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IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO

OHIO STATE CONFERENCE OF THE NAACP, *et al.*,	:	
Plaintiffs,	:	Case No. 21-CV-005692
v.	:	Judge Stephen L. McIntosh
THE STATE OF OHIO,	:	Action for Declaratory Judgment
Defendant.	:	

REPLY IN SUPPORT OF MOTION TO DISMISS OF DEFENDANT THE STATE OF OHIO

INTRODUCTION

Plaintiffs' Opposition to the State's Motion to Dismiss brims with non-binding case law and unsupported theories. First, Plaintiffs lack standing. They fail to meaningfully respond to some of the State's key points in its Motion to Dismiss, such as the fact that S.B. 175 is race-neutral and that Denise Williams's alleged injury is caused by racism, not S.B. 175. In their attempt to show standing for Senator Thomas, Plaintiffs assert a "vote-dilution" theory from inapplicable federal cases. And in their effort to show organizational standing, Plaintiffs rely on non-binding cases about an organization's core mission—even though the race-focused missions of Ohio NAACP and OOC undercut any theory that S.B. 175 attacks either's core mission. S.B. 175 is a race-neutral law that concerns handgun liability.

Second, Plaintiffs fail to rebut the State's arguments showing that both their three-considerations and one-subject claims fail. Addressing two handgun-liability issues in the same bill neither "defies rationality" nor "wholly changes" the initial version of the bill—the applicable

legal standards that Plaintiffs must meet. As a matter of law, Plaintiffs' claims fail, and their Complaint should be dismissed.

ARGUMENT

I. Plaintiffs Lack Standing.

A. The Organizational Plaintiffs lack standing.

1. The Organizational Plaintiffs lack standing in their own right.

Ohio NAACP and OOC ("Organizational Plaintiffs") lack standing in their own right. Here, the Organizational Plaintiffs offer the same two alleged injuries—the diversion of organizational resources and the denial of the opportunity to participate in the legislative process. *See* Compl. ¶¶ 14-15, 19-20. They do not even address, much less rebut, the State's argument that they lack standing under the latter theory and have essentially conceded that they do not. *Compare* Mot. to Dismiss at 7-8, *with* Opp. at 6-9. As for the only argument they attempt to rebut, the Organizational Plaintiffs still fail to establish standing based on an alleged diversion of organizational resources.

Simply put, S.B. 175, a handgun-liability bill, does not affect either of the Organizational Plaintiffs' missions. Neither organization serves as an Anti-NRA. Rather, Ohio NAACP's mission is "to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination[,]" Compl. ¶ 9, and OOC's mission is "organizing everyday Ohioans to build transformative power for racial, social, and economic justice." *Id.* ¶ 18. As S.B. 175 cannot be said to have *any* effect on either of the Organizational Plaintiffs' missions, their alleged injuries amount to nothing more than "ideological opposition to a program or legislative enactment[, which] is not enough" to confer standing under Ohio law. *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, ¶ 1. Thus, even under the test the Organizational Plaintiffs want applied, they lack standing.

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2. *The Organizational Plaintiffs lack associational standing.*

The Organizational Plaintiffs also lack associational standing. Plaintiffs have all but conceded OOC lacks associational standing. Opp. at 10-12. And because OOC has not established standing in its own right, all claims brought by it must be dismissed. Ohio NAACP fares no better. The only member of Ohio NAACP upon which it relies, Denise Williams, lacks standing in her own right. Thus, Ohio NAACP lacks associational standing as well. *See* Mot. to Dismiss at 3-4.

Ms. Williams's alleged injury is *highly* speculative. "A bare allegation that plaintiff fears that some injury will or may occur is insufficient to confer standing." *Wurdlow v. Turvy*, 2012-Ohio-4378, ¶ 15 (10th Dist.). Changing one's behavior is not necessarily sufficient to establish an injury. Like the plaintiffs in *Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St.3d 157, 2018-Ohio-441, ¶ 26, Ms. Williams claims that she has had to alter her behavior because of the passage of S.B. 175. Yet, just like in *Preterm*, S.B. 175 has no effect on Ms. Williams, other than her highly speculative belief. To be sure, her alleged injury requires a *minimum* of five steps to happen before coming to fruition, which only further highlights the amount of speculation her "injury" requires. *See* Mot. to Dismiss at 5.

Contrary to Ohio NAACP's contentions, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000), is easily distinguishable. In *Laidlaw*, unlike here, the injury was not speculative. It was undisputed that the defendant was polluting the North Tyger River. *See id.* at 175-76. Further, local outdoor enthusiasts testified that they had stopped engaging in activities near the river for fear of exposure to the pollutants. *Id.* at 181-83. The Court, applying standing principles related to *environmental* plaintiffs, found that this *environmental* harm constituted an injury. *Id.* at 183-85. There was no question that the plaintiffs would be exposed to these pollutants had they continued to engage in their outdoor activities. That is not the case here, where Ms. Williams's injury requires multiple steps to come to fruition. Further, *Laidlaw* involved

environmental plaintiff standing, which is not the case here. *See id.* at 183, quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972) ("We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity.")

Next, racism is the cause of Ms. Williams's perceived "injury," not S.B. 175. Plaintiffs' own words bear that out. *See, e.g.*, Compl. ¶¶ 16-17 (alleging that Ms. Williams is targeted due to her race and involvement with Ohio NAACP); Opp. at 10 (arguing that Ms. Williams's fear was reasonable because she is black and a member of Ohio NAACP). If racism was not the cause of Ms. Williams's injuries, then it would not matter that Ms. Williams is black or that she is a member of Ohio NAACP. Rather, people would simply be more likely to use violence *solely* because of the *possibility* of a stand-your-ground defense. However, that is not what Plaintiffs have alleged. The only reasons why Ms. Williams fears being targeted is because of her race and her involvement in an organization that seeks to combat racism. *See* Compl. ¶¶ 16-17.

Finally, because Ohio NAACP has failed to allege facts to support the notion that S.B. 175 caused its alleged injury, it similarly failed to allege facts to establish that enjoining it will redress Ms. Williams's "injury." Ms. Williams credibly claims to have faced racism *before* S.B. 175. Compl. ¶ 16. Enjoining a law that is not alleged to have caused an injury will not redress that injury. Because Ms. Williams lacks standing in her own right, Ohio NAACP lacks associational standing to bring its complaint on her behalf.

B. Senator Thomas lacks standing to challenge S.B. 175.[1]

Tellingly, Plaintiffs' argument regarding Senator Thomas's standing cites almost no controlling case law. *See* Opp. at 12 (relying on three D.C. Circuit opinions and a Tenth Circuit

[1] Representative Howse has voluntarily dismissed her claims. *See* Notice of Voluntary Dismissal of Plaintiff Stephanie Howse (entered Dec. 7, 2021); *see also* Opp. at 5 n.1.

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opinion); *id.* at 13-14 (relying on a concurrence and committee recommendations). And Plaintiffs largely fail to respond to the Ohio Supreme Court, U.S. Supreme Court, and Sixth Circuit precedent discussed at pages 8-10 of the State's Motion to Dismiss. Instead, they confuse legal precedent. Plaintiffs theorize that Senator Thomas suffered injury from a "dilution of voting power." Opp. at 13. This is absurd. First, the non-binding vote-dilution cases Plaintiffs cite are not even applicable. Vote dilution is a mathematical inquiry concerning the "distribution of committee seats." *Vander Jagt v. O'Neill*, 699 F.2d 1166, 1170 (D.C. Cir. 1982). It asks whether persons have been omitted from or added to a congressional committee such that the voting power of the non-dominant party has been diluted. *See, e.g.*, *id.* at 1167 ("Even though Republicans constituted 44.14% of the House and Democrats 55.86%, Republicans were given . . . only 31.25% of the Rules Committee seats."). That is not what Plaintiffs allege happened here.

Nor has Senator Thomas suffered any specific, personal injury such as being "barred from voting" or "inappropriately barred from taking his seat and from receiving his pay." *Maloney v. Murphy*, 984 F.3d 50, 62 (D.C. Cir. 2020) (internal quotation marks omitted). As Plaintiffs allege, S.B. 175 passed the Senate by a vote of 18 to 11. Compl. ¶ 99. Ten other senators joined Senator Thomas in voting against S.B. 175. Nonetheless, Plaintiffs contend that the Senate's affirmative vote "depriv[e]d [Senator Thomas] of the capacity to oppose Stand Your Ground legislation." Opp. at 13. Not so. In fact, Senator Thomas had the opportunity to "sp[eak] against concurring in the House amendments," and then he voted against the final version of S.B. 175. Compl. ¶¶ 103, 27. He "simply lost that vote"—which is insufficient for standing. *Raines v. Byrd*, 521 U.S. 811, 824 (1997). Said differently, Plaintiffs are trying to confer standing—via a "vote-dilution" theory—upon any state legislator who votes against legislation which ultimately passes. Their theory finds no support in the law.

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Senator Thomas is free to continue opposing stand-your-ground legislation, including by urging the General Assembly to "vote to repeal" S.B. 175. *Crawford v. U.S. Dep't of Treasury*, 868 F.3d 438, 453 (6th Cir. 2017), quoting *Raines*, 521 U.S. at 824. If Senator Thomas's complaint is that he can no longer oppose the *passage* of S.B. 175—because it has already passed—that is true of every legislator who finds himself on the losing side of a bill-related vote. But failing to persuade enough fellow senators to vote against a bill does not mean a senator has suffered a cognizable injury—let alone a "vote-dilution" injury. Plaintiffs' contentions are meritless.

II. Plaintiffs Fail To State Any Claim.

Plaintiffs do not meaningfully contest the cases discussed in the State's Motion to Dismiss—referencing some of them only in a footnote—which establish that they have failed to state either a three-considerations or a one-subject claim. *See* Opp. at 19 n.5. Plaintiffs' Opposition does not undermine the fact that the Ohio Supreme Court has upheld numerous statutory combinations in the face of similar challenges even though those combinations had far *less* cohesiveness than the handgun-liability provisions in S.B. 175.

A. The three-considerations claim fails.

Plaintiffs miss the mark from the outset. They first contend that the amended version of S.B. 175 "departs entirely from S.B. 175's consistent theme before December 17." Opp. at 15. But the question is not whether a bill's amended version differs from the original bill's "consistent theme." The question (as Plaintiffs' cited cases makes clear) is whether there is no "common purpose or relationship *between the original bill and the bill as amended*." (Emphasis added.) *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225, 233 (1994). Put another way, just because S.B. 175's amendments do not speak of "nonprofits" does not mean they lack connection to the original bill through the common thread of reducing handgun-related liability.

Plaintiffs' contentions largely reduce to an argument that there is no common purpose between the old and new versions of S.B. 175 because S.B. 175's amendments are *broader* than the initial bill. *See* Opp. at 16. But *broadening* a bill does not render it "wholly changed" or make it "depart[] entirely from a consistent theme." *Youngstown City Sch. Dist. Bd. of Educ. v. State*, 161 Ohio St. 3d 24, 2020-Ohio-2903, ¶¶ 14-15 (quotations omitted). For example, Plaintiffs point out that S.B. 175's original version concerns "civil cases," whereas the amendments concern "criminal and civil cases." Opp. at 16. All this shows is that the common thread of handgun-related civil liability runs consistently through the amended version.

Equally inapt is Plaintiffs' contention that the original version relates only to handguns, whereas the amendments concern not only handguns but also "any type of deadly force." *Id.*; *see also id.* at 18-19. This proves the State's point: a common purpose of reducing handgun-related liability connects both original and amended versions. To illustrate, AB + BC—where "AB" is the original bill and "BC" is the amended bill—both have "B" as a common purpose between both original and amended versions. *Broadening* a bill is not the same as "wholly changing" it.

Plaintiffs' attempt to distinguish *Youngstown* underscores this point. In *Youngstown*, "[a] bill allowing school boards and communities to jointly provide supportive services to schools" was "transformed overnight into an amended bill imposing the installation of unelected CEOs imbued with complete operational, managerial, and instructional control of school districts[.]" *Youngstown*, ¶ 12. Yet the Ohio Supreme Court determined that this complied with the three-considerations doctrine in part because "the text of the bill as introduced remained in the enacted bill"—also the case here. *Id.* ¶ 18. Plaintiffs rely on *Hoover v. Board of County Commissioners*, 19 Ohio St. 3d 1 (1985), but in *Hoover*, "none of the original text remained in the final wording."

Id. That is a far cry from the bill at issue here, which leaves intact the language granting nonprofit corporations civil immunity related to handgun usage. *See, e.g.*, Compl. ¶ 93.

Failing on the law, Plaintiffs protest that S.B. 175's procedural history is "relevant." Opp. at 17. Incorrect. Plaintiffs do not contest—because they cannot—the Ohio Supreme Court's pronouncement that "the three-consideration rule does not allow th[e] court to consider the legislative proceedings leading to an amendment" because "[i]t is not [the court's] role to police how the amended language came into existence." *Youngstown*, 161 Ohio St. 3d 24, 2020-Ohio-2903, at ¶ 20. Plaintiffs' three-considerations claim fails.

B. Plaintiffs' one-subject claim fails.

Plaintiffs' one-subject contentions offer little more than recitations of the legal standard and assertions that S.B. 175 fails this standard. *See* Opp. at 17-18. And Plaintiffs' reliance (at 18) on *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225 (1994), is inapt. First, the Court in *Voinovich* determined that multiple provisions relating to the Bureau of Workers' Compensation and the Industrial Commission did *not* violate the one-subject doctrine. *Id.* at 229-30. The Court then proceeded to invalidate provisions concerning intentional torts and workers' compensation solely because the Court had "previously stated . . . that intentional torts are completely unrelated to workers' compensation and the employment relationship." *Id.* at 230. In other words, the Court was bound by its previous determination that two subject areas were "*completely* unrelated." (Emphasis added). *Id.* The Court relied on this reasoning in similarly rejecting the attempted combination of a child labor exemption with workers' compensation provisions. *Id.* By contrast, Plaintiffs here point to no case showing that granting nonprofits civil immunity related to handgun usage and curtailing potential liability for handgun usage by limiting the duty to retreat are "completely unrelated" subjects under controlling case law. Such a combination—with the common theme of reducing handgun-related liability—is not "merely coincidental." Opp. at 19.

Plaintiffs fail to distinguish the cases discussed in the State's Motion to Dismiss (at 13-14). Plaintiffs fail to meaningfully distinguish *State v. Bloomer*, 122 Ohio St. 3d 200, 2009-Ohio-2462, *superseded by statute on other grounds*. *Bloomer* undermines Plaintiffs' complaint that S.B. 175's amendments concern civil *and* criminal liability, whereas the original bill addressed only civil liability. The Court in *Bloomer* determined that "two distinct topics" shared a common relationship, even though the one (post-release control) involved criminal proceedings and the other (juvenile delinquency proceedings) was "characterized . . . as civil in nature." *Id.* ¶ 54. Plaintiffs also fail to distinguish *City of Riverside v. State*, 190 Ohio App. 3d 765, 2010-Ohio-5868 (10th Dist.), which they reference only in a footnote. Opp. at 19 n.5; *see* Mot. to Dismiss at 13.

Plaintiffs (at 19-20) oversimplify *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, in their attempt to render it inert. Indeed, *Bloomer* relies on *Willke* as an example of the one-subject doctrine's deferential standard. *Bloomer* at ¶ 51. And with good reason. *Willke* (at ¶ 38) upholds the General Assembly's combination of three programs in one amendment, not only under the separate-vote requirement, but "even under the stricter one-subject provision." *Id.* ¶ 35.

Plaintiffs' remaining cases (at 20) do not establish that one-subject analysis depends on the specific procedural history of a challenged bill. Indeed, as Plaintiffs elsewhere acknowledge, the one-subject analysis is legal in nature—not factual. *See, e.g.*, Opp. at 18. "[I]dentification of a bill's subject is *a question of law*," depending on a bill's "particular language" and "subject matter"—not procedural history. (Emphasis added). *State ex rel. Ohio Civil Serv. Emples. Ass'n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478, ¶ 21 (quotations omitted). Plaintiffs might wish to compensate for the legal weaknesses of their case by leaning principally on alleged procedural history, but their cited cases do not support such an approach. *See, e.g.*, *Gallipolis Care, L.L.C. v. Ohio Dept. of Health*, 10th Dist. Franklin No. 03AP-1020, 2004-Ohio-5533, ¶ 37 (focusing

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principally on textual analysis). Tellingly, much of Plaintiffs' cited case law is not even controlling. *See* Opp. at 20 (relying on *City of Cleveland v. State*, 2013-Ohio-1186 (8th Dist.); *Plain Local School Dist. Bd. of Edn. v. DeWine*, 486 F.Supp.3d 1173 (S.D. Ohio 2020)). Plaintiffs' one-subject claim is meritless.

CONCLUSION

Therefore, Defendant the State of Ohio respectfully asks this Court to dismiss Plaintiffs' Complaint in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing ***Reply in Support of Motion to Dismiss*** has been served upon the following by electronic mail this 8th day of December, 2021:

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