No. 13-193

In the Supreme Court of the United States

SUSAN B. ANTHONY LIST and COALITION OPPOSED TO ADDITIONAL SPENDING AND TAXES,

Petitioners,

v.

STEVEN DRIEHAUS, JOHN MROCZKOWSKI, BRYAN FELMET, JAYME SMOOT, HARVEY SHAPIRO, DEGEE WILHELM, LARRY WOLPERT, PHILIP RICHTER, CHARLES CALVERT, OHIO ELECTIONS COMMISSION, and JON HUSTED,

Respondents.

ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR REPUBLICAN NATIONAL COMMITTEE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) prohibit people from knowingly or recklessly making false statements about political candidates or their voting records in order to affect the outcome of an election. Any person may file a complaint against a speaker for allegedly violating these provisions. Such a complaint may trigger multiple hearings before an administrative body concerning the speaker's statements, an investigation, subpoenas of the speaker's personal papers, and even a criminal prosecution. Political action committees ("PACs") such as Petitioners Susan B. Anthony List ("SBA List") and Coalition Opposed to Additional Spending and Taxes ("COAST") regularly engage in political speech about candidates and controversial issues in the course of elections.

Are the challenges to §§ 3517.21(B)(9) and (B)(10) brought by SBA List and COAST justiciable, on the grounds that those entities face a realistic possibility of complaints being lodged against them in response to their speech, which will substantially burden and chill that speech by subjecting them to the inconvenience, cost, and intrusion of subpoenas, investigations, and administrative proceedings to defend the truth of their political claims?

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INTERESTS OF *AMICUS CURIAE*[1]

The Republican National Committee ("RNC") is a national political party committee dedicated to ensuring the integrity of the electoral process; safeguarding the fundamental right to vote of all Americans; and representing the interests of Republican voters and candidates at all levels throughout the nation.

STATEMENT OF THE CASE

A. Ohio's System for Policing Allegedly False Political Speech

1. The State of Ohio has enacted a complex code regulating political speech that prohibits approximately a dozen different types of allegedly false or misleading statements. Ohio Rev. Code §§ 3517.21(B), 3517.22(B) (collectively, "Political Speech Prohibitions"). Among other things, Ohio law makes it a crime for any person, during any "campaign for nomination or election to public office or office of a political party" to use "campaign materials," knowingly and with the intent to affect the campaign's outcome, to either:

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[1] Counsel for all parties have consented to the filing of this brief. Letters evidencing consent are on file with the Clerk. Pursuant to S. Ct. R. 37.6, *amicus curiae* certifies that no counsel for a party authored any part of this brief, nor did any person or entity, other than the *amicus*, its members, or its counsel, make a monetary contribution to fund the preparation or submission of this brief.

- "[m]ake a false statement concerning the voting record of a candidate or public official," *id.* § 3517.21(B)(9); or

- in any way "disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate," *id.* § 3517.21(B)(10).

2. State law grants the Ohio Elections Commission ("Commission") "exclusive original jurisdiction to determine whether there has been a violation of those provisions." *State ex rel. Ohio Democratic Party v. Blackwell*, 855 N.E.2d 1188, 1198-99 (Ohio 2006). A person may be prosecuted for violating Ohio's Political Speech Prohibitions only after the Commission has concluded that a violation has occurred. Ohio Rev. Code §§ 3517.21(C), 3517.153(C).

Proceedings before the Commission may begin only after a complaint has been filed by the Secretary of State or a member of a county board of elections, or by any person who submits an affidavit based on personal knowledge. *Id.* § 3517.153(A). When a complaint is filed, a Commission attorney must review it within one business day. *Id.* § 3517.154(A)(1). If the attorney concludes that the complaint alleges a violation of Ohio's Political Speech Prohibitions and was filed within 60 days of a primary or special election or 90 days of a general election, a panel of the Commission must hold an

expedited hearing on it within two business days, *id.* §§ 3517.154(A)(2)(a), 3517.156(B)(1).

The panel must be comprised of at least three Commission members, no more than half of whom may belong to the same political party. *Id.* § 3517.156(A). It must determine whether probable cause exists to refer the case to the full Commission for a hearing, which must be held within 10 days of such ruling, *id.* §§ 3517.156(A), (C)(2). If the panel concludes there is insufficient evidence to make a probable cause determination, it must direct an "investigatory attorney" to investigate the complaint, and refer the matter to the full Commission to review the evidence she gathers. *Id.* § 3517.156(C)(3). If the panel concludes that probable cause does not exist to believe that the law has been violated, it must dismiss the complaint. *Id.* § 3517.156(C)(1).

When a panel dismisses a complaint, the person who filed it may request reconsideration by the full Commission, which must rule on the request within three business days. *Id.* § 3517.156(E). If the Commission grants reconsideration, it shall hold a hearing on the complaint as if the panel had referred the complaint to it. *Id.* If the Commission denies reconsideration, the person who filed the complaint must pay reasonable attorneys' fees and the costs of the Commission panel. *Id.*

When the full Commission receives a Complaint, whether through referral by a panel or reconsideration of a panel's dismissal, it must determine whether, "by clear and convincing

evidence," the alleged violations of Ohio's Political Speech Prohibitions occurred. *Id.* § 3517.155(A)(1), (D)(1). If it concludes that those laws were violated, the Commission may issue a public reprimand, Pet. App. 53a;[2] *see, e.g.*, *SEIU Dist. 1199 v. Ohio Elections Comm'n*, 822 N.E.2d 424, 428 (Ohio App. 2004); refer the matter to the appropriate prosecutor, Ohio Rev. Code § 3517.155(A)(1)(c), (D)(2); or instead determine that good cause exists to do neither, *id.* § 3517.155(A)(1)(a).[3] A prosecutor is not required to take further action on a Commission referral. *See, e.g.*, *Team Working for You v. State Elections Comm'n*, 754 N.E.2d 273, 276 n.2 (Ohio App. 2001). If the Commission believes that the evidence is insufficient to allow it to determine whether a Political Speech Prohibition was violated, it may refer the matter to an "investigatory attorney" to gather additional evidence. *Id.* § 3517.155(B).

If either the Commission or a panel determines that a complaint is frivolous, it may order the person who filed it to pay reasonable attorneys' fees, as well as the costs of the panel or the Commission. *Id.* § 3517.155(E).

3. Judicial review in state trial court is available for certain types of rulings by a panel or the Commission. *See id.* § 3517.157(D). A person may

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[2] "Pet. App." refers to the Appendix to the Petition for Certiorari.

[3] For violations of certain other election-related statutes, the Commission may impose a fine. Ohio Rev. Code § 3517.155(A)(1)(b).

appeal a finding by the Commission that he violated a Political Speech Prohibition, regardless of whether the Commission issues a reprimand or recommends prosecution. *See Flannery v. Ohio Elections Comm'n*, 804 N.E.2d 1032, 1035 (Ohio App. 2004) (discussing appeal of Commission finding that violation occurred, despite lack of public reprimand or referral for prosecution); *SEIU Dist. 1199*, 822 N.E.2d at 428 (discussing appeal of Commission finding that violation occurred and resulting public reprimand, despite lack of referral for prosecution); *Team Working for You*, 754 N.E.2d at 277 n.2 (adjudicating appeal of Commission's findings after it referred matter to a prosecutor, despite prosecutor's decision not to proceed).

A complainant, in contrast, may not seek judicial review of a decision by a panel or the Commission to dismiss a complaint due to lack of probable cause. *Billis v. Ohio Elections Comm'n*, 766 N.E.2d 198, 200 (Ohio App. 2001); *see also State ex rel. Common Cause/Ohio v. Ohio Elections Comm'n*, 806 N.E.2d 1054, 1059-60 (Ohio App. 2004) (mandamus unavailable to challenge panel determination regarding lack of probable cause). After a panel or the Commission has determined that probable cause exists, however, a complainant may challenge the Commission's subsequent determination that a statutory violation did not actually occur. *Common Cause/Ohio v. Ohio Elections Comm'n*, 779 N.E.2d 766, 770-71 (Ohio App. 2002).

B. Susan B. Anthony List Is Accused of False Political Speech

Petitioner Susan B. Anthony List ("SBA List"), a political action committee ("PAC"), distributed political advertising material criticizing congressional candidate and then-Representative Steve Driehaus for voting in favor of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010). Pet. App. 3a, 43a. The advertisements contending that he voted "FOR taxpayer-funded abortion." *Id.* SBA List also attempted to post a billboard containing that message, but the advertising company refused to accept the advertisement after Driehaus threatened to take legal action against it. *Id.*

In October 2010, Driehaus filed a complaint with the Commission, alleging that SBA List's advertisements violated Ohio Rev. Code §§ 3517.21(B)(9) and (10). *Id.* at 3a, 43a-44a. Because the general election was only a few weeks later, the complaint was referred to a panel, which found that probable cause existed to believe the statutes had been violated. *Id.* at 4a, 44a. The parties agreed to postpone a hearing before the full Commission until after the election. *Id.* at 45a.

In the meantime, in mid-October 2010, SBA List filed the instant lawsuit to enjoin further proceedings before the Commission. Pet. App. 4a-5a, 45a. The district court, however, stayed that federal case under *Younger v. Harris*, 401 U.S. 37 (1971), pending the completion of the Commission's proceedings. *Id.* at

5a, 45a. After Driehaus lost the election, he withdrew his complaint before the Commission and the administrative proceedings terminated. *Id*. at 5a, 45a.

Petitioner Coalition Opposed to Additional Spending and Taxes ("COAST"), which operates two PACs, also wishes to publicly declare that the Affordable Care Act provides government-subsidized abortions and criticize other candidates who voted in favor of it. Pet. App. 5a, 46a-48a. COAST has been deterred from disseminating such communications, however, by the threat of having to defend itself before the Commission, like SBA List. *Id*. at 6a, 46a-48a. COAST also has refrained from engaging in speech concerning the true costs of a proposal to introduce street cars to Cincinnati, for fear of the Commission disagreeing about how much the proposal would cost. *Id*. at 49a. It filed its own lawsuit against the Commission, raising claims similar to SBA List's. *Id*. at 2a, 47a.

C. Procedural History and Rulings Below

1. SBA List's Amended Complaint, filed in the U.S. District Court for the Southern District of Ohio, alleges in relevant part that Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) are unconstitutional, both facially and as applied to lobbyists taking positions on political issues. J.A. 122-124.[4] It contends that the Commission's investigatory

[4] "J.A." refers to the Joint Appendix the parties filed in this Court.

procedures are unconstitutional as well. *Id*. at 125. The Amended Complaint seeks a declaration that §§ 3517.21(B)(9) and (B)(10) are unconstitutional and an injunction against their enforcement. *Id*. at 127-28. COAST's lawsuit, containing materially identical claims, was consolidated with the SBA List suit. Pet. App. 47a.

2. The district court dismissed SBA List's and COAST's suits, contending that neither case was ripe, Pet. App. 31a, 57a, and neither plaintiff had standing, *id*. at 34a, 62a. SBA List argued that its speech was being chilled because the Commission already had concluded that probable cause existed to believe that it had violated Ohio law, and it intended to engage in "substantially similar activity in the future." *Id*. at 25a-26a.

Rejecting that claim, the court held that the plaintiffs' claims were not ripe, because whether the Commission or anyone else would seek to enforce Ohio Rev. Code §§ 3517.21(B)(9) or (B)(10) against them at some point in the future "is contingent on a number of uncertain events." *Id*. at 26a n.6, 56a-57a. Therefore, the plaintiffs could not establish that they presently faced a "credible threat of enforcement." *Id*. The court also found that, because of the vagueness of SBA List's allegation concerning the precise statements it intended to make in the future, it was impossible to determine whether someone was likely to try to apply those provisions to it. *Id*. at 30a.

The district court also concluded that both plaintiffs lacked standing. It held that a plaintiff

wishing to bring a First Amendment challenge must show that the challenged statute "will be immediately enforced against it." *Id.* at 34a. SBA List and COAST could not make such a showing, because Ohio law established several steps that had to be satisfied before Ohio Rev. Code §§ 3517.21(B)(9) or (B)(10) could be enforced against them, rendering any such enforcement purely speculative. *Id.* at 34a, 61a. The court further reasoned that, because the plaintiffs alleged that they intended to engage in truthful future speech, and the challenged provisions prohibited only false speech, the likelihood that those laws would be erroneously enforced against them was even slimmer. *Id.* at 34a, 60a-61a.[5]

3. The Sixth Circuit affirmed the dismissal of both SBA List's and COAST's suits, agreeing that they were unripe without separately considering the plaintiffs' standing. *Id.* at 18a. The court held that SBA List's claim was not ripe because it "has not shown that it labors under an imminent threat of prosecution by the Commission." *Id.* at 12a-13a; *see also id.* at 12a (stating that there was no evidence that "the Commission will threaten SBA List with prosecution anytime soon"). The court downplayed the significance of the Commission's probable cause determination against SBA List, because the Commission never actually found that SBA List violated §§ 3517.21(B)(9) or (B)(10). *Id.* at 10a. The

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[5] Based on essentially similar reasoning, the court also concluded that sovereign immunity under the Eleventh Amendment prevented it from exercising jurisdiction over SBA List's claims against Ohio Secretary of State Jon Husted. Pet. App. 38a.

Commission's "preliminary assessment that a violation *may* have occurred" does not "establish the threat of future harm" to SBA List. *Id.* at 12a.

Moreover, the Commission cannot act unless someone files a complaint, and the court declined to find that SBA List was at risk of being targeted in the future by "some citizen in Ohio who supports Obama." *Id.* at 12a. And there was no reason to believe that either Secretary of State Husted, who never had filed a complaint against SBA List, or Driehaus, who had withdrawn his complaint, lost re-election to Congress, and moved to Africa, were likely to file any complaints against SBA List based on its future communications. *Id.* at 13a-14a.

The court also emphasized that SBA List did not allege that it intended to violate Ohio Rev. Code §§ 3517.21(B)(9) or (B)(10) in the future. *Id.* at 15a. Rather, SBA List contended that it wished to make truthful statements concerning the Affordable Care Act's provisions concerning abortions. *Id.* Thus, SBA List could not establish that it faced a substantially likely "risk of a false prosecution." *Id.* Overall, the court declined to speculate about what exactly SBA List would say, the "veracity" of its "as-yet unarticulated statement," the likelihood that someone would file a complaint about it, and the odds that the Commission would conclude that the statement violated Ohio law. *Id.* at 15a-16a. Finally, noting that Driehaus had failed to intimidate SBA List into silence about his vote for the Affordable Care Act and its abortion-related provisions, the

court held that there was no evidence that SBA List's speech had been chilled. *Id*. at 17a-18a.

The court then went on to hold that COAST's fear of prosecution was "even more speculative than SBA List's," and affirmed the dismissal of its claims as well. *Id*. at 18a. The Sixth Circuit refused to rehear the case en banc. *Id*. at 65a.

SUMMARY OF ARGUMENT

SBA List and COAST have asserted justiciable claims that Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) violate the First Amendment.

Sections 3517.21(B)(9) and (B)(10) prohibit a person from knowingly or recklessly making certain types of false statements about candidates running for public office. Ohio law permits any person to file a complaint with the Commission alleging that a speaker violated one of these provisions. When such a complaint is filed, the speaker faces the prospect of multiple hearings before the Commission and its panels, may be investigated by a Commission attorney, and can be required to produce documents in response to administrative subpoenas. If the Commission ultimately determines that the speaker broke the law, it may refer the case to a prosecutor, who may choose to commence criminal proceedings.

The First Amendment protects speakers—particularly those wishing to speak about politics, public affairs, and candidates for public office—not only against direct criminal prohibitions on their

speech, such as those §§ 3517.21(B)(9) and (B)(10) impose, but also "substantial burdens" that can have a chilling effect on public discourse. SBA List and COAST may challenge the constitutionality of §§ 3517.21(B)(9) and (B)(10) because those provisions pose a realistic risk of imposing substantial burdens on their political expression.

SBA List and COAST are active participants in the political process and regularly engage in controversial speech concerning the candidates they support or oppose. It is virtually inevitable that at least one person in the state will (again) conclude that a statement in one of their advertisements is false and file a complaint against them. SBA List and COAST therefore face the realistic prospect of enduring hearings before the Commission and its panels, providing internal documents in response to subpoenas, and being investigated by a Commission attorney. Even assuming that the ultimate prospect of SBA List or COAST being prosecuted or convicted is slim, the cost, burden, intrusiveness, and expense of these administrative proceedings are a substantial burden on them that reasonably can be expected to deter free and robust political expression. Because SBA List and COAST face the realistic prospect of such substantial burdens simply for engaging in political speech, they have standing to challenge the constitutionality of the underlying prohibitions, §§ 3517.21(B)(9) and (B)(10).

Moreover, the speech at issue in this case deals with elections. This Court should adopt the broad justiciability requirements that the D.C. Circuit

embraced for election-related cases in *Shays v. Federal Election Comm'n*, 414 F.3d 76 (D.C. Cir. 2005). That court held that a person or entity actively competing in the electoral process has standing to challenge allegedly invalid legal provisions which "distort[ ]" or "fundamentally alter the environment" or "overall rules" in which the election is being conducted. *Id*. at 85, 86. A party can establish standing by showing that it must "anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow." *Id*. at 86.

PACs such as SBA List and COAST compete against their ideological counterparts to raise money, persuade the electorate, and attempt to facilitate the election of candidates who share their vision of the public good. Laws such as §§ 3517.21(B)(9) and (B)(10) require them to "adjust their campaign strategy" to "account for" the omnipresent, yet reasonable, possibility that someone will file a complaint based on their political communications. *Id*. at 86-87. SBA List and COAST therefore have standing to ensure that the electoral system in which they actively participate and compete complies with the First Amendment.

More broadly, practical reasons exist for applying Article III's justiciability requirements liberally to election-related cases such as this. Resolving challenges outside the context of an impending election allows courts to avoid the need for truncated briefing schedules, limited discovery, expedited hearings, and constraints on the time available for

judicial reflection and decision making. Determining the validity of the rules governing elections well in advance of an election also avoids the possible due process concerns that might arise from a last-minute change in the governing legal standards.

Applying justiciability requirements broadly in election cases also permits courts to resolve potentially controversial disputes under something of a "veil of ignorance," because a particular candidate or political party may not stand to immediately benefit. This may not only help the judge herself rule fairly, but contribute to the perceived legitimacy of the court's ruling, by preventing any public perception (however inaccurate) that the court's action might have been influenced, even subconsciously, by political or partisan considerations. Finally, because elections are essentially adversarial contests between opposing candidates and the groups and voters that support them, broad justiciability rules are necessary to allow both sides equal access to the courts to ensure that the applicable legal rules are both valid and fairly enforced.

ARGUMENT

I. PETITIONERS' CLAIMS ARE JUSTICIABLE BECAUSE SPEAKERS FACE THE REALISTIC RISK OF INVESTIGATIONS, SUBPOENAS, AND ADMINISTRATIVE PROCEEDINGS CONCERNING THE TRUTHFULNESS OF THEIR POLITICAL SPEECH.

SBA List and COAST brought justiciable challenges to the constitutionality of Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10), because they have a fundamental constitutional right to engage in political speech without facing the omnipresent threat of having to defend the validity of their speech before either a government administrative tribunal or a criminal court. Because the Sixth Circuit failed to recognize the complete range of ways in which §§ 3517.21(B)(9) and (B)(10) burden fundamental First Amendment rights, it adopted an erroneously narrow view of the types of plaintiffs who have standing to challenge those provisions.

The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for public office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971). One of its "major purpose[s]" is "to protect the free discussion of governmental affairs," including "discussions of candidates" and "the manner in which government is operated or should be operated." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). The First Amendment generally prohibits not only direct restrictions on

political expression, *see, e.g.*, *Texas v. Johnson*, 491 U.S. 397, 420 (1989) (invalidating criminal prohibition on flag burning), but also other types of "substantial[] burdens" on "protected political speech," *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. ___, 131 S. Ct. 2806, 2833 (2011); *see, e.g.*, *Davis v. FEC*, 554 U.S. 724, 740 (2008) ("Because § 319(a) imposes a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech," it must be subject to strict scrutiny and invalidated). "[C]onstitutional violations may arise from the deterrent, or 'chilling' effect of government regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972); *see also Dickerson v. United States*, 530 U.S. 428, 459 (2000) (Scalia, J., dissenting) (recognizing that "the importation of 'chill'" on political speech through such burdens "[i]s *itself* a violation of the First Amendment") (emphasis in original).

Sections 3517.21(B)(9) and (B)(10) raise First Amendment concerns in both ways. First, they impose criminal penalties for political speech, Ohio Rev. Code § 3517.21(B)—the unconstitutionality of which Petitioners seek to establish in the underlying lawsuit. Second, they chill political speech by imposing substantial burdens on people who choose to speak out in heated races, by creating a realistic risk that they will be subject to the cost, invasiveness, and inconvenience of administrative hearings, investigations, and discovery. These substantial burdens, and the chilling effect on speech

they inevitably generate, give Petitioners standing to maintain their claims. The Sixth Circuit erroneously minimized these burdens in concluding that Petitioners' claims were unripe. *See, e.g.*, Pet. App. 12a, 15a.

1. "Speech can be chilled and punished by administrative action as much as by judicial processes." *Waters v. Churchill*, 511 U.S. 661, 669 (1994). Under Ohio law, when a person engages in political speech about a candidate or public official, "any person" may file a complaint with the Commission, triggering administrative proceedings. Ohio Rev. Code § 3517.153(A). A panel will hold a hearing to determine whether probable cause exists to believe that the speaker violated Ohio law. *Id.* § 3517.156(A). Even before the panel makes such a probable cause determination, the speaker faces the possibility of an intrusive investigation by an "investigatory attorney" into his statements, his knowledge at the time he made them, and his intent or motives. *See id.* §§ 3517.21(B) (establishing *mens rea* and intent requirements), 3517.156(C)(3) (authorizing probable cause investigation by attorney).

If the panel determines that probable cause exists and refers the matter to the Commission, the Commission itself may decide to have an attorney conduct an investigation, *id.* § 3517.155(B), and issue subpoenas requiring the speaker to produce any personal papers concerning his statements, beliefs, and intent, *id.* § 3517.153(B). As this Court has recognized, "[U]nduly burdensome disclosure

requirements offend the First Amendment by chilling protected speech." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010). Following yet another hearing, the Commission will decide whether to refer the speaker's statements to a prosecutor. *Id.* § 3517.155(A)(1)(c). The speaker, of course, must "bear the costs of litigation" throughout this entire process, which "might well . . . encourage [her] to cease engaging in certain types of [expression]." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 794 (1988).

Thus, the mere act of engaging in political expression creates a realistic possibility that a person will have to defend himself, provide discovery of personal papers, and cooperate with investigations by a state administrative body—to say nothing of the possibility of subsequent prosecution. These substantial burdens chill and deter the exercise of fundamental First Amendment rights, particularly by individuals. "Many persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation" before the Commission and its panels, "will choose simply to abstain from protected speech." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003); *accord Citizens United v. FEC*, 558 U.S. 310, 335 (2010); *see also Riley*, 487 U.S. at 794. "Knowledgeable persons should be free to participate in [public] debate without fear of unfair reprisal. The interest in protecting such participants from the chilling effect of the prospect of expensive litigation is therefore . . . a matter of great importance." *Nike, Inc. v. Kasky*,

539 U.S. 654, 664 (2003) (Stevens, J., concurring in dismissal of certiorari).

The Sixth Circuit minimizes the likelihood that any of these contingencies will befall SBA List or COAST if they engage in future political communications about the Affordable Care Act or the politicians who supported it. Pet App. 12a. The court emphasizes that none of these events can occur unless "'some citizen in Ohio who supports Obama'" chooses to file (another) complaint against SBA List or COAST. *Id.* Given the level of discord, distrust, and vitriol in modern politics, fed by media trackers, political blogs, and the 24-hour news cycle, a person or group taking a stand on a controversial issue would be foolhardy to *not* expect some sort of retaliation of this nature. Particularly with the way that senior political leaders and even White House officials have vilified those who oppose them—labeling them terrorists,[6] arsonists,[7] anarchists,[8]

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[6] *See* Zeke J. Miller, *Obama Senior Adviser Compares Republicans to Terrorists*, TIME (Sept. 26, 2013) (statement of White House Senior Advisor Jim Pfeiffer) (explaining that President Obama would not negotiate with congressional Republicans because he is not for "negotiating with people with a bomb strapped to their chest"), *available at* http://tinyurl.com/k7rq6sa; Tal Kopan, *Gore: Shutdown "Political Terrorism,"* POLITICO (Sept. 27, 2013), (statement of former Vice President Al Gore) (stating, in reference to the government shutdown, "I think the only phrase that describes it is political terrorism. 'Nice global economy you got there, be a shame if we had to destroy it.'"), *available at* http://tinyurl.com/pu7ele9; *see also* Jonathan Allen & John Bresnahan, *Sources: Joe Biden Likened Tea Partiers to Terrorists*, POLITICO (Aug. 1, 2011), *available at* http://tinyurl.com/3qy9ght.

racists, and Neanderthals[9]—conservative groups justifiably can feel even more vulnerable to retaliation for promoting their beliefs in limited government, balanced budgets, and personal freedom.

In short, Ohio law makes it extremely easy for people to attempt to shut their opponents out of the political marketplace through a burdensome and intrusive administrative process, rather than engage them with the force of their ideas. Active participants in the political process such as SBA List and COAST therefore have standing to challenge Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10).

2. The likelihood that political speakers will face substantial burdens from Commission investigations, subpoenas, and proceedings is enhanced by the Commission's long history of readily declaring

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[7] State of the Union (CNN television broadcast Sept. 22, 2013) (statement of House Minority Leader Nancy Pelosi) ("But for many of them [House Republicans], I call them legislative arsonists. They're there to burn down what we should be building . . . ."), *available at* available at http://tinyurl.com/p6r8uae.

[8] CNN Newsroom (CNN television broadcast Oct. 4, 2013) (statement of Senate Majority Leader Harry Reid) (calling members of the Tea Party "anarchists" who "don't believe in government at any level"), *available at* http://tinyurl.com/lrjvt4p.

[9] Jennifer Epstein, *Biden: "Neanderthal Crowd" Slowed VAWA Renewal*, POLITICO (Sept. 12, 2013) (statement of Vice President Joe Biden), *available at* http://tinyurl.com/kqsnymx.

political speech to be false, or at least concluding that probable cause exists to conclude that it is false. The sweeping breadth with which the Commission enforces §§ 3517.21(B)(9) and (B)(10) exacerbates their chilling effect.

The Commission punctiliously subjects political communications to exacting standards, scrupulously parsing every word and phrase to uncover misplaced modifiers, imprecise phrasing, and unsupported overstatements. For example, in *Ohio Democratic Party v. Ohio Elections Comm'n*, No. 07AP-876, 2008 Ohio App. LEXIS 3553 (Ohio App. Aug. 21, 2008), the Commission concluded, and Ohio courts agreed, that a campaign advertisement violated the Political Speech Prohibitions because:

> instead of indicating that Sherrod Brown was seeking the office of "U.S. Senator," below his name is "U.S. Senate." In addition, instead of indicating that Ben Espy and Bill O'Neill were both seeking the office of "Justice," below each of their names is "Supreme Court." At the time the flyer was distributed, none of the Democratic candidates held the office that was being sought in the election.

Id. at *4; *see also Walter v. Cincione*, No. C-2-00-1070, 2000 U.S. Dist. LEXIS 23160, at *2, *13-14 (S.D. Ohio Oct. 6, 2000) (noting that the Commission found probable cause to believe that a candidate had violated § 3517.21(B)(10) by using the label "Independent Democrat" on his campaign materials, even though he was a registered Democrat running

as an independent, since he had not received the Democratic Party's nomination).

Similarly, in *Team Working for You v. State Elections Comm'n*, 754 N.E.2d 273, 276 (Ohio App. 2001), the Commission found that several candidates had violated § 3517.21(B)(10) by running an advertisement declaring that one of their opponents "is currently campaigning against industrial growth and overdevelopment in [the municipality of] Macedonia." The Commission concluded that the word "currently" was false because the opponent had made the statements upon which the advertisement was based two years earlier. *Id.* at 279. It also found fault with the rest of the advertisement because, after reviewing the opponent's public statements, it concluded that she "was not opposed to growth," but simply "did not favor growth supported by taxpayers through tax abatements." *Id.*

Indeed, the Commission has found statements to be false simply because they did not reveal enough details that the Commission believed to be relevant. In *Comm. to Elect Straus Prosecutor v. Ohio Elections Comm'n*, No. 07AP-12, 2007 Ohio App. LEXIS 4797 (Ohio App. 2007), a candidate in a race for prosecutor ran an advertisement attacking the way in which the incumbent's office had handled a number of cases. Among other things, the advertisement claimed that, in a particular drug prosecution, "the case against the ringleader later plea bargained to 7 months time served. No prison time." *Id.* at *2. The Commission found, and Ohio courts agreed, that the statement violated § 3517.21(B)(10), even though the defendant

had entered into a plea bargain and received a sentence of only 7 months, because the prosecutor's office had argued in favor of a higher sentence. *Id*. at *16-18.

Other findings by the Commission that the Political Speech Prohibitions were violated have been overturned by Ohio courts. *See, e.g.*, *Flannery v. Ohio Election Comm'n*¸ 804 N.E.2d 1032, 1034 (Ohio App. 2004) (overturning Commission's conclusion that a candidate violated the Political Speech Prohibitions by claiming that his opponent, the incumbent Secretary of State, had acted "akin to an election official handing a person a ballot and saying, 'Vote for [the opponent],'" by posting official signs bearing his name at polling places to caution against voter fraud); *SEIU Dist. 1199 v. Ohio Elections Comm'n*, 822 N.E.2d 424, 430, 432 (Ohio App. 2004) (overturning Commission's conclusion that a union violated Ohio's Political Speech Prohibitions by claiming that a proposed tax levy would increase property taxes by 60%, because its advertisements failed to specify that only the health-and-human-services property tax levy, and not other property taxes, would increase).

Thus, the Commission's own history of interpreting and applying Ohio's Political Speech Prohibitions, including § 3517.21(B)(10), further increases the chances of a speaker being subject to burdensome, costly, and invasive administrative proceedings, investigations, and subpoenas.

3. The Sixth Circuit held that SBA List's and COAST's challenges to §§ 3517.21(B)(9) and (B)(10) were not ripe. It placed great weight on the fact that Petitioners did not allege that they intended to violate those statutes, but rather insisted that their intended speech was true and accurate. Pet. App. at 15a. The court claimed that "the fear animating [Petitioners'] request for prospective relief" is therefore "the risk of a false prosecution," and such risk is "exceedingly slim." *Id.*; *see also id.* at 10a (claiming that SBA List and COAST cannot show "an imminent threat of prosecution").

The Sixth Circuit further noted that numerous procedural barriers to prosecution exist. SBA List and COAST cannot be prosecuted for making a statement—particularly a truthful statement—unless someone files a complaint; a panel finds probable cause to conclude the statement violates Ohio law; the Commission ultimately concludes by clear and convincing evidence that the statement does violate Ohio law (despite its actual truthfulness); and it decides to refer the matter for prosecution. *See id.* at 12a, 15a-16a.

The Sixth Circuit's exclusive emphasis on the ultimate likelihood of prosecution for SBA List and COAST is erroneous, ignoring the both the full scope of protection that the First Amendment guarantees to political speakers and the burdens of the very administrative process it discusses. *Cf. Laird v. Tatum*, 408 U.S. 1, 11 (1972) (recognizing that speech may be impermissibly chilled by measures short of prosecution); *Ariz. Free Enter. Club's Freedom Club*

PAC v. Bennett, 564 U.S. ___, 131 S. Ct. 2806, 2813 (2011) (holding that "substantial burdens" on speech other than direct prohibitions violate the First Amendment). Administrative proceedings, investigations, and discovery can be just as burdensome and chilling as a prosecution. *See Waters v. Churchill*, 511 U.S. 661, 669 (1994). SBA List and COAST have the fundamental First Amendment right to engage in political expression concerning candidates for public office without facing the realistic possibility of suffering the expense, inconvenience, intrusiveness, and governmental scrutiny that arises from the Commission's procedures. *Virginia v. Hicks*, 539 U.S. 113, 119 (2003). Thus, Petitioners' claims—particularly their facial challenges to §§ 3519.21(B)(9) and (B)(10)—are justiciable.

4. While political discourse has thankfully evolved since the days of Vice President Aaron Burr and Alexander Hamilton[10]—and even progressed past the era of Senator Charles Sumner and Representative Preston Brooks[11]—lies, baseless assertions, exaggerations, hyperbole, and invective remain unfortunate parts of it. President Barack Obama

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[10] *See* U.S. Senate Historical Office, *March 2, 1805: Indicted Vice President Bids Senate Farewell*, *available at* http://tinyurl.com/m3rjjv3.

[11] *See* U.S. Senate Historical Office, *May 22, 1856: The Caning of Senator Charles Sumner*, *available at* http://tinyurl.com/nxz56hn.

himself uttered one of the most significant false statements in modern American political history:

> [N]o matter how we reform health care, we will keep this promise: If you like your doctor, you will be able to keep your doctor. Period. If you like your health care plan, you will be able to keep your health care plan. Period. No one will take it away. No matter what.[12]

Similarly, during the 2012 election cycle, Senator Majority Leader Harry Reid falsely declared, "So, the word's out that [Governor Mitt Romney] hasn't paid any taxes for 10 years. Let him prove that he has paid taxes, because he hasn't."[13]

The solution to such falsehoods lies not in administrative or criminal proceedings, detailed inquiries by "investigatory attorneys," or voluminous discovery requests, but rather in more speech. As Justice Brandeis memorably declared, in words that history has vindicated:

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[12] Mary Lu Carnevale, *Obama: "If You Like Your Doctor, You Can Keep Your Doctor,"* WALL ST. J. WASH. WIRE (June 15, 2009), *available at* http://tinyurl.com/mvlz5h; *cf.* Angie Drobnic Holan, *Lie of the Year: "If You Like Your Health Care Plan, You Can Keep It,"* TAMPA BAY TIMES POLITIFACT.COM (Dec. 12, 2013), *available at* http://tinyurl.com/pu7xtl4.

[13] Niels Lesniewski, *Harry Reid Again Accuses Mitt Romney of Failing to Pay Taxes*, ROLL CALL (Aug. 2, 2012), *available at* http://tinyurl.com/n7dgl39; *cf.* Glenn Kessler, *Four Pinocchios for Harry Reid's Claim About Mitt Romney's Taxes*, WASH. POST FACT CHECKER (Aug. 7, 2012), *available at* http://tinyurl.com/cn7f2yl.

> Those who won our independence by revolution were not cowards. . . . They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.

Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring), *overruled on other grounds by Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969); *accord United States v. Alvarez*, 132 S. Ct. 2537, 2550 (2012); *Meese v. Keene*, 481 U.S. 465, 481 (1987).

Ohio law casts a chilling pall over political discourse, imposing a very real risk of substantial burdens—to say nothing of possible criminal prosecution—on those individuals, candidates, and groups who would dare to publicly engage in political dialogue. Article III therefore permits SBA List and COAST to challenge §§ 3517.21(B)(9) and (B)(10).

II. THIS COURT SHOULD APPLY JUSTICIABILITY REQUIREMENTS LIBERALLY IN THIS CASE BECAUSE THE CHALLENGED LAWS RELATE TO ELECTIONS

This Court should apply Article III's standing requirements broadly in this case, since it deals with an election-related statute. Many scholars have pointed out that courts during the Founding Era did not apply consistent, strict justiciability requirements. *See, e.g.*, Jack B. Weinstein, *The Role of Judges in a Government Of, By, and For the People: Notes for the Fifty-Eighth Cardozo Lecture*, 30 CARDOZO L. REV. 1, 66-67 (2008) ("[T]he Supreme Court's opinions over the nation's first 150 years [show] that direct injury was not a necessary element of a 'case' or 'controversy.'"); Joshua L. Sohn, *The Case for Prudential Standing*, 39 U. MEMPHIS L. REV. 727, 735 (2009) ("American Framing-era courts commonly entertained cases that would flunk the Supreme Court's modern standing requirements."). This is especially true for disputes that qualified as "cases" rather than "controversies" under Article III. Robert J. Pushaw, Jr., *Article III's Case/Controversy Distinction and the Dual Functions of the Federal Courts*, 69 NOTRE DAME L. REV. 447, 449-50 (1994) (explaining that early federal courts would exercise jurisdiction over disputes that qualified as "cases" under Article III, regardless of whether they would have met modern justiciability requirements). Thus, this Court has the authority to determine how strictly to apply Article III's justiciability requirements to this case.

Many of the nation's leading legal scholars have argued that, while traditional standing requirements apply most readily to purely private disputes between litigants that primarily center around disagreements of historical fact, this Court should relax standing requirements in "public law" cases involving government entities, where important public values are at stake. *See, e.g.*, Abram Chayes, *Foreword: Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4, 24 (1982); Susan Bandes, *The Idea of a Case*, 42 STAN. L. REV. 227, 317 (1990); Girardeau A. Spann, *Expository Justice*, 131 U. PA. L. REV. 585, 630-32, 642-43 (1983); *see also* Owen M. Fiss, *Foreword: The Forms of Justice*, 93 HARV. L. REV. 1, 29 (1978). The Court need not go so far, however, to recognize that the unique context of elections counsels that justiciability requirements be applied very forgivingly to determine whether litigants may challenge or seek enforcement of the statutes and regulations relating to that process.

1. The D.C. Circuit's ruling in *Shays v. Federal Election Comm'n*, 414 F.3d 76 (D.C. Cir. 2005), provides a persuasive model for how this Court's justiciability requirements should be applied in election-related cases. The plaintiffs were Members of the House of Representatives who had sponsored the Bipartisan Campaign Finance Reform Act ("BCRA") of 2002, Pub. L. No. 107-155, 116 Stat. 81 (Mar. 27, 2002), which imposed stricter limits on "soft money" contributions and issue advertisements. *Shays*, 414 F.3d at 79. They sued the FEC, contending that its regulations did not enforce BCRA's requirements strictly enough, and even

permitted some of the practices that Congress had sought to prevent. *Id*.

The D.C. Circuit recognized that the plaintiffs had to establish "injury in fact," causation, and redressability to establish their standing to challenge the FEC's BCRA regulations. *Id*. at 83 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000)). The plaintiffs alleged that they satisfied these requirements because the regulations created the "'strong risk'" that their opponents would use "BCRA-banned advertising" and "soft money spending" against them. *Id*. at 85. Moreover, the plaintiffs argued that the regulations forced them to campaign "in an environment rife with practices Congress has proscribed." *Id*.

The D.C. Circuit agreed, holding that "illegal structuring of a competitive environment injures those who are regulated in that environment" and is "sufficient to support Article III standing." *Id*. It explained that participants in such an environment may challenge legal provisions that create "distortions that alter the competitive environment's overall rules." *Id*. at 86; *see also id*. at 85 ("[R]egulated litigants suffer legal injury when agencies set the rules of the game in violation of statutory directives.").

The plaintiffs met these standards because the FEC's regulations compelled them to "compete for office in contests tainted by BCRA-banned practices."

Id. They had to "anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow." *Id*. at 86. Thus, because the FEC's regulations "fundamentally alter[ed] the environment" in which the election was being conducted, participants who had to "adjust their campaign strategy" to "account for" activities permitted by the regulations had standing to challenge them. *Id*. at 86-87. The court went on to hold that participants in the electoral process could challenge the allegedly invalid regulations so long as there was a "'distinct risk'" that others would take advantage of them, *id*. at 92 (quoting *Fla. Audobon Soc'y v. Bentsen*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc)) without having to "wait[] for specific competitors" to actually do so, *id*. at 90.

PACs such as SBA List and COAST are integral players in the electoral process. Federal law defines the term "political committee" broadly enough to refer to almost any group of people wishing to band together to move the electorate and influence public policy on a particular issue. 2 U.S.C. § 431(4).

> [T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th-century Committees of Correspondence and the pamphleteers were early examples of this phenomena . . . . The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus

> on a candidate or on a ballot measure. Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.

Citizens Against Rent Cont./Coal. for Fair Hous. v. Berkeley, 454 U.S. 290, 294 (1981); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."); *Buckley v. Valeo*, 424 U.S. 1, 24, 65-66 (1976).

PACs compete against their ideological counterparts to raise money, persuade the electorate, and facilitate the election of candidates who share their vision of the public good. They help move issues onto the public agenda; hold candidates accountable for their public statements, proposed policies, and voting records; and craft messages intended to galvanize the electorate. Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) are responsible for "fundamentally alter[ing]" and "illegal[ly] restructuring" the competitive electoral environment in which PACs operate, *Shays*, 414 F.3d at 85-86, by allowing any speaker to be subjected to administrative hearings, subpoenas, investigations, and even criminal prosecution for engaging in speech that the government determines is recklessly or knowingly false.

Active participants in the electoral process such as SBA List and COAST must "adjust their campaign strategy" to "account for" the omnipresent, yet

reasonable, possibility that someone will file a complaint based on a powerful, persuasive advertisements that may be seen as taking advocacy a step too far. *Cf. Cohen v. California*, 403 U.S. 15, 26 (1971) ("[W]ords are often chosen as much for their emotive as their cognitive force."). This Court should recognize their standing to demand a judicial determination of whether the State of Ohio has "set the rules of the game in violation of [constitutional] directives." *Shays*, 414 F.3d at 85.

2. Numerous other practical considerations bolster the desirability of applying Article III's justiciability requirements to allow election-related disputes such as this to be brought well outside the context of an ongoing election. When disputes arise in the weeks or even months before an election—which is the only time that allegedly false statements about a candidate for office can violate the Political Speech Prohibitions, *see* Ohio Rev. Code § 3517.21(B) (prohibiting false statements made "during the course of any campaign for nomination or election")—they often must be resolved on an expedited basis with truncated briefing schedules, limited if any discovery, expedited hearings, and relatively little time for judicial reflection. *See, e.g.*, *Dep't of Comm. v. Montana*, 503 U.S. 442, 445 (1992) ("In view of the importance of the issue and its significance in this year's congressional and Presidential elections, we noted probable jurisdiction and ordered expedited briefing and argument."); *cf. Bush v. Gore*, 531 U.S. 98 (2000) (per curiam). This Court should apply justiciability rules so as to allow disputes concerning election laws to be resolved along a more sensible

timetable, whenever reasonably possible, to allow for better and more accurate decision making by all levels of courts.

Due process concerns can arise when the rules governing an election are changed at or near the last minute. *See Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 73 (2000) (per curiam) (discussing grant of certiorari concerning "whether the decision of the Florida Supreme Court, by effectively changing the State's elector appointment procedures after election day, violated the Due Process Clause"); *Roe v. Alabama*, 43 F.3d 574, 580-81 (11th Cir. 1995). The intended effect of laws such as Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) is to curtail the range of issues, themes, messages, and strategies that may be used by political candidates and the PACs that support them. Determining the constitutionality of these provisions well in advance of an election is far preferable to altering such substantial limits on public discourse at the last minute, potentially altering the contours of a race by judicial fiat.

Allowing disputes concerning election-related legal provisions to be adjudicated outside the context of an impending election also may contribute to fairer decision making, and certainly promote the public appearance of fairer decision making. In cases such as this, where a particular candidate or party does not stand to benefit or be disadvantaged in an impending election, and a ruling will not tend to systematically benefit or disadvantage either party, judges effectively enjoy the benefit of a Rawlsian "veil of ignorance." *See* John Rawls, A Theory of Justice

12, 136-42 (1971). Allowing courts to decide cases concerning the electoral process under circumstances where the ultimate beneficiaries in future elections are indeterminate or unclear helps prevent judges' potentially subconscious biases or preferences from inadvertently coloring their perception of the issues. *Id*. at 136. It also enhances the likely public legitimacy of the court's ruling, by preventing the perception (even if inaccurate or unfair) that it might have been influenced, even unknowingly, by political or partisan considerations. *Cf*. Code of Conduct for United States Judges, Canon 2(B) (Rev. ed. July 1, 2009) ("A judge should not allow . . . political . . . relationships to influence judicial conduct or judgment."). In election-related cases, the judiciary might best promote its legitimacy by avoiding Bickel's passive virtues. *Cf*. Alexander Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics 70-71, 117-18, 205-07 (1962).

Finally, when applying justiciability principles to cases concerning the electoral process, the court should consider the fact that election laws do not simply regulate the conduct of private actors or government officials in the conventional sense. Rather, election laws establish a fundamentally adversarial process between the opposing candidates, parties, and the groups and voters that support them. If that process is to be fair, and the will of The People accurately determined in accordance with law, participants on both sides must have the ability to demand and compel compliance with all applicable legal provisions, and seek the invalidation of unconstitutional or otherwise invalid provisions.

Using strict standing requirements or other high procedural hurdles to prevent certain participants in the electoral process from ensuring that applicable constitutional, statutory, and regulatory requirements are enforced will result in one side enjoying an unfairly greater degree of access to the courts, and the applicability of the rules resting with potentially partisan election officials, thereby undermining both the rule of law and the integrity of the electoral process. *See, e.g.*, *Brunner v. Ohio Republican Party*, 555 U.S. 5, 5-6 (2008) (per curiam) (holding that plaintiffs lacked a private right of action to compel the Ohio Secretary of State to comply with a federal law requiring her to ensure the accuracy of the State's voter registration rolls by comparing them to state motor vehicle records); *Townley v. Miller*, 722 F.3d 1128, 1131 (9th Cir. 2013) (holding that the plaintiff voters, candidates, and political party lacked standing to argue that the Constitution and federal law required that "None of These Candidates" be excluded as an option on the ballot, because state law prohibited votes cast for that option from being given any legal effect), *cert. denied* 82 U.S.L.W. 3404 (Jan. 13, 2014); *League of Women Voters of Florida v. Detzner*, 283 F.R.D. 687, 688 (N.D. Fla. 2012) (allowing voters' groups to challenge the constitutionality of statutory safeguards on third-party registration drives, while holding that other voters lacked standing to intervene to defend those laws after the State refused to do so and sought to negotiate a settlement). Thus, this Court should apply Article III's standing requirements liberally in lawsuits centering around

laws relating to the electoral process such as Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10).

CONCLUSION

For the foregoing reasons, Petitioners have asserted justiciable constitutional challenges to Ohio Rev. Code §§ 3517.21(B)(9) and (B)(10) and the Commission's procedures. This Court should reverse the judgment of the U.S. Court of Appeals for the Sixth Circuit and reinstate their lawsuit.

Respectfully submitted,

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