Case No. 23-3178

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIAN AMES,

Plaintiff - Appellant,
v.

FRANK LAROSE,

Defendant - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION
DISTRICT COURT CASE NO. 2:22-CV-2085

BRIEF OF DEFENDANT-APPELLEE FRANK LAROSE

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STATEMENT REGARDING ORAL ARGUMENT

The Secretary believes that the issue here, i.e., whether the Appellant had standing to bring his claims, is well settled by applicable case law and, therefore, is not requesting oral argument. However, the Secretary would welcome the opportunity to participate in oral argument should the Court determine that it would further assist the Court in deciding the issue.

STATEMENT OF THE ISSUE

Whether Appellant has standing under Article III to bring this action when he cannot establish a concrete injury, that the challenged provisions caused his alleged injury, and that his requested relief would likely redress his purported injury.

STATEMENT OF THE CASE

This appeal is about whether Plaintiff-Appellant Brian Ames has standing to challenge two provisions of an election-statute, namely Ohio Rev. Code § 3517.03 ("the Challenged Provisions"). The Challenged Provisions provide as follows:

> The controlling committees of each major political party or organization shall be a state central committee consisting of two members, one a man and one a woman, representing either each congressional district in the state or each senatorial district in the state, as the outgoing committee determines * * *.
>
> All the members of such committees shall be members of the party and shall be elected for terms of either two or four years, as determined by party rules, by direct vote at the primary held in an even-numbered year.

Ohio Rev. Code § 3517.03. These requirements have also been adopted by the Ohio Republican Party ("ORP") State Central and Executive Committee in its Permanent

Rules ("the ORP Rules"). *See* 2019 Republican State Central and Executive Permanent Rules, RE 17-1 at PageID # 117.

Ames filed an original complaint against Ohio Secretary of State Frank LaRose (the "Secretary") on May 3, 2022. *See generally* Compl., RE 1. In short, Ames alleged that the Challenged Provisions violated his First Amendment right to freely associate with the political party of his choosing and Fourteenth Amendment right to equal protection. *See id.* at PageID # 2. The Secretary filed a motion to dismiss on July 5, 2022. *See generally* Motion to Dismiss, RE 11. Less than two weeks before the August 2, 2022 primary election, Ames filed an Amended Complaint contemporaneously with a motion for a preliminary injunction and a motion for partial summary judgment on July 22, 2022. The Secretary's motion to dismiss was rendered moot as a result.

In his Amended Complaint, Ames alleged he was a "member of the Republican State Central Committee 32nd District" and that he was a candidate for one of the representative positions in his district in 2022. Am. Compl., RE 14 at PageID # 66, ¶ 6–7. Ames claimed that the Challenged Provisions violated his First Amendment right to "freely associate with others" and his Fourteenth Amendment right to "enjoy equal protection under a state's laws." *Id.* at PageID # 68–69. As to the former, Ames alleged that the Challenged Provisions prevented him from voting for the candidates of his choosing by limiting his choices to one man and one woman.

Id. Moreover, he claimed that the Challenged Provisions improperly restricted him from voting for a candidate for a term longer than the period prescribed by statute. *Id.* at PageID # 69. As to the latter, Ames alleged that the statute improperly required candidates to run by gender and prevented voters from voting for two of the same gender in violation of the Equal Protection clause of the Fourteenth Amendment. *Id.* at PageID # 69. For relief, Ames requested (1) an order declaring that Ohio Revised Code section 3517.03 violates the First and Fourteenth Amendments, (2) an order enjoining the Secretary from enforcing the challenged statute, (3) nominal damages, and (4) attorneys' fees and costs. *Id.* at PageID # 70.

In response, the Secretary filed a motion to dismiss the Amended Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). *See generally* Motion to Dismiss, RE 19. The Secretary argued that Ames lacked standing to bring this action and that he otherwise failed to state a valid claim under either the First or Fourteenth Amendments as a matter of law. *Id.* at PageID # 135–39. After the issues were fully briefed by both parties, the District Court agreed with the Secretary and dismissed the case on the grounds that Ames lacked standing. *See generally* Order, RE 33. The District Court found that Ames failed to demonstrate causation and redressability in order to establish standing. *Id.* at PageID # 306–10. Because the Court granted the Secretary's motion to dismiss, Ames's motions for preliminary

injunction and partial summary judgment were denied as moot. *Id.* at PageID # 311. Ames, then, timely appealed the District Court's Order granting the Secretary's motion to dismiss to this Court.

SUMMARY OF THE ARGUMENT

The District Court correctly determined that Ames lacks standing because Ames cannot establish any of the three requirements for standing under Article III.

First, Ames cannot establish a concrete injury, whether as a candidate or as a voter. As a candidate, Ames cannot show that his failure to be elected was related to anything other than his own merits. It is clear that the same number of men and the same number of women ran for the respective positions in question. Thus, the Challenged Provisions had no impact on his chances at being elected. Further, as a voter, Ames cannot establish an injury merely because he cannot vote to elect two men (or two women) to a state central committee district or because he cannot vote to elect candidates to six- or eight-year terms instead of two- or four-year terms. It is well established that a person has no fundamental right to vote for a specific candidate or a particular class of candidates and these purported injuries are simply not particularized. As a result, he fails to establish the first requirement for standing.

Second, Ames cannot show that the Challenged Provisions caused his alleged injuries. The ORP Rules require the exact same equal-representation and term-limit provisions that Ames challenges. In similar situations, courts have required that the

plaintiff be able to show that the political party opposes the statute(s) in question and would change its rules if the statute was invalidated. Here, Ames has not shown there is a conflict between the ORP Rules and the Challenged Provisions. As such, any alleged injury to Ames as a voter or candidate cannot reliably be shown to be caused by the Challenged Provisions. Rather any injury is the result of the ORP Rules.

Third, Ames similarly cannot show that striking down the Challenged Provisions would redress his alleged injuries. Even if the District Court struck down the Challenged Provisions, the ORP Rules—the explicit will of the party—would remain. Therefore, Ames cannot establish the requisite elements of standing to bring a constitutional challenge to the election-law provisions.

Finally, this Court should disregard any arguments made by Ames as to the merits of his constitutional claims. These arguments are outside the scope of the issue on this appeal, which is whether Ames has standing to bring this action in the first place. The District Court dismissed the case solely on standing grounds pursuant to Fed. R. Civil P. 12(b)(1). *See* Order, RE 33 at PageID # 306–10.

Accordingly, the District Court's decision dismissing the Amended Complaint should be affirmed.

ARGUMENT

I. Standard of Review.

A motion to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction "may involve a facial attack or a factual attack." *Am. Telecom Co., LLC v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007). A facial attack "goes to the question of whether the plaintiff has alleged a basis for subject matter jurisdiction, and the court takes the allegations of the complaint as true for purposes of Rule 12(b)(1) analysis." *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014).

Meanwhile, a factual attack "challenges the factual existence of subject matter jurisdiction." *Id.* In a factual attack, "a court has broad discretion with respect to what evidence to consider in deciding whether subject matter jurisdiction exists, including evidence outside of the pleadings, and has the power to weigh the evidence and determine the effect of that evidence on the court's authority to hear the case." *Id.* 759–60.

"If the district court's jurisdictional ruling is based on the resolution of factual disputes," appellate courts "review those findings under a clearly erroneous standard." *Golden v. Gorno Bros.*, 410 F.3d 879, 881 (6th Cir. 2005). However, an appellate court's review of the district court's application of the law to the facts is de novo. *Id.* (citing *MI Titanium Co. v. Westinghouse Electric Corp.*, 78 F.3d 1125, 1135 (6th Cir. 1996)).

II. The District Court properly found that Ames lacked standing.

The District Court properly found that the Ames lacked standing to bring his claims. First, although the District Court did not address this requirement, Ames failed to allege a sufficient injury. Second, the District Court properly held that the ORP Rules were the cause of any perceived injury. Third, the District Court correctly found that Ames also had a redressability problem in that there was nothing in the record to indicate that the ORP would change their Rules if the Challenged Provisions were struck down. Having been unable to establish any of the three requirements for standing, Ames's Amended Complaint was appropriately dismissed under Fed. R. Civ. P. 12(b)(1).

A. Article III Standing Requirements.

"Article III's 'case and controversy' requirement is not satisfied, and a court therefore has no jurisdiction, when the claimant lacks standing . . . ." *Fieger v. Mich. Supreme Court*, 553 F.3d 955, 961 (6th Cir. 2009) (vacating judgment for lack of jurisdiction because plaintiffs had no standing). "Standing is the 'threshold question in every federal case.'" *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 832 (6th Cir. 2001) (quoting *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999)). Courts should "presume that [they] lack jurisdiction unless the contrary appears affirmatively from the record." *See Renne v. Geary*, 501 U.S. 312, 316 (1991)

(internal quotation marks omitted) (dismissing a challenge to a California election statute on justiciability grounds).

To satisfy the Constitution's standing requirement, a party must establish that "(1) he or she has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Fieger*, 553 F.3d at 962 (quoting *Fieger v. Ferry*, 471 F.3d 637, 643 (6th Cir. 2006)). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

These same standing requirements apply when, as here, Ames raises a facial challenge to a state statute. *O'Toole v. O'Connor*, 802 F.3d 783, 789 (6th Cir. 2015) ("[W]here a plaintiff makes a facial challenge under the First Amendment to a statute's constitutionality, the facial challenge is an overbreadth challenge.") (internal quotation marks omitted). However, "the overbreadth doctrine does not eviscerate the standing requirement, which is a *constitutional* mandate that is 'absolute' and 'irrevocable.'" *Fieger*, 553 F.3d at 961 (quoting *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 349–50 (6th Cir. 2007)). "[T]he Supreme Court has made clear that the injury in fact requirement still applies to overbreadth claims under the First Amendment." *Id.* (quoting *Prime Media*, 485 F.3d at 350); *see*

Virginia v. Am. Booksellers Ass'n, 484 U.S. 383, 392–93 (1988) (holding that "[t]o bring a cause of action in federal court requires that plaintiffs establish at an irreducible minimum an injury in fact; that is, there must be some threatened or actual injury resulting from the putatively illegal action" (internal quotation marks omitted)); *Sec'y of State of Maryland v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 958 (1984) ("The crucial issues [for overbreadth standing] are whether [the plaintiff] satisfies the requirement of 'injury-in-fact,' and whether [the plaintiff] can be expected satisfactorily to frame the issues in the case."). Simply put, "[f]acial challenges, like as-applied ones, require ripeness as well as standing." *Miller v. City of Wickliffe*, 852 F.3d 497, 506 (6th Cir. 2017).

B. Ames failed to allege a sufficient injury.

Ames failed to allege a sufficient injury in fact. In order to establish standing, Ames was required to plead sufficient facts to demonstrate an injury that is "concrete" and "particularized," not "conjectural or hypothetical." *Fieger*, 553 F.3d at 962. He failed to do so. In the Amended Complaint, Ames alleged two injuries—(1) as a candidate and (2) as a voter. Under Ames's candidate-based theory, it would be a constitutional violation if four women ran for office whereas only one man ran for the other seat. Am. Compl., RE 14 at PageID # 67, ¶ 18. In other words, his theory requires, at minimum, establishing that his failure to be elected was related, not to the candidates' merits, but to the fact that there were more men than women

running for his desired office. But it is impossible for Ames to do this because the same number of men and women ran for the respective state central committee positions in question.[1] Thus, using his own theory, Ames cannot establish an injury as a candidate.

Ames failed to allege a sufficient injury in his capacity as a voter too. "Just as candidates have no fundamental right to run for office, voters have no fundamental right to vote for a specific candidate or even a particular class of candidates." *Kowall v. Benson*, 18 F.4th 542, 549 (6th Cir. 2021) (rejecting state legislators' First and Fourteenth Amendment challenge to Michigan term limits); *see also Miyazawa v. City of Cincinnati*, 825 F. Supp. 816, 818 (S.D.Ohio 1993) (voter lacked standing to challenge term-limit provision, as she was "merely asserting a general complaint that a candidate she may want to vote for will not be eligible for the ballot"). Under this well-established jurisprudence, Ames's claims that he cannot vote for two men or two women OR that the cannot vote for those candidates to serve longer than 2- or 4-year terms simply do not rise to the level of a cognizable injury-in-fact required for standing. Accordingly, Ames failed to allege the first requirement of standing, requiring dismissal of his Amended Complaint.

[1] *See* https://liveresults.ohiosos.gov/.

C. The Challenged Provisions did not cause Ames's injuries.

Even if Ames suffered an injury, which he did not, he failed to establish that the Challenged Provisions caused his injuries. Because the Secretary's Motion to Dismiss raised a factual, as well as a facial, attack of the Amended Complaint based on lack of subject matter jurisdiction, the District Court could consider evidence outside of the pleadings. *Nichols v. Muskingum Coll.*, 318 F.3d 674, 677 (6th Cir. 2003). Additionally, as the plaintiff, Ames possessed the burden to establish subject matter jurisdiction. *Cartwright v. Garner*, 751 F.3d 752, 760 (6th Cir. 2014). He failed to carry his burden as to this requirement.

When, as here, a third-party regulating body restricts a plaintiff by passing similar and/or the same restrictions found in statute, courts require a showing that the third-party actually opposes the statutory requirements in order to establish causation. *See Marchioro v. Chaney*, 442 U.S. 191, 199 (1979) ("[T]here can be no complaint that the party's right to govern itself has been substantially burdened by statute when the source of the complaint is the party's own decision * * *."); *see also San Francisco County Democratic Central Committee v. March Fong Eu*, 826 F.2d 814, 824 (9th Cir. 1987) (plaintiffs were able to establish causation where they submitted "uncontroverted affidavits of party representatives" showing that "they would reform the composition of their parties' central committees if the statutes were invalidated" and "all committee plaintiffs sa[id] they would make preprimary

endorsements if the practice were not prohibited."); *Charlestown Democratic Town Committee v. Connell*, 789 F. Supp. 517, 524–25 (D.R.I. 1992) (holding that "plaintiffs' standing ultimately fails because of lack of causation and redressability" where "[t]he Democratic State Committee has in its by-laws chosen the identical methods as set forth in the challenged statutes"). In *Marchioro*, the Supreme Court upheld a Washington state statute requiring that each major political party have a state committee with a particular composition. 442 U.S. at 193. Like Ames, the plaintiffs (members and officers of the State's Democratic Party) argued that the "statutory restriction on the composition of the Democratic State Committee violated their rights to freedom of association" under the First Amendment. *Id.* at 194. The Supreme Court rejected this argument because the party itself, not the State, imposed the burdens claimed. *Id.* at 198–99.

This point is perhaps most clearly articulated by the Fourth Circuit Court of Appeals in *Marshall v. Meadows*, 105 F.3d 904 (4th Cir.1997), and *Miller v. Brown*, 462 F.3d 312 (4th Cir. 2006). First, in *Marshall*, various members of the Virginia Republican Party ("VRP") challenged a Virginia law requiring political parties to hold open primaries. 105 F.3d at 905. However, the VRP's own rules also contained a provision requiring open primaries. *Id.* There was no evidence that the VRP opposed open primaries or that it would revise its rules if the statute was invalidated. *Id.* at 906 ("there is * * * simply *no indication* that the Virginia Republican Party

would have a 'closed' primary in the absence of the Open Primary Law or change to a 'closed' primary if we declared the Open Primary Law unconstitutional") (emphasis sic.). In other words, the Fourth Circuit held that it was the VRP's rules that caused the plaintiffs' alleged injuries, not the challenged law. *Id.* Therefore, the Fourth Circuit concluded that the plaintiffs lacked standing to bring their case. *Id.* at 907.

Nearly a decade later, other members of the VRP challenged the same law that was challenged in *Marshall*. *See generally Miller*, 462 F.3d 312. In *Miller*, the plaintiffs were able to establish that the VRP no longer approved of open primaries as it amended its rules to exclude certain voters from an election. *Id.* at 314–15. With this information that was not present in *Marshall*, the Fourth Circuit found that the VRP's rules were in conflict with the challenged law. *Id.* at 318. Thus, this time, the Fourth Circuit found that the plaintiffs established causation as the challenged law was the cause of their injury. *See id.* ("The mere existence of the open primary law causes these decisions to be made differently than they would absent the law, thus meeting the standing inquiry's second requirement of a causal connection between the plaintiffs' injuries and the law they challenge."). Therefore, unlike the plaintiffs in *Marshall*, the plaintiffs in *Miller* were determined to have standing. *Id.*

Here, the District Court correctly found that the Challenged Provisions were not the cause of Ames's alleged injuries because the ORP Rules contain the same

restrictions as the Challenged Provisions. Specifically, Art. I, § 1 of the Rules provides,

> The controlling committee of the Ohio Republican Party (the "ORP"), the Republican State Central Committee, *shall consist of two members, one man and one woman*, representing each senatorial district in the state. All members of the committee must be members of the Republican Party and *shall be elected for terms of two years*, by direct vote at the primary held in an even-numbered year.

(Emphasis added). Because the ORP Rules include the same restrictions as the Challenged Provisions, the ORP Rules, not the Challenged Provisions, are the actual cause of any perceived injury. *See, e.g.*, *Marshall*, 105 F.3d at 906. To establish the opposite, i.e., that the Challenged Provisions are the actual cause, Ames was required to either allege facts or present evidence that the ORP opposes the Challenged Provisions and would not include the same restrictions in their Rules absent the statute. *See Miller*, 462 F.3d at 318. But he failed to do either here. Therefore, he failed to carry his burden to plead, let alone establish, the second requirement for standing, causation. Accordingly, he lacks standing for this additional reason.

Ames's continued reliance on *Tashjian v. Republican Party*, 479 U.S. 208, 215 (1986), and *also San Francisco County Democratic Central Committee v. March Fong Eu*, 826 F.2d 814, 824 (9th Cir. 1987) does not save him. *See* Appellant's Brief, Doc. 14 at PageID # 22–24. *Tashjian* does not mention, let alone address, standing and is, therefore, of little value to Ames's argument that a member of a political party automatically has standing simply because he or she alleges an

interference with the party's freedom of association. Even more problematic for Ames is the fact that the political party in *Tashjian* adopted a party rule that *conflicted with state election law*, 479 U.S. at 210–11, whereas here there is no conflict. Nor is *Eu* of any help to Ames. To the contrary, in *Eu*, the plaintiffs were easily able to establish standing by submitting uncontroverted evidence that but-for the challenged state statutes, the political parties would do the opposite of what the state statutes required. 826 F.2d at 824. But Ames submitted no such evidence or even included any factual allegations in his Amended Complaint. Thus, unlike the plaintiffs in *Eu*, Ames failed to carry his burden to establish standing, and the Amended Complaint was appropriately dismissed.

Ames's newfound reliance on *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59 (1978), is also unpersuasive. *Duke Power* involved a challenge to the Price-Anderson Act, which limited the amount of liability in the event of a nuclear power plant incident. *Id.* at 64–65. The plaintiffs, an environmental group, a labor union, and 40 individuals that lived within a close proximity to the planned sites of two nuclear power plants, sued a constructor of nuclear power plants and the Nuclear Regulatory Commission. *Id.* at 67. The Court found that the plaintiffs adequately established the causation requirement for standing by providing evidence that, but-for the protections of the Price-Anderson Act, the companies building the nuclear plants were likely to either (1) not build the planned plants or (2) cease their

operations. *Id.* at 75–77. In doing so, the Court looked at testimony presented at Congress when the Price-Anderson Act was being considered as well as evidence offered to the district court. *Id.*

Relying on *Duke Power*, the Ames claims that "the central committees would not have gender quotes but for the statue." Appellant's Brief, Doc. 14, at p. 25. How he draws that conclusion from *Duke Power* is confounding. *Duke Power* has nothing to do with elections cases and, therefore, is of little use for this Court. This is particularly the case whereas, here, there is an abundance of caselaw on the issue before this Court, i.e., a standing challenge to a plaintiff challenging a state's elections laws. *See generally, e.g.*, *Marshall*, 105 F.3d 904. But even if this Court were to apply *Duke Power*, the application would be to Ames's detriment because the plaintiffs there, like in *Miller* and *Eu*, were actually able to present evidence that the statute was the cause of their injuries. *See Duke Power*, 438 U.S. at 75–77. But Ames offered *nothing* in the form of either evidence or allegations here.

Accordingly, Ames failed to establish the second requirement for standing, i.e., causation, and the District Court properly dismissed his Amended Complaint.

D. Ames cannot establish redressability.

A separate and independent requirement for standing, redressability is often intertwined with the causation requirement, and Ames failed to establish redressability for similar reasons. *See Marshall*, 105 F.3d at 907 ("as long as the

Virginia Republican Party voluntarily chooses to hold an 'open' primary, the alleged injury cannot be redressed"). Even if, on remand, the district court were to invalidate the Challenged Provisions, the ORP's Rules containing those same restrictions would remain. Stated differently, "as [Ames] must act in concert with the rest of the party, [he] will not get the results [he] desire[s] regardless of the actions of this Court." *Connell*, 789 F. Supp. at 524. As the court in *Connell* reasoned, "[i]f the Court were to strike down these statutes, the provisions would still remain in place under the . . . party by-laws. Federal courts should not engage in this sort of pointless activity." *Id.* at 525. For these reasons, Ames cannot establish redressability and lacks standing.

Because Ames lacked standing, the district court appropriately dismissed the Amended Complaint. Therefore, the Secretary respectfully requests that this Court affirm the ruling of the District Court.

III. Any arguments as to the merits of the constitutionality of the challenged election-law provisions are outside the scope of the issue on appeal.

The merits of Ames's constitutional challenges to the statute are outside the scope of the issue on appeal. *See City of Highland Park v. United States EPA*, No. 22-1288, 2022 U.S. App. LEXIS 31894, at *2 (6th Cir. Nov. 17, 2022) ("any argument that an issue is outside the scope of an appeal can be made in merits briefing."). Ames commits nearly six pages of his brief to explaining how the statute

is unconstitutional. Appellant's Brief, Doc. 14 at PageID # 11–16. Despite that expansive effort, Ames enumerates only one issue presented for appeal in his brief—"Whether Appellant Brian Ames has standing to challenge the Statute-at-issue…." *Id.* at PageID # 8. Therefore, this is the only issue that the Court should consider. *See Bonkowski v. Allstate Ins. Co.*, 544 Fed. Appx. 597, 608, n.2 (6th Cir. 2013) (refusing to consider an issue, in part, where it was not raised as an assignment of error).

Furthermore, in his Civil Appeal Statement of Parties and Issues, instead of outlining any specific issue(s) on appeal, Ames merely states he is bringing this appeal "regarding the lower court's decision that he lacks standing to challenge a state law * * *." Civil Appeal Statement, Doc. 6 at PageID # 1. But, the District Court dispensed of the case solely on standing grounds under Fed. R. Civ. P. 12(B)(1). *See* Order, RE 33 at PageID # 304 ("The Court need only address Defendant's 12(b)(1) challenge here because it is dispositive.") The District Court did not address the merits of Ames's constitutional claims, nor his failure to state a claim under Fed. R. Civ. P. 12(B)(6). *Id.* Accordingly, the merits of the constitutional claims are outside the scope of the issue before this Court. This Court should narrow its focus to only the issue of standing.[2]

[2] To the extent that this Court wishes to review the Complaint under a 12(b)(6) analysis, the Secretary rests on the arguments contained in his Motion to Dismiss and Reply in Support of it. Thus, those arguments are incorporated by reference as

CONCLUSION

For these reasons, the Secretary respectfully asks this Court to affirm the judgment of the District Court.

Respectfully submitted,

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if fully rewritten herein. *See* Motion to Dismiss, RE 19 at PageID # 140–45; Reply, RE 27 at PageID # 262–65.

CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, this brief complies with the type-volume requirements for a principal brief and contains 5360 words. *See* Fed. R. App. P. 32(a)(7)(B)(i).

/s/ Michael A. Walton
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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2023, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Michael A. Walton
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DESIGNATION OF DISTRICT COURT RECORD

Appellee Frank LaRose, pursuant to Sixth Circuit Rule 30(g), designates the following filings from the District Court's electronic records:

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