

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO STATE CONFERENCE
OF THE NAACP, *et al.*,

Plaintiffs,

v.

THE STATE OF OHIO,

Defendant.

Case No. 21-CV-005692

Judge Stephen L. McIntosh

**PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS
OF DEFENDANT THE STATE OF OHIO**

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 2

STANDARD OF REVIEW 5

ARGUMENT 5

 I. Each Plaintiff has alleged a cognizable injury caused by the unconstitutional passage of the Stand Your Ground amendment that can be redressed by this Court..... 6

 A. The Ohio NAACP and the OOC have standing because their organizations have suffered injuries from the Stand Your Ground amendment’s enactment 6

 B. The Ohio NAACP has associational standing based on its members’ injuries 10

 C. Senator Thomas has standing to redress the dilution of his vote and his power 12

 II. Plaintiffs have stated claims for declaratory judgment..... 15

 A. The General Assembly violated the three-considerations rule in passing S.B. 175 the day after inserting the Stand Your Ground amendment 15

 B. The General Assembly violated the one-subject rule by combining a bill about nonprofit parity with a bill about an individual defendant’s duty to retreat 17

CONCLUSION..... 20

INTRODUCTION

This case challenges the General Assembly's straightforward violations of constitutional procedural protections. The General Assembly crammed two very different bills into one in ways proscribed by the Ohio Constitution. One bill closed a loophole that had exposed nonprofits to civil liability for injuries resulting from the use of a handgun on their premises by establishing an immunity from liability that their for-profit counterparts already enjoyed. Everyone approved of this first bill. The second bill upended criminal and civil individual self-defense laws by eliminating the duty to retreat before using deadly force in public places and by changing the standard that judges and juries use for determining when an individual's use of force is murder and when it is justifiable homicide. In seven years of trying, the General Assembly could not pass this second, controversial legislation—known as Stand Your Ground—as a standalone bill. Late last year, the public and legislators again rose up in opposition to Stand Your Ground legislation, but its supporters circumvented the regular process, adding its provisions to the popular bill with a late-night amendment, effectively passing two bills in one package.

In packaging the bills together, the General Assembly violated the three-considerations and one-subject rules of the Ohio Constitution, each of which prohibits legislation lacking a common purpose between provisions. The unnatural combination of these wholly disparate provisions is impossible to explain away because no theme unites them. Stuck with making sense of the General Assembly's last-minute pairing, the State offers the flimsy rationalization that "handgun liability" is the bill's common theme. This label falls short: it fails to capture the purpose of either the first provision, which establishes nonprofit parity with for-profit corporations, or the Stand Your Ground amendment, which changes individual defensive force standards, makes no mention of

handguns, and applies whether an individual uses a knife, bat, rifle, or some other instrument of deadly force.

Plaintiffs are appropriate parties to bring this lawsuit because they have been harmed by the Stand Your Ground amendment in concrete ways that distinguish them from the general public. The Ohio State Conference of the National Association for the Advancement of Colored People (“Ohio NAACP”) is revamping its educational programming in response to its Black constituents’ fears of a new law known to heighten the risk of violent public confrontations and to exacerbate racial inequities. One of its members, facing threats of racial violence, has changed how she deals with others in public out of a reasonable fear that the new use of force standards will precipitate a deadly encounter. The Ohio Organizing Collaborative (“OOC”) is altering its training of voter engagement canvassers to account for Stand Your Ground and faces reduced engagement in its direct-action programs. The General Assembly’s unconstitutional passage of the Stand Your Ground amendment dilutes State Senator Cecil Thomas’s voting and legislative power.

BACKGROUND

Closing the nonprofit loophole. On December 17, 2020, Amended Senate Bill 175 (“S.B. 175”) came up for its final consideration in the House. Compl. ¶ 91. Up to that point, the bill, as its title indicated, legislated on the subject of “grant[ing] civil immunity to nonprofit corporations for certain injuries, deaths, or losses resulting from the carrying of handguns” by amending R.C. 2923.126. Compl. Ex. O. The original sponsor announced that the bill “fixes a loophole to protect non-profit organizations around the state.” Compl. ¶ 46. He noted that the law already protected other institutions from civil liability for concealed-carry incidents that happen on their premises and that S.B. 175 “simply extends that protection to a fourth type of institution—nonprofit organizations.” *Id.* The sponsor emphasized, “This is not a ‘gun bill.’” *Id.* ¶ 47. A committee

witness supported S.B. 175 as a “modest change to state law that does one thing: it amends nonprofit organizations seeking insurance coverage into the same category as local governments, colleges and universities, and even private sector businesses.” *Id.* ¶ 42.

Closing the nonprofit loophole was an easy sell in the General Assembly. It did not require agreeing with a general policy that institutions should be immune from liability for shootings by concealed handgun licensees that happen on their premises; it only required agreeing that nonprofits deserve parity with for-profit businesses and other institutions. It attracted bipartisan cosponsors, including Plaintiff Senator Thomas, and it passed the Senate on a unanimous vote on third consideration. *Id.* ¶ 44. The House considered S.B. 175 at least three times and the bill was informally passed on its third consideration by a vote of 85 to 7. *Id.* ¶¶ 45, 49.

A late-night Stand Your Ground amendment. Shortly before midnight on December 17, 2020, with only days left in the lame duck session, House members proposed Amendment 3883 to S.B. 175 which, unrelated to the closing of the nonprofit loophole, legislated on the separate subject of individual self-defense. *Id.* ¶¶ 92–93. The amendment—which would enact into law a controversial doctrine known as Stand Your Ground—“expand[ed] the locations at which a person has no duty to retreat before using force under both civil and criminal law.” *Id.* ¶¶ 5, 93, 95 & Ex. O. The Stand Your Ground amendment established the principle that “[a] person has no duty to retreat before using force in self-defense . . . if that person is in a place in which the person lawfully has a right to be.” *Id.* ¶ 93 & Ex. O. It also created a new evidentiary rule that prohibits the trier of fact from considering the possibility of retreat in determining whether a person reasonably believed that their use of defensive force was necessary. *Id.*

The Stand Your Ground amendment in no way concerned nonprofits’ liability for handgun usage on their premises, nor parity between for-profits and nonprofits; instead, it concerned the

different subject of an individual's duty to retreat before using *any* instrument of force in *any* location. *Id.* ¶¶ 93–94; *see* R.C. 2901.01(A)(1) and (2) (defining “Force” to mean “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing” and “Deadly force” to mean “any force that carries a substantial risk that it will proximately result in the death of any person”). Legislators spoke of the Stand Your Ground amendment as separate legislation from closing the nonprofit loophole. Compl. ¶¶ 99–105. A Senator even supported the Stand Your Ground amendment as “*another* excellent bill.” *Id.* ¶ 100 (emphasis added).

Stand Your Ground bills failed to pass on their own. The Stand Your Ground amendment inserted language from two then-pending bills—S.B. 383 and H.B. 796—that had recently been heard in committees and were the latest iterations of Stand Your Ground legislation that had failed to pass the General Assembly at least six other times since 2013. *Id.* ¶¶ 6, 50–59. The two bills faced overwhelming opposition in committees. *Id.* ¶¶ 62, 84. The Chiefs of Police of major Ohio cities wrote that Stand Your Ground “would threaten public safety by encouraging armed vigilantism and allow a person to kill another person in a public area even when he or she can clearly and safely walk away from danger.” *Id.* ¶ 86. The Ohio Prosecuting Attorneys Association favored keeping a duty to retreat because it “is a good policy that prevents needless confrontation, helps lead to de-escalation, and potentially prevents the unnecessary loss of life.” *Id.* ¶ 65.

Many witnesses testified about their fears of a Stand Your Ground law—grounding their concerns in academic studies showing that Stand Your Ground laws are associated with significant increases in homicides and with racial disparities in criminal justice outcomes. *Id.* ¶¶ 67–79. Witnesses also warned against pushing through the legislation in the lame duck session and urged a “full discussion” of the matter. *Id.* ¶¶ 64, 89. Like their predecessors, these two bills failed to pass standing alone, so House members jammed their contents into the popular and sure-to-pass

S.B. 175. The House passed the combined legislation at about 11:40 p.m. on December 17 and the Senate concurred in the amendment the next day. *Id.* ¶¶ 98–99. The unnatural combination of the two bills is evident in the bill’s final title:

To amend sections 2307.601, 2901.05, 2901.09, and 2923.126 of the Revised Code to grant civil immunity to nonprofit corporations for certain injuries, deaths, or losses resulting from the carrying of handguns and to expand the locations at which a person has no duty to retreat before using force under both civil and criminal law.

Compl. Ex. A at 1. After the bill was signed, it took effect April 6, 2021. *Id.* ¶¶ 105–06.

This lawsuit. Plaintiffs—the Ohio NAACP, the OOC, and Senator Thomas¹—filed a Complaint for Declaratory Judgment requesting that this Court invalidate S.B. 175’s Stand Your Ground amendment’s changes to R.C. 2307.601 and 2901.09 for violations of the three-considerations and one-subject rules of the Ohio Constitution, Article II, Section 15(C) and (D). The State moved to dismiss.

STANDARD OF REVIEW

This Court may dismiss Plaintiffs’ Complaint only if it fails Ohio’s lenient notice-pleading standard. “Factual allegations made in a complaint are taken as true for purposes of determining whether the complaint states a claim.” *Wells Fargo Bank, N.A. v. Horn*, 142 Ohio St. 3d 416, 2015-Ohio-1484, ¶ 13.

ARGUMENT

In its Motion to Dismiss (“MTD”), the State argues that Plaintiffs lack standing and fail to state a claim for which relief can be granted. It is wrong on both counts. The Complaint supports each Plaintiff’s standing, and the Stand Your Ground amendment violated the three-considerations and one-subject rules.

¹ State Representative Stephanie Howse is also a plaintiff in this case, but, due to her recent election to the Cleveland City Council, her voluntary dismissal is forthcoming.

I. Each Plaintiff has alleged a cognizable injury caused by the unconstitutional passage of the Stand Your Ground amendment that can be redressed by this Court.

“Standing exists only when (1) the complaining party has suffered or has been threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, (2) the law in question caused the injury, and (3) the relief requested will redress the injury.” *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565, 2012-Ohio-5776, ¶ 8. Ohio courts “are generous in considering whether a party has standing.” *Moore v. City of Middleton*, 133 Ohio St.3d 55, 2012-Ohio-3897, ¶ 48.

A. The Ohio NAACP and the OOC have standing because their organizations have suffered injuries from the Stand Your Ground amendment’s enactment.

The Ohio NAACP and the OOC amply allege that they have been injured and continue to be injured by the Stand Your Ground amendment’s enactment. The State’s unavailing arguments misconstrue their organizational injuries and rely on inapposite theories of standing.

An organization incurs an injury where a challenged law “perceptibly impair[s]” the organization’s mission and causes a “drain on the organization’s resources.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).² Educating an organization’s members or constituents about the strictures of a new law in response to their concerns is a diversion-of-resources injury that satisfies organizational standing. *Online Merchants Guild v. Cameron*, 995 F.3d 540, 548 (6th Cir.

² This court recently recognized organizational standing to challenge voting directives. *See Ohio Democratic Party v. LaRose*, Franklin C.P. No. 20CV-5634, 2020 Ohio Misc. LEXIS 131, 29–30 (applying *Havens* and finding that an organization has standing to challenge a law that “‘str[ikes] directly at the organization’s mission’” which then “‘compel[s] it to devote resources to combatting the effects of that law that are harmful to the organization’s mission’”), quoting *Common Cause Indiana v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019), and *aff’d in relevant part*, 2020-Ohio-4778 (10th Dist.); *Ohio Democratic Party v. LaRose*, Franklin C.P. No. 20CV-4997, 2020 Ohio Misc. LEXIS 3410, 24, *aff’d in relevant part*, 2020-Ohio-4664 (10th Dist.).

2021) (organization established standing where it “expend[ed] organizational resources . . . discuss[ing] open questions” about a new law with its “confused and concerned” members).³

The Ohio NAACP’s injury stems from Black Ohioans’ fears about what the Stand Your Ground amendment means for their safety and survival. Compl. ¶¶ 11–13. These fears are front and center at chapter meetings and in conversations, as members seek information and counsel from chapter leaders. *Id.* These fears and the racially disproportionate impact of Stand Your Ground strike at the Ohio NAACP’s mission “to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.” *Id.* ¶¶ 9–10. To respond, the Ohio NAACP is educating its members about Stand Your Ground, conducting community outreach, developing de-escalation strategies, coordinating with experts, and advocating for government interventions. *Id.* ¶¶ 11–12. These efforts divert resources from other core initiatives—including economic sustainability, education equality, health equality, environmental and climate justice, criminal justice reform, and voting rights and fair representation. *Id.* ¶ 14. The Stand Your Ground amendment, therefore, “impairs” the Ohio NAACP’s “ability to engage in its own projects by forcing the organization to divert resources in response.” *Arcia v. Florida Secy. of State*, 772 F.3d 1335, 1341 (11th Cir. 2014).

Similarly, fears about the Stand Your Ground amendment’s impact frustrate the OOC’s “multi-pronged mission of organizing everyday Ohioans to build transformative power for racial, social, and economic justice.” Compl. ¶¶ 18, 20. The OOC engages in nonpartisan voter engagement and grassroots community organizing. *Id.* Its voter engagement program recruits and trains canvassers to travel street-to-street to register voters or set up voter registration tables in

³ While Ohio Courts are not bound by federal standing doctrine, “in deciding issues of standing in the courts of Ohio, the Ohio Supreme Court relies on federal court decisions.” *Cincinnati City School Dist. v. State Bd. Of Edn.*, 113 Ohio App.3d 305, 313 (10th Dist. 1996).

public places. *Id.* ¶ 20. In response to the Stand Your Ground amendment, the OOC has amended its canvasser field training to include lessons on how volunteers can keep themselves safe. *Id.* The OOC also plans to divert its limited resources to engage outside counsel to update its formal written training materials, particularly its “Know Your Rights” handouts, and to make copies available for each canvasser. *Id.* Finally, the OOC has heard from some individuals that they are no longer willing to attend its programming due to the new law. *Id.* This injury alone—“imped[ing] its ability to attract members”—gives the OOC standing to challenge the new law. *Florida Democratic Party v. Hood*, 342 F.Supp.2d 1073, 1079 (N.D. Fla. 2004). In response, the OOC is rethinking its direct-action strategies that are essential to its mission. Compl. ¶ 20.

These facts make out organizational injuries. An organization has standing where a new law or rule impairs its mission in some way and the organization responds by diverting resources—including towards education—to address its constituents’ fears about the new law or rule’s impact. *See, e.g., Kravitz v. U.S. Dept. of Commerce*, 366 F.Supp.3d 681, 742 (D.Md. 2019) (finding organizations had standing to challenge a new Census citizenship question because it would make the immigrant population they served “more reluctant to respond” and force the organizations “to divert resources to help mitigate the impact of the citizenship question”); *Florida State Conference of the NAACP v. Lee*, N.D.Fla. No. CV 21-187, 2021 U.S. Dist. LEXIS 200532, 26 (Oct. 8, 2021) (Florida NAACP had standing to challenge a new voting law because “electoral engagement and access [was] core” to its mission and it diverted resources towards educating its members and other voters about the law’s allegedly disproportionate impact on Black and Latino voters); *Whitman-Walker Clinic, Inc. v. U.S. Dept. of Health & Human Servs.*, 485 F.Supp.3d 1, 21–22 (D.D.C. 2020) (health care providers’ mission to provide health care to all was frustrated because LGBTQ patients’ fears of a new rule’s discriminatory application by other providers would cause

“increased demand” and cause them to use more resources in response); *Natl. Press Photographers Assn. v. McCraw*, 504 F.Supp.3d 568, 581 (W.D.Tex. 2020) (journalist advocacy organization had standing to challenge a law regulating drones because it had diverted resources from its core activities to counter the law’s effects on journalist members who used drones when reporting, including by advising members about the law).

The State paints the Ohio NAACP’s and OOC’s diversions of resources as “voluntary.” MTD at 7. But expenditures of resources “do qualify as an injury, whether they are voluntarily incurred or not,” and this attempt to create a distinction has “no support in the law, and it misses the point.” *Florida State Conference of NAACP v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008). The State also mischaracterizes the organizations’ injuries as mere “ideological opposition”, MTD at 7,⁴ overlooking the specific organizational injuries alleged here, and incorrectly implying that the Ohio NAACP and the OOC cannot have standing because educating about Stand Your Ground is consistent with their missions; in fact, an organization has standing “even if [it] is diverting resources to educate its members about issues related to its core mission.” *Natl. Press Photographers Assn.*, 504 F.Supp.3d at 581; *see also Online Merchants Guild*, 995 F.3d at 548.

Finally, the Stand Your Ground amendment caused the Ohio NAACP’s and the OOC’s injuries because it spurred their constituents’ fears for personal safety to which the organizations have responded at the cost of other activities. Compl. ¶¶ 9–14, 20. Unless the Stand Your Ground

⁴ The State supports its point by relying on a case in which the organizational plaintiff conceded that it had no personal injury and asserted standing not through organizational injury, but rather through the public-right doctrine, an *exception* to standing’s personal-injury requirement. *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, ¶ 9.

amendment is invalidated, the Ohio NAACP and the OOC must continue to divert time and resources to addressing its impact. *Id.* ¶¶ 12–14, 20.

B. The Ohio NAACP has associational standing based on its members’ injuries.

An organization has standing to sue on behalf of its members—associational standing—if “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Ohio Contrs. Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994), quoting *Hunt v. Washington State Apple Advertising Comm.*, 432 U.S. 333, 343 (1977). The State does not dispute that the Ohio NAACP has satisfied two of the *Hunt* factors to sue on behalf of its members, contesting only whether member Denise Williams has standing to sue in her own right. MTD at 3–4. The State’s argument fails: Ms. Williams has standing to sue in her own right for an injury caused by the Stand Your Ground amendment that only its invalidation can redress.

In response to the new law, Ms. Williams has altered her behavior in public to avoid confrontations out of a reasonable fear that—as an Ohio NAACP public figure and a Black woman—she faces a newly heightened risk that she will be killed in what will be deemed a justifiable homicide. Compl. ¶¶ 16–17. This change in behavior in response to a reasonable fear is a cognizable injury under *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167 (2000). In *Laidlaw*, the U.S. Supreme Court found that an organization had associational standing because its members who lived near the defendant’s hazardous waste facility no longer engaged in outdoor activities out of their fear of the facility’s pollutant discharges. *Id.* at 181–83. The “members’ reasonable concerns about the effects of [the] discharges, directly affected [their] recreational, aesthetic, and economic interests,” establishing

an injury. *Id.* at 183–84. In *Laidlaw*, pollution provoked vulnerable individuals’ reasonable fears about undertaking recreational activities; here, the Stand Your Ground amendment changed the conditions for the use of deadly force in public, causing Ms. Williams to reasonably fear that she could be victimized. Compl. ¶¶ 16–17. The well-known risks of Stand Your Ground laws and their disproportionate effect on the Black community show the reasonableness of Ms. Williams’s fear. *Id.* ¶¶ 55, 59, 66–80, 86, 88, 96–97, 104. *See also Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (finding an injury where a member’s “reasonable fear and concern about the effects of [the defendant’s] discharge, supported by objective evidence, directly affect his recreational and economic interests”). Ms. Williams’s fears are arguably more acute than the concerns about pollution that affected the members’ “recreational” and “aesthetic” interests in *Laidlaw*. It is Ms. Williams’s fear for her survival under Stand Your Ground which has affected her interest in freely interacting in daily life encounters.

The State mischaracterizes the injury to Ms. Williams as speculative. MTD at 5. The harm to Ms. Williams is not only in the future; she has already changed her behavior in response to her fear about what the Stand Your Ground amendment means for her. Compl. ¶¶ 16–17. Further, Ms. Williams’s situation is not akin to the plaintiff’s in *Preterm-Cleveland, Inc. v. Kasich*, where the Court found that because the plaintiff had no credible fear of prosecution under a statute that *did not apply to it*, its change in conduct was not an injury. 153 Ohio St.3d 157, 2018-Ohio-441, ¶ 26, cited by MTD at 4–5. As a public-facing Black woman who has regularly received racist death threats, Compl. ¶¶ 16–17, Ms. Williams’s change in behavior is based on a reasonable fear: academic studies document how laws like the Stand Your Ground amendment heighten the risks accompanying public confrontations and reduce the chances that a perpetrator will be brought to justice, particularly when a Black victim is involved. *Id.* ¶¶ 68–79.

The State contends that invalidating the Stand Your Ground amendment cannot redress Ms. Williams’s injury because it will not end racial injustice or “prevent people from harboring racist views.” MTD at 6. But Ms. Williams is not seeking redress for racial prejudice; she is seeking to invalidate the law that has caused her to change her handling of public interactions out of her reasonable fear that this law gives individuals an *additional* impetus and perceived license to use violence against her with impunity. Compl. ¶¶ 16–17.

C. Senator Thomas has standing to redress the dilution of his vote and his power.

Senator Thomas has standing because he incurred a “personal injury” from the General Assembly’s constitutional violations. A “personal injury” in the context of legislative standing is one which “harms the legal rights of the individual legislator, as distinct from injuries to the institution in which they work or to legislators as a body.” *Maloney v. Murphy*, 984 F.3d 50, 62–64 (D.C. Cir. 2020) (legislators had standing based on an injury from “the denial of information to which they as individual legislators [were] statutorily entitled”). A cognizable personal injury arises where the legislature’s allegedly unconstitutional action dilutes the legislator’s voting power or political power. *See Michel v. Anderson*, 14 F.3d 623, 625, 628 fn.4 (D.C. Cir. 1994) (members of Congress had standing to assert that “their voting power in Congress ha[d] been diluted” in challenging a House rule that granted a right to vote in a committee to House delegates from the territories and Washington, D.C.); *Vander Jagt v. O’Neill*, 699 F.2d 1166, 1170 (D.C. Cir. 1982) (Republican congresspeople had standing where Democratic leaders diluted their political power by “disproportionately limit[ing] the Republicans’ representation on congressional committees”); *Kerr v. Hickenlooper*, 824 F.3d 1207, 1216 (10th Cir. 2016) (“[I]f a particular subset of legislators was barred from exercising their right to vote on bills, such an injury would likely be sufficient to establish a personal injury.”).

Here, the General Assembly’s unconstitutional act diluted Senator Thomas’s voting power. His votes for and cosponsorship of closing the nonprofit loophole advanced the bill that came to include the Stand Your Ground legislation that he actively opposed, a result the General Assembly achieved only by violating the three-considerations and one-subject rules through a last-minute amendment. Compl. ¶¶ 27–30, 80, 103. That amendment diluted Senator Thomas’s power by depriving him of the capacity to oppose Stand Your Ground legislation by raising public awareness and organizing opposition with constituents and other legislators. *Id.* ¶¶ 28–31. Because the Stand Your Ground amendment did not undergo three considerations in each chamber, Senator Thomas could not meaningfully communicate with his constituents about it, and he could not oppose the amendment in committee hearings. *Id.* ¶¶ 28, 30. That Senator Thomas’s opposition would have succeeded but for the General Assembly’s unconstitutional act is indicated by the many times that Stand Your Ground legislation failed to pass in standalone bills. *Id.* ¶¶ 53–59.

The three-considerations and one-subject rules prevent the dilution of voting power incurred by Senator Thomas here and preserve his political power by establishing basic procedures that legislators—particularly members of the minority party—can rely on. The three-considerations rule “affords each legislator an opportunity to study the proposed legislation, communicate with his or her constituents, note the comments of the press and become sensitive to public opinion.” *Hoover v. Bd. of Cty. Commrs.*, 19 Ohio St.3d 1, 8 (1985) (Douglas, J., concurring). It also protects a legislator’s “right to be informed” about the contents of legislation. Ohio Const. Revision Comm., Recommendations for Amendments to the Ohio Constitution, Final Report 123–24 (1977), <https://bit.ly/3zJRafz> (accessed Nov. 16, 2021). The three-considerations and one-subject rules “provide a minimum guarantee for an orderly and fair legislative process” that “protect[s] [] a temporary minority whose rights may not be suspended by a majority willing

to disregard traditional procedures.” *Id.* at 125. The State’s facetious assertion that legislators “have no constitutional right . . . to update their constituents at their preferred pace,” MTD at 9, disregards the concrete interests conferred on individual legislators by the Ohio Constitution.

The State rests on a “general rule against legislative standing.” MTD at 8. But this principle—established in *Raines v. Byrd*, 521 U.S. 811 (1997)—bars legislator standing only for harm done by the executive to the legislature as a whole and “d[oes] not decide whether congressmen would have standing to challenge the actions of Congress which diminished their institutional role.” *Campbell v. Clinton*, 203 F.3d 19, 21 fn.2 (D.C. Cir. 2000); *Maloney*, 984 F.3d at 63. Here, the General Assembly’s constitutional violations harmed Senator Thomas. For this reason, his claim does not hinge on showing that his vote would have been “sufficient to defeat” S.B. 175 after its unconstitutional amendment. *See* MTD at 8. The “sufficient votes” metric for legislator standing applies in a challenge to the executive’s unconstitutional veto of validly enacted legislation. *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, ¶ 20. Through the claims in this case, Senator Thomas makes a “constitutional challenge . . . to the authority of the General Assembly to enact the bill” *Rumpke Sanitary Landfill, Inc. v. State*, 128 Ohio St.3d 41, 2010-Ohio-6037, ¶ 20. The State cites no Ohio case precluding legislator standing for a personal injury caused by the General Assembly’s constitutional violations.

Finally, Senator Thomas’s personal injury is redressable. Invalidating the Stand Your Ground amendment both restores Senator Thomas’s ability to use his political power to oppose future Stand Your Ground bills and protects the effectiveness of Senator Thomas’s vote in the face of the continued dilution of his voting power. Compl. ¶¶ 30–31.

II. Plaintiffs have stated claims for declaratory judgment.

As to the merits, the General Assembly violated the three-considerations and one-subject rules of the Ohio Constitution by packaging the Stand Your Ground amendment with the nonprofit parity provision, thereby vitally altering the original bill, and enacting a combined bill lacking a common purpose between its provisions. Because Plaintiffs have stated claims for declaratory judgment, the State's motion to dismiss should be denied.

A. The General Assembly violated the three-considerations rule in passing S.B. 175 the day after inserting the Stand Your Ground amendment.

Under the three-considerations rule, an amendment that vitally alters the substance of a bill triggers a requirement that the bill be considered anew three times in each chamber. *Hoover*, 19 Ohio St.3d at 5. After the Stand Your Ground amendment was added, S.B. 175 was enacted without the requisite three considerations in each house, a point the State concedes. MTD at 11. The only question is whether the amendment “vitally altered” S.B. 175, so that it “depart[ed] entirely from a consistent theme” or “there [was] no longer a common purpose or relationship between the original bill and the bill as amended.” *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 233 (1994).

The Stand Your Ground amendment departs entirely from S.B. 175's consistent theme before December 17—closing the nonprofit loophole. Viewed broadly, the nonprofit loophole provision aims to establish parity between nonprofits and other institutions, while the Stand Your Ground amendment aims at expanding the locations where an individual can lawfully use deadly force without having a duty to retreat. Nothing about closing the nonprofit loophole relates to the standards that apply in individual self-defense cases. Nothing in the Stand Your Ground amendment relates to nonprofit civil liability.

The two sets of provisions are just as disparate in their specific dimensions. *Compare* Compl. Ex. A at 5 (closing of the nonprofit loophole) *with* 1–3 (Stand Your Ground amendment). The nonprofit loophole provision applies in civil cases, the Stand Your Ground amendment in criminal and civil cases. The nonprofit loophole provision provides immunity from liability to nonprofit entities for the conduct of third parties who carry concealed handguns on their premises. The Stand Your Ground amendment provides a justification to individuals for their own use of any type of deadly force—whether with a firearm, baseball bat, or knife—in any “place in which the person lawfully has a right to be.”

There is no tenable shared purpose or consistent theme between a provision as specific and limited as closing the nonprofit loophole—establishing the equitable treatment of nonprofit and for-profit entities in civil cases—and the Stand Your Ground amendment, which applies to a whole other area of law—criminal law—and to the standards governing the use of force by individuals. The State tries to glue together the ill-fitting provisions of S.B. 175 with the notion that they all relate to “reducing handgun-related liability,” *see* MTD at 11, a label that cannot unite the bill’s provisions. First, “liability” has an entirely different meaning when applied to closing the nonprofit loophole compared to the Stand Your Ground amendment: one relates solely to immunizing a corporate entity’s civil liability for a third party’s conduct while the other relates to the standards for evaluating an individual’s criminal or civil liability for their personal conduct. Second, the State appears to be aware it is hamstrung by the narrowness of the nonprofit loophole’s application to uses of handguns. So, it attempts to reduce the Stand Your Ground amendment to a handgun issue as well. But this attempt obscures all other applications that the amendment’s changes to defensive force standards will have and ignores that handguns are neither mentioned in its text nor necessary for its application.

Moreover, by inserting the Stand Your Ground amendment into S.B. 175, the General Assembly effectively avoided further hearings and debate on legislation that had been proposed and failed as standalone bills many times. Compl. ¶¶ 35, 50–59. Legislators understood the Stand Your Ground amendment as separate legislation, *id.* at ¶¶ 99–105, and it was added to S.B. 175 in a late-night, lame duck maneuver precisely because the standalone Stand Your Ground bills could not pass on their own. *Id.* ¶¶ 92, 98. This context is relevant to this Court’s analysis, *first*, because it shows how the legislators originally understood the purposes and subjects of the two provisions and, *second*, because the “underlying purpose” of the three-consideration rule is “to prevent hasty action and to lessen the danger of ill-advised amendment at the last moment.” *Voinovich*, 69 Ohio St. 3d at 233, quoting *Hoover*, 19 Ohio St. 3d at 8 (Douglas, J., concurring).

The State’s defense of the three-considerations rule violation relies on an inapt comparison. MTD at 11, citing *Youngstown City School Dist. Bd. of Edn. v. State*, 161 Ohio St.3d 24, 2020-Ohio-2903. *Youngstown* involved provisions all related to the coherent common purpose of “improving education in underperforming school districts,” where the challenged amendment simply employed different “tools” to “pursue[] that goal.” *Id.* ¶¶ 17–18. The Stand Your Ground amendment, however, is not a different “tool” for ensuring nonprofit immunity in third party shootings; Stand Your Ground does not apply to nonprofits at all. It vitally altered the original bill.

B. The General Assembly violated the one-subject rule by combining a bill about nonprofit parity with a bill about an individual defendant’s duty to retreat.

The General Assembly violated the one-subject rule because the Stand Your Ground amendment shared no common purpose with closing the nonprofit loophole. That violation is further supported by Plaintiffs’ allegations that the amendment was tactical.

In reviewing legislation containing multiple topics, “[t]he pivotal question is whether [the] topics share a common purpose or relationship so that they unite to form a single subject for

purposes of [the one-subject rule].” *Akron Metro. Hous. Auth. Bd. of Trustees v. State*, 10th Dist. Franklin No. 07AP-738, 2008-Ohio-2836, ¶ 20. “[U]nnatural combinations” of provisions in an act evince a violation. *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 143 (1984). Review of S.B. 175’s compliance with the one-subject rule “depends primarily on a ‘case-by-case, semantic and contextual analysis.’” *Village of Linndale v. State*, 2014-Ohio-4024, ¶ 12 (10th Dist.), quoting *Dix* at 145. Here, the purpose of S.B. 175’s nonprofit loophole provision is to establish parity between corporate entities for their civil liability for handgun use by third parties at locations where those entities operate. The purpose of the Stand Your Ground amendment is to change the standards that apply to an individual’s use of any type of deadly defensive force, establishing the principle that an individual is not required to retreat before using force even if they could safety do so.

Courts have invalidated provisions that share far more in common. For example, in *Voinovich*, the Court noted that although “[i]n a broad sense” a child labor law and workers’ compensation provisions both “addresse[d] the area of employment,” the child labor law violated the one-subject rule because it did not “in any way touch upon” the actual purpose of the workers’ compensation provisions, which was “not to generally amend laws that relate to employment but to specifically amend the workers’ compensation laws.” 69 Ohio St.3d at 230. In *Akron*, the court invalidated provisions affecting *who* used authority to regulate local housing on certain housing boards because those provisions lacked a common purpose with zoning law provisions affecting *how* authority to regulate local housing was used. 2008-Ohio-2836, at ¶ 23. To find otherwise, the court found, would “stretch[] the one-subject concept too far.” *Id.*

The State’s proposed common purpose of “handgun liability,” so limited in scope, is a total mismatch for the Stand Your Ground amendment, which, as detailed above, changes the criminal standards that apply to individuals for their personal conduct in public places for the use of any

kind of deadly force in self-defense. That handguns are just one of innumerable instruments of deadly force, and that a person may or may not be convicted of murder or assault for using one due to the Stand Your Ground amendment, is at most the type of “connection [that] is merely coincidental” that does not make out a common purpose. *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St. 3d 145, 148 (1991). “Handgun liability” describes too insignificant of an aspect of the Stand Your Ground amendment; a proposed common purpose must provide more than a “tenuous, tangential link” between provisions. *City of Cleveland v. State*, 2013-Ohio-1186, ¶¶ 49–52. (8th Dist.).

The State cannot point to any case in which the combination of comparably dissimilar subjects withstood one-subject review. *See* MTD at 13–14. In *State v. Bloomer*, the Court’s analysis found that the bill’s two topics furthered the same “overriding purpose” which had been expressly articulated in statutes and the Court’s prior decisions. 122 Ohio St.3d 200, 2009-Ohio-2462, ¶¶ 54–55.⁵ Further, the State relies on a case that did not even raise a one-subject challenge, but instead involved a challenge under the Ohio Constitution’s more liberally construed separate-vote requirement. MTD at 14, citing *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, ¶¶ 37–38; *see Willke* at ¶¶ 30, 35 (recognizing the separate-vote requirement is “broader” than the “stricter one-subject provision”). The State then mistakenly relies on the irrelevant

⁵ The State also points to other cases where challenged provisions were meaningfully described by the bill’s common purpose. MTD at 13–14, citing *City of Riverside v. State*, 190 Ohio App.3d 765, 2010-Ohio-5868, ¶¶ 44–45 (10th Dist.) (upholding provision restricting city’s “ability to generate revenue” in appropriations bill because at the “core” of an appropriations bill is “revenues and expenditures”); *Scancarello v. Erie Ins. Co.*, 10th Dist. Franklin No. 96APE02-166, 1996 Ohio App. LEXIS 3216, 15 (July 25, 1996) (“motor vehicle insurance” bill encompassed provision limiting recovery in vehicular accidents and provision “requiring financial responsibility information as part of the driver education curriculum”).

separate-vote requirement standard in *Willke* to argue that “statutory combinations” are upheld even when “seemingly the product of a tactical decision.” MTD at 14.

That is not the rule in one-subject cases, where a late-in-the-process amendment indicates that it was added to a bill for tactical reasons and not because it shared a common purpose with the other provisions. *See, e.g., Gallipolis Care, L.L.C. v. Ohio Dept. of Health*, 10th Dist. Franklin No. 03AP-1020, 2004-Ohio-5533, ¶ 37 (invalidating one section of a bill where “the record indicate[d] that the section was inserted into the bill late in the process and for what appear to be tactical reasons”); *City of Cleveland* at ¶ 45 (“The facts giving rise to the birth of the amendments, coupled with the lack of a nexus between the amendments and the appropriations bill, create a strong suggestion that the provisions were combined for tactical reasons.”); *Plain Local School Dist. Bd. of Edn. v. DeWine*, 486 F.Supp.3d 1173, 1207 (S.D. Ohio 2020) (invalidating a statute added to bill where “[t]he procedural history of the statute shows that it was tactically crammed into the budget bill to secure its passage for fear it might not garner enough votes if it was considered on its own merits”). The circumstances here demonstrate that the late-night Stand Your Ground amendment was made tactically—S.B. 175 was up for its final consideration, only days remained in the legislative session, the amendment was not subject to debate after being added, and the Stand Your Ground amendment had failed to pass in standalone bills. It was “no coincidence” that the “controversial” Stand Your Ground amendment “escaped analysis and debate.” *Plain Local* at 1207. The Stand Your Ground amendment’s enactment was therefore in violation of the Ohio Constitution’s one-subject rule and its provisions are severable as an “unrelated addition” to S.B. 175. *Village of Linndale*, 2014-Ohio-4024, at ¶ 11.

CONCLUSION

For these reasons, the Court should deny the State’s motion to dismiss.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Opposition to Motion to Dismiss of Defendant the State of Ohio has been served upon the following by electronic mail this 17th day of November 2021:

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