No. 22-1986

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JILL HILE; SAMANTHA JACOKES; PHILLIP JACOKES; NICOLE LEITCH; MICHELLE LUPANOFF; GEORGE LUPANOFF; PARENT ADVOCATES FOR CHOICE IN EDUCATION FOUNDATION; JOSEPH HILE; JESSIE BAGOS; RYAN BAGOS; and JASON LEITCH,

Plaintiffs-Appellants,

v.

STATE OF MICHIGAN; GRETCHEN WHITMER, Governor, in her official capacity; and RACHEL EUBANKS, Michigan Treasurer, in her official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Michigan
Docket No. 1:21-cv-00829
The Honorable Robert J. Jonker

APPELLANTS' REPLY BRIEF

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INTRODUCTION AND SUMMARY OF ARGUMENT

The State's response brief is notable for what it doesn't do. To begin, the State does not grapple with the Supreme Court's decision in *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291 (2014), *not* to overrule *Hunter v. Erickson*, 393 U.S. 385 (1969), and *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982). Those decisions have not been overruled by implication and still bind this Court. Next, the State ignores that the Supreme Court recognized the political-process doctrine's applicability to religious classifications from its very beginning—in *Hunter* itself. Finally, the State says that the Blaine Amendment's facial neutrality gives Michigan a free pass, overlooking longstanding Supreme Court decisions to the contrary.

Ignorance may be bliss, but not when it comes to Supreme Court precedent. Accepting Appellants' allegations as true, as the Court must do on a motion to dismiss, only an ostrich could conclude that Michigan's Blaine Amendment is neutral in its intent and impact. This Court should reverse the district court's dismissal of Appellants' equal protection claim and remand with instructions to enter judgment in favor of Appellants on that claim.

REPLY ARGUMENT

I. Appellants have standing.

The State says that Appellants lack standing because they have no "alleged theory of redressible harm." State Br. 9–14. That's false. To establish Article III standing, a plaintiff must show (1) an imminent or actual injury to himself that is "concrete and particularized," (2) "a causal connection between the injury and the conduct complained of," and (3) that the injury likely will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

"[A]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [courts] presume that general allegations embrace those specific facts that are necessary to support the claim." *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 256 (1994) (quoting *Lujan*, 504 U.S. at 561). Indeed, "[f]or purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

Even a cursory reading of Appellants' complaint shows that they have identified a redressable injury. The individual Appellants[1] alleged that they seek state aid to fund their children's private, religious-school tuition and that Michigan's Blaine Amendment disadvantages them in the political process because they must first secure the Amendment's repeal before seeking aid from the Michigan Legislature. R.1, Compl. ¶¶ 17–21, 146–56, PageID.6–7, 31–33. These allegations alone establish the three fundamental ingredients for Article III standing:

1. Injury in Fact. Appellants seek state aid for their children's private, religious-school tuition, but they can't lobby the Michigan Legislature for that aid because Michigan's Blaine Amendment indisputably would invalidate any favorable legislation they secured. Their injury lies in the unlevel playing field created by the Amendment.

2. Causation. Michigan's Blaine Amendment causes Appellants' injury because, absent the Amendment, they could lobby state senators and state representatives for state aid with efficacy.

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[1] Each individual Appellant is a member of Appellant Parent Advocates for Choice in Education Foundation, also known as P.A.C.E. R.1, Compl. ¶¶ 17–21, PageID.6–7. P.A.C.E.'s standing follows from the individual Appellants' standing. *See, e.g.*, *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) (discussing the requirements for associational standing).

3. Redressability. If Appellants succeed in obtaining declaratory and injunctive relief against enforcement of the Blaine Amendment, they will be able to petition for legislative help on the same terms as those who seek aid for public schools.

Nothing more is required. *Cf. Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 211 (1995) ("Adarand need not demonstrate that it has been, or will be, the low bidder on a Government contract. The injury in cases of this kind is that a 'discriminatory classification prevent[s] the plaintiff from competing on an equal footing.'" (quoting *Ne. Fla. Chapter, Associated Gen. Contractors of Am. v. Jacksonville*, 508 U.S. 656, 667 (1993))); *ACLU of Ohio, Inc. v. Taft*, 385 F.3d 641, 646 (6th Cir. 2004) ("These members had suffered an actual injury, as they were without representation in the House and had been threatened with the imminent denial of their right to vote. . . . This injury would have been redressable by injunctive and declaratory relief, in that an injunction requiring Governor Taft to issue a writ of election would have allowed residents of the district to exercise their right to vote and to regain representation in the House.").

The State's emphasis on the meaning of the Michigan Education Savings Program ("MESP") Act underscores the point. According to the State, the MESP Act does not allow tax-advantaged funds to be used to pay for any K–12 tuition. State Br. 10. Assuming the State is correct about the Act's proper interpretation, Appellants would have an interest in petitioning the Michigan Legislature to amend the MESP Act to allow tax-advantaged funds to be used for their children's private, religious-school tuition.[2] After all, they brought this lawsuit because they would like to use the tax-advantaged funds they have already set aside for that purpose. *E.g.*, R.1, Compl. ¶ 17, PageID.6.

But doing so would be fruitless because of the Blaine Amendment: it would automatically invalidate any expansion of the MESP Act to encompass private, religious-school tuition payments. Appellants' requested relief would level the playing field and ensure they are able to petition the government for aid on the same terms as other Michiganders, precisely the right the political-process doctrine protects.

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[2] As noted in Appellants' district court briefing, the State's online documents and MESP governing officials took the opposite view of the Act's meaning until this litigation was filed, at which time the Michigan Attorney General Office's reinterpreted the Act to avoid a federal judicial decision on Appellants' three MESP-based claims.

The State also says that Appellants haven't adequately alleged that they are religious. State Br. 13–14. The State's argument is misguided for at least two reasons. As a threshold matter, while Appellants' membership in a suspect class might affect the merits of their equal protection claim, whether Appellants are religious has no bearing on their standing to bring an equal protection claim. The Blaine Amendment indisputably removes one category of legislation (public funding for private schools) from the purview of the Michigan Legislature. *E.g.*, *id.* at 3. Appellants, as parents who seek aid for their children's private-school education, fall on the disfavored side of the line as compared to public-school parents. That injury exists whether or not Appellants are religious and gives rise to a cognizable equal protection claim, though admittedly one with a more deferential standard of review. *Cf. Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) ("Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.").

More to the point, it is sophistry for the State to suggest that Appellants are not religious given the allegations and claims in their complaint. Appellants alleged that they send their children to religious schools, a decision about which they feel so strongly that they were willing to initiate a lawsuit against the State. R.1, Compl. ¶¶ 17–21, PageID.6–7. In addition to the equal protection claim at issue in this appeal, Appellants brought three claims under the Free Exercise Clause. *Id.* ¶¶ 8–10, PageID.3–4 (summarizing free exercise claims). The only reasonable inference to be drawn from Appellants' allegations is that they are religious.

If the Court were to conclude that Appellants' religious status is material to the standing question and doubt that Appellants are religious, the proper course would be to remand to give Appellants the opportunity "to make more definite the allegations of the complaint." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982). Dismissal would be appropriate only "[i]f after that opportunity the pleadings fail to make averments that meet the standing requirements" under Article III. *Id.*

II. The Supreme Court's political-process precedent applies.

The State invites this Court to deem the Supreme Court's political-process precedent overruled, asserting that it does not apply outside of race. Those arguments fail.

A. The *Schuette* majority's decision not to overrule the Supreme Court's political-process precedent means those decisions continue to bind this Court.

Relying on *Schuette*, the State contends that the political-process doctrine "either no longer exists or is severely diminished." State Br. 16. But as Appellants explained in their initial brief, Br. 29–31, the Supreme Court's decision *not* to overrule *Hunter* and *Seattle* in *Schuette* conclusively proves that those decisions remain good law. This Court's "cases are clear that [lower courts] may not disregard Supreme Court precedent unless and until it has been overruled by the Court itself." *Taylor v. Buchanan*, 4 F.4th 406, 408 (6th Cir. 2021) (citing *Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 813 (6th Cir. 2020)). "If a precedent of [the] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Grutter*

v. Bollinger, 288 F.3d 732, 743–44 (6th Cir. 2002) (en banc) (quoting *Agostini v. Felton*, 521 U.S. 203, 237 (1997)) (alterations in original). "In other words, it is for the Supreme Court to tell the courts of appeals when the Court has overruled one of its decisions, not for the courts of appeals to tell the Court when it has done so implicitly." *Taylor*, 4 F.4th at 409. The State's invitation for this Court to treat *Hunter* and *Seattle* as overruled is an invitation to commit error.

What's more, Appellants' equal protection claim is on all fours with *Schuette*'s understanding of the political-process doctrine's heartland. *Schuette* recognized that the political-process doctrine applies when "the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race," that is, inflicted because of a group's suspect class, 572 U.S. at 313–14. "[W]hen hurt or injury is inflicted on" a suspect class "by the encouragement or command of laws or other state action," *Schuette* recognized that "the Constitution requires redress by the courts." *Id.* at 313.

That's exactly what Appellants allege here. By placing a political restriction on religious persons' ability to obtain state aid for religious-school tuition, Michigan's Blaine Amendment was designed to and does

impose injuries on religious minorities. Restructuring the political process in this fashion violates the Equal Protection Clause even after *Schuette*.

B. Appellants seek to apply the political-process doctrine just as in *Hunter*, where the Supreme Court recognized that it applied to religion.

While admitting that religion is a suspect classification, State Br. 24 n.3, the State says that the political-process doctrine applies only to race, *id.* at 22. But as Appellants explained in their initial brief, they ask only to apply the political-process doctrine as the Supreme Court applied it in *Hunter*. Br. 33–35. The Court in *Hunter* did not limit its focus to the racial aspects of the Akron charter amendment at issue. Quite the opposite, the charter amendment required that ordinances regulating real-estate transactions on the basis of race, religion, or ancestry (but not on other bases) be approved by a majority of voters, and the Supreme Court recognized that *all three* classifications ran afoul of the Equal Protection Clause. 393 U.S. at 390–91.

The Court described the ordinance as drawing an improper "distinction between those groups who sought the law's protection against racial, *religious*, or ancestral discrimination in the sale and

rental of real estate and those who sought to regulate real property transactions in the pursuit of other ends." *Id.* at 390 (emphasis added). It underscored that while the law applied equally to black and white people and "Jews," "Catholics," and "gentiles," "the reality is the law's impact falls on the minority." *Id.* at 390–91. And it recognized that its political-process principle applies to any protected class: "[T]he State may no more disadvantage *any particular group* by making it more difficult to enact legislation in its behalf than it may dilute any person's vote or give *any group* a smaller representation than another of comparable size." *Id.* at 393 (emphasis added).

So the State is flatly wrong when it asserts that the political-process doctrine has never been applied to nonracial classifications. *See* State Br. 22. *Hunter* itself recognized that religious classifications run afoul of its political-process principle. And, just like the Akron charter amendment in *Hunter*, there is no doubt that Michigan's facially neutral Blaine Amendment was targeted at the religious minority. Indeed, as explained in Appellants' opening brief, the Michigan Supreme Court has expressly so held. Br. 38–41.

III. Michigan's Blaine Amendment does not survive strict scrutiny.

The State advances a host of theories for why the Blaine Amendment should not be subject to strict scrutiny. None succeeds.

A. Appellants have adequately alleged that they fall within a protected class.

As with standing, the State asserts that Appellants have not adequately alleged that they are religious. State Br. 25–27. Again, this is an appeal from the district court's dismissal of Appellants' complaint under Federal Rule of Civil Procedure 12(b)(6). When evaluating a complaint under Rule 12(b)(6), "the court must accept all of the plaintiff's allegations as true" and "draw all reasonable inferences" in his favor. *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018). "If it is at all plausible (beyond a wing and a prayer) that a plaintiff would succeed if he proved everything in his complaint, the case proceeds." *Id.*

With respect to their status as religious, Appellants' allegations clear this hurdle. Appellants send their children to religious schools, R.1, Compl. ¶¶ 17–21, PageID.6–7, and they brought three free exercise claims in their complaint, *id.* ¶¶ 8–10, PageID.3–4. The only reasonable inference is that Appellants are religious.

B. That some religious people might support the Blaine Amendment or some nonreligious people might support religious-school funding is irrelevant.

The State next says that Appellants' religious status is irrelevant to resolving their equal protection claim because (a) some religious people might support the Blaine Amendment and (b) some nonreligious people might support public funding for parochial schools. State Br. 26–27. The State misses the point. In *Hunter*, some members of Akron's racial, religious, or ancestral minorities surely supported the challenged charter amendment; some members of the city's majorities undoubtedly disagreed with it. That was no impediment to the Court applying strict scrutiny and striking down the amendment. 393 U.S. at 393.

So too in *Seattle* with respect to mandatory school busing to integrate schools. In fact, the Court explicitly recognized that neither the supporters nor opponents of the challenged ballot initiative could be classified by race. 458 U.S. at 472 ("It undoubtedly is true . . . that the proponents of mandatory integration cannot be classified by race: Negroes and whites may be counted among both the supporters and the opponents of Initiative 350."). That did not save the ballot initiative from invalidation under strict scrutiny. *Id.* at 487.

Properly understood, the political-process doctrine cases are not about discerning whether particular policies enacted through the political process serve a minority group. *See Schuette*, 572 U.S. at 305–07. Rather, they stand for the proposition that a state cannot intentionally restructure the political process to make it more difficult for a disfavored suspect class to participate in that process. *See id.* at 314 ("Those cases were ones in which the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race."); *cf. Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) ("[G]overnment regulations are not neutral . . . whenever they treat any comparable secular activity more favorably than religious exercise. It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." (citations omitted)).

C. The State's attempt to deflect the Michigan Supreme Court's holding that the Blaine Amendment targeted religion misses the mark.

With respect to the Blaine Amendment's antireligious intent, the State asserts that the Michigan Supreme Court did not mean what it has twice said because "parochiaid" purportedly means "*any* public

funds for private schools." State Br. 28–30. The State's redefinition of the term does not make sense. "Parochiaid" plainly is a portmanteau of "parochial," which means "of or relating to a church parish," and "aid." Parochial, *Merriam-Webster's Unabridged Dictionary*, https://unabridged.merriam-webster.com/unabridged/parochial. And even a cursory review of the Michigan Supreme Court's decisions shows that it meant what it said.

Consider first *Traverse City School District v. Attorney General*, 185 N.W.2d 9 (Mich. 1971), in which the Michigan Supreme Court considered the validity of a Michigan Attorney General opinion construing the Blaine Amendment almost immediately after voters approved it. 185 N.W.2d at 13. In a lengthy footnote, the court described the history of aid to nonpublic schools in Michigan and the genesis of the Blaine Amendment ballot proposal. It concluded by observing, "As far as the voter was concerned, the result of all the pre-election talk and action concerning [the Blaine Amendment proposal] was simply this—[the proposal] was an anti-parochiaid amendment—no public monies to run *parochial schools*—and beyond that all else was utter and complete confusion." *Id.* at 17 n.2 (emphasis added).

The court also rejected, under the Free Exercise Clause, the Attorney General opinion's conclusion that public schools could exclude nonpublic school students from shared-time instruction under the Blaine Amendment. *Id.* at 28–29. The Blaine Amendment's facial neutrality did not insulate it from scrutiny because its impact was "near total" on religious people. *Id.* at 29 (observing that "ninety-eight percent of the private school students" in Michigan were "in church-related schools").

Nearly three decades later, the Michigan Supreme Court reached the same conclusion in *Council of Organizations & Others for Education About Parochiaid, Inc. v. Engler*, 566 N.W.2d 208 (Mich. 1997), when it considered a Blaine Amendment-based challenge to Michigan's charter-school law. Among other things, the court rejected that challenge because "the common understanding of the voters in 1970 was that no monies would be spent to run a parochial school" and charter schools under Michigan's statute cannot be parochial. 566 N.W.2d at 221. In other words, the Michigan Supreme Court relied on the Amendment's antireligious purpose to reach its holding.

D. As the Supreme Court's political-process precedent shows, voters' motivation for a facially neutral law matters.

The State also asserts that Appellants' detailed allegations regarding the Blaine Amendment's purpose are irrelevant because courts cannot inquire into the intent behind facially neutral measures passed through referenda. State Br. 31–35. The State offers no response to Appellants' explanation in their initial brief that facial neutrality is no silver bullet for the government. Br. 35–41. Instead, the State hangs its hat on *Arthur v. City of Toledo*, 782 F.2d 565 (6th Cir. 1986). But *Arthur* dealt with a very different sort of ballot initiative—a simple repeal of an existing policy rather than one that restructured the political process. Extending its holding to a case like this would be inconsistent with Supreme Court decisions both before and after this Court decided it.

Arthur arose out of referendum votes repealing Toledo, Ohio ordinances granting authority to construct sewer extensions to proposed public housing sites. 782 F.2d at 566. Among other things, the plaintiffs claimed that the referenda, which were facially neutral, violated the Equal Protection Clause because they were racially motivated. *Id.* at

571. This Court correctly recognized that *Hunter* and *Seattle* did not control because the referenda did not restructure the political process. *Id.* at 572. It observed that *Seattle* made clear that "the simple repeal or modification of desegregation or antidiscrimination laws, without more, never has been viewed as embodying a presumptively invalid racial classification." *Id.* (quoting *Seattle*, 458 U.S. at 483)). The Court elaborated that—in the context of such a referendum—"a district court cannot inquire into the electorate's motivations" unless the referendum "facially discriminates racially, or . . . although facially neutral, the only possible rationale is racially motivated." *Id.* at 574.

Whatever *Arthur*'s merits in the context of a referendum effectuating a simple repeal, it does not govern referenda that restructure the political process. *Seattle* shows as much. The Washington ballot initiative at issue there was also facially neutral, 458 U.S. at 471, and the Supreme Court acknowledged that voters there may also have had nondiscriminatory reasons to support it, *id.* at 465 & n.9, 472. So *Seattle* itself would not pass *Arthur*'s test: the initiative was facially neutral, and racism was not its only possible rationale. Nonetheless, the Supreme Court held "there is little doubt that the initiative was effectively

drawn for racial purposes" and subject to strict scrutiny. *Id.* at 471.

Seattle is not an anomaly. Post-*Arthur*, the Supreme Court recognized that "statements made by decisionmakers *or referendum sponsors* during deliberation over a referendum may constitute relevant evidence of discriminatory intent in a challenge to an ultimately enacted initiative." *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196–97 (2003) (emphasis added). And just three years ago, the Supreme Court struck down Louisiana's and Oregon's constitutional provisions allowing non-unanimous jury verdicts in criminal trials, emphasizing the facially neutral provisions' discriminatory intent. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1393–94, 1401 (2020); *id.* at 1410 (Sotomayor, J., concurring in part); *id.* at 1418 (Kavanaugh, J., concurring in part). Notably, the Oregon constitutional provision at issue was the product of a ballot initiative. Aliza B. Kaplan & Amy Saack, *Overturning* Apodaca v. Oregon *Should Be Easy: Nonunanimous Jury Verdicts in Criminal Cases Undermine the Credibility of Our Justice System*, 95 Or. L. Rev. 1, 5–6 (2016). So much for the purported irrelevance of intent when it comes to ballot initiatives.

As Appellants explained in their initial brief, the Michigan Supreme Court's repeated recognition that the Blaine Amendment was passed to ban state aid to religious schools and the detailed historical facts pleaded in Appellants' complaint show beyond peradventure that the Blaine Amendment was adopted "at least in part 'because of,' not merely 'in spite of,' its adverse effects" on religious people. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979). That is sufficient.

E. Michigan's 2000 school-voucher ballot proposal has no bearing on Appellants' claim.

The State also attempts to defend the Blaine Amendment based on a failed 2000 Michigan school-voucher ballot proposal. State Br. 36–40 & n.7. Even assuming it is appropriate to consider the ballot proposal and the results thereof—even though nowhere referenced in Appellants' complaint—when reviewing a Rule 12(b)(6) dismissal, the 2000 ballot proposal comes nowhere close to doing the work the State suggests.

The State casts the 2000 ballot proposal as a considered readoption of the Blaine Amendment untainted by religious animus. *Id.* at 36. Not so. To begin, the 2000 ballot proposal failed. *Id.* at 37. Even if the

proposal had been to repeal the Blaine Amendment, a vote against repeal is not the same as a vote to readopt.

Even more to the point, the 2000 ballot proposal's focus was *not* repeal of the Blaine Amendment. Its target was school vouchers and teacher testing. *See id.* at 37 n.7 (setting out the proposal's text). Although the school-voucher proposal required a *partial* repeal of the Blaine Amendment's ban on *indirect* aid, *see id.*, it simply was not the equivalent of a readoption of the Amendment, much less a thorough reconsideration of it. *Contra Rostker v. Goldberg*, 453 U.S. 57, 75 (1981) ("Congress did not change the MSSA [when it reauthorized it] in 1980, but it did thoroughly reconsider the question of exempting women from its provisions, and its basis for doing so."). A vote against school vouchers is not the same as a vote in favor of the Blaine Amendment. The 2000 ballot proposal has no bearing on Appellants' equal protection claim here.

IV. Appellants are asking only for a level playing field, not compelled government support of religious schools.

The State says that accepting Appellants' position would amount to a holding that a state must fund private religious schools even when it provides no such support to other private schools. State Br. 40–46. The State argues against a straw man. Accepting Appellants' argument would *not* require Michigan to fund religious schools. It would mean only that the State can't enshrine a restriction against religious families in the Michigan Constitution making it more difficult for them—as compared to other similarly situated families—to advocate for public benefits. *Cf. Carson v. Makin*, 142 S. Ct. 1987, 2000 (2022) ("The dissents are wrong to say that under our decision today Maine '*must*' fund religious education. Maine chose to allow some parents to direct state tuition payments to private schools; that decision was not 'forced upon' it.").

As Appellants explained in their initial brief, Br. 41–42, the ultimate policy outcome on aid to religious schools may be the same. The democratic process yields winners and losers, and religious and other minorities often are on the losing side. If Appellants prevail in this Court, they may still lose at the state capitol.

But a state goes too far when it requires laws protective of minorities to go through a more onerous approval procedure than other laws. That is why the Supreme Court struck down the laws at issue in *Hunter* and *Seattle*. And it is why Michigan's Blaine Amendment should suffer the same fate in this proceeding.

CONCLUSION AND REQUESTED RELIEF

For the reasons set forth herein and in Appellants' initial brief, this Court should reverse the district court's dismissal of Count IV of Appellants' complaint and remand with instructions to enter judgment in favor of Appellants on that count.

Dated: April 13, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing reply brief complies with the type-volume limitation pursuant to Fed. R. App. P. 32(a)(7)(B)(ii). The foregoing brief contains 4,393 words of Century Schoolbook 14-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

Dated: April 13, 2023

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CERTIFICATE OF SERVICE

This certifies that Appellants' Reply Brief was served on April 13, 2023, by electronic mail using the Sixth Circuit's Electronic Case Filing system on all counsel of record.

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