IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

TOMMY RAY MAYS, II, *et al.*,	:	
	:	
Petitioners,	:	Case No. 2:18-cv-1376
	:	
v.	:	JUDGE WATSON
	:	
FRANK LAROSE, in his official capacity as Secretary of State of Ohio,	:	MAGISTRATE JUDGE VASCURA
	:	
	:	
Defendant.	:	

DEFENDANT SECRETARY OF STATE FRANK LAROSE'S REPLY IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

The reader could be forgiven, upon finishing Plaintiffs' opposition to the Secretary of State's motion for summary judgment, for having no idea that that the Supreme Court's longstanding *Anderson-Burdick* test applies to this case. Plaintiffs never mention the test, much less apply it. As a result, they never seriously engage with the constitutionally mandated *balance* between the desire for voting opportunities and the need for orderly election rules (even if such rules ultimately exclude some people). Plaintiffs stubbornly pound the drum of strict scrutiny, mislabeling a reasonable deadline as a complete ban. They cannot, however, point to any authority justifying their post-deadline, end-point framework for evaluating a voting burden. As the Secretary has repeatedly pointed out, courts do not assess a deadline's burden by focusing solely on the time after someone has missed it. Courts must instead consider the *entire* voting landscape.

By failing to see that this case involves a *deadline* (not a ban), Plaintiffs ignore various election realities. They close their eyes, for example, to the many early voting opportunities they

had. By voting early by mail or in person, Plaintiffs, like anyone else, could have eliminated the possibility that an unexpected event would keep them from the polls on Election Day. Perhaps most problematically, Plaintiffs close their eyes to the difficulties shifting an already late absentee deadline even later would cause for election officials who are very busy completing many tasks leading up to Election Day.

Plaintiffs say their willful blindness should be forgiven because they are bringing an as-applied challenge. Incorrect. Whatever the scope of relief, the underlying constitutional test remains. That test, *Anderson-Burdick* balancing, says that reasonable, generally applicable election rules pass, even though some people will inevitably fail to meet them. To be sure, some rules might seem harsh in a specific, individual application. Yet States cannot legislate elections on an individual level. The constitutional standard, therefore, must be a workable one.

Plaintiffs' approach is much different, and it has no logical limits. Their case might seem narrow at first, but the test they ask for is broad and unwieldy. Under Plaintiffs' after-the-fact approach to burden measuring, a deadline shortly before an election transforms into an absolute ban (because it is viewed in hindsight). In turn, any voter who misses that deadline, but has a good excuse, can bring an "as applied" challenge—saying they have been banned from voting and should receive a judicially created deadline exemption. That is not and cannot be the test.

Ultimately, Plaintiffs offer no reason to question the Secretary's conclusion that Ohio's interest in administering orderly elections and easing burdens on the boards of elections justifies a three-day gap between the absentee-ballot-request deadline and Election Day.

As to their equal protection claim, Plaintiffs fault the Secretary for failing to articulate a *relevant* difference between jailed and hospitalized voters that justifies their disparate treatment in Election Day absentee voting. Access is the relevant difference. Election Day absentee

voting hinges on election officials' ability to reach unexpectedly hospitalized voters in a compressed time. With their barriers to entry and movement, jails do not offer this type of access. Accordingly, Ohio lawmakers could justifiably distinguish between these groups. Plaintiffs' equal protection claim fails as a matter of law.

I. Plaintiffs' as-applied challenge does not change the applicable test—*Anderson-Burdick*—or that test's result.

In response to the Secretary's motion for summary judgment, Plaintiffs try to work around *Anderson-Burdick*. They stress that they asserted an as-applied challenge to Ohio's deadline for requesting absentee ballots. According to Plaintiffs, an as-applied challenge means that the Court must accept Plaintiffs' framing of the law's burden on voting—"outright vote denial" for Plaintiffs and other late-jailed voters. Pl's Opp'n at 5, Doc. 65 at PageID 4176. This attempted dodge should fail. The fact that Plaintiffs assert an as-applied challenge does not change two bedrock principles underlying this case: (1) the *Anderson-Burdick* framework applies, and (2) that framework does not permit the Court to assess the magnitude of a voting burden through a narrow, after-the-fact lens.

A. Whether a plaintiff seeks as-applied or facial relief, *Anderson-Burdick* balancing allows for reasonable, generally applicable election rules.

"A facial challenge to a law's constitutionality is an effort to invalidate the law in each of its applications . . . ." *Green Party of Tenn. v. Hargett*, 791 F.3d 684, 691 (6th Cir. 2015) (quoting *Speet v. Schuette*, 726 F.3d 867, 871 (6th Cir. 2013)). A claim that challenges more than just the plaintiff's particular case is a facial challenge insofar as it reaches beyond the plaintiff's circumstances. *See id*. at 691-92 (citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010)). Stated differently, a plaintiff seeking to represent all late-jailed voters must demonstrate that the law is unconstitutional in all of its applications to that group of voters.

Whether Plaintiffs' challenge to the absentee-ballot deadline is facial, as-applied, or carries characteristics of both types of challenges leaves unaltered the legal standard that applies to this case: the *Anderson-Burdick* balancing test. Though unmentioned in Plaintiffs' opposition brief, the *Anderson-Burdick* test applied in every case Plaintiffs cite for the proposition that the Court must focus on "the particular burden posed on the impacted plaintiffs," which Plaintiffs characterize as a ban on voting. *See Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016) (setting forth and following the three-step *Anderson-Burdick* test); *Green Party of Tenn.*, 791 F.3d at 692-93 (same); *Brakebill v. Jaeger*, __ F.3d __, 2019 U.S. App. LEXIS 22766, at *12-21 (8th Cir. July 31, 2019) (applying *Crawford v. Marion Cnty.*, 553 U.S. 181 (2008), an *Anderson-Burdick* case); *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016) (noting that plaintiff's challenges arose under *Anderson-Burdick*). Under this test, the Court first considers the character and magnitude of the restrictions on voting, then identifies the interests and justifications for the restrictions, and finally assesses the legitimacy and strength of those justifications compared to the burden on voting. *Libertarian Party of Kentucky*, 835 F.3d at 574. And as Ohio has explained at length and repeatedly, the balancing of the *Anderson-Burdick* factors favors the state.

B. The *Anderson-Burdick* balancing favors the State.

Plaintiffs persist in calling the ballot-request deadline a ban, attempting by sheer repetition to make it true. Because the deadline is a ban on voting, they say, the burden on voting is at its apex. But every statute and case cited by Plaintiffs puts the lie to Plaintiffs' framing. In the as-applied challenges as much as the facial challenges, courts do not evaluate the burden by zeroing in on the plaintiff *after* a law has worked its effect. And more specifically, courts do not deem election laws bans every time a law prevents a voter from casting a ballot.

1. Plaintiffs' own case do not support after-the-fact burden measuring.

Plaintiffs cannot cite any case justifying their post-deadline, end-point assessment of the burden on voting. Indeed, the cases Plaintiffs cite in support of this framing directly undercut it. *See* Pl's Opp'n at 6, Doc. 65 at PageID 4177 (noting that numerous cases support assessing the particular burden imposed on impacted plaintiffs). In the first such case, *Libertarian Party of Kentucky*, minor political parties challenged certain ballot-access laws in Kentucky. As the *Anderson-Burdick* test demands, the court analyzed the burden *from the outset*, *i.e.,* the steps a minor political party must undertake to access the ballot. Kentucky law provided two avenues for ballot access: (1) obtaining a certain vote threshold in a general election or (2) filing petitions for a candidate. 835 F.3d at 575-76. In finding the burden constitutional, the court did not limit its review to a situation occurring *after* a minor political party failed to obtain the requisite vote threshold or *after* it submitted invalid petitions. But that's exactly what Plaintiffs seek in this case. Under their framework, Kentucky's ballot-access law would be a ballot-access *ban* if a minor political party that failed to clear the vote threshold or file a petition challenged the law.

The same holds true for the other cases cited by Plaintiffs. In *Green Party of Tennessee*, for example, the Green Party and other minor political parties challenged Tennessee's ballot-access and ballot-retention systems. By the time of filing suit, the minor parties "did not receive enough votes for plaintiffs to maintain their recognized minor party status by qualifying as a statewide political party and lost their continued ballot access in future elections." 791 F.3d at 690. They were off the ballot as recognized minor parties. Yet, the court did not characterize the challenged laws as a ballot-access *ban* for the minor political parties. Instead, it analyzed the ballot-access and ballot-retention scheme from the outset, considering whether the laws imposed a severe burden on the minor political parties. Under Plaintiffs' framing, the ballot-access law

was, in fact, a ballot-access *ban* because the court could only assess the law *after* it had gone to work.

The same holds true outside the Sixth Circuit. When an election statute like a voter identification law *results* in the potential inability of some affected individuals to vote, courts do not analyze the law as a "ban" or the "outright denial of the right to vote." Rather, these courts follow *Anderson-Burdick* and measure the burden on voting from the outset. For example, in *Brakebill*, the district court found that North Dakota's voter ID law severely burdened the voting rights of Native Americans, 4,998 of whom possessed no voter ID with 2,305 of those lacking the documentation to ever secure a valid ID. 2019 U.S. App. LEXIS 22766, at *7 (describing the district court's decision). But the court did not call the voter ID law a *ban* on voting or the "outright denial of the right to vote." Instead, it measured the burden on voting by assessing how difficult it would be for voters to comply—*prospectively*—with the voter ID law. *See id*. at *14-17; *see also Frank v. Walker*, 768 F.3d 744, 746-48 (7th Cir. 2014).

Perhaps it is helpful to consider what a voting ban actually looks like. In *O'Brien v. Skinner*, 414 U.S. 524 (1974), a state law blocked inmates from registering to vote *and* from requesting absentee ballots if they were incarcerated in their home counties. Whether viewed prospectively or after the fact, the law in *O'Brien* prevented any incarcerated individual from voting. Unlike the facts of this case, it was a true ban.

2. Viewing the actual character of Ohio's election laws, this case involves a reasonable deadline, not a ban.

Under Plaintiffs' proposed framework for evaluating election burdens, all election laws are ultimately voting bans. A ballot-access law, for example, is actually a ballot ban if a political party fails to complete the steps necessary to secure a place on the ballot. Likewise, a voter-identification law would be a ban on voting if an individual found herself without the required

credentials on Election Day. And any election-related deadline transforms into a ban once the deadline has passed. The Supreme Court has explicitly rejected this type of framing in the elections context. *See Rosario v. Rockefeller,* 410 U.S. 752, 758 (1973) ("The petitioners do not say why they did not enroll prior to the cutoff date; however, it is clear that they could have done so, but chose not to. Hence if their plight can be characterized as disenfranchisement at all, it was not caused by [the challenged statute], but by their own failure to take timely steps to effect their enrollment."). This Court should not adopt Plaintiffs' erroneous framework here.

Indeed, even Plaintiffs acknowledge that deadlines are not voting bans when discussing other states. Pl's Opp'n at 3, Doc. 65 at PageID 4174 ("Other states have taken steps to shrink the window between the regular absentee ballot application *deadline* and Election Day, minimizing the risk of disenfranchisement for late-jailed voters." (emphasis added)). Although all the cited states—other than Maryland—impose a deadline that will result in arrests occurring post-deadline but pre-opening of the polls, Plaintiffs do not call these deadlines voting bans. In other states, deadlines are simply deadlines. In fact, by citing eleven states that impose a pre-Election Day deadline for absentee-ballot requests and only one that does not, Plaintiffs only underscore the widespread administrative need for them.

As the Secretary set forth in his motion for summary judgment, the deadline's effect on voting is minimal in the context of Ohio's myriad voting opportunities. Ohioans—including incarcerated Ohioans—enjoy several methods of voting spread across the month preceding Election Day. Def's Mtn. at 6, Doc. 54 at PageID 2056. Voters, including incarcerated voters, can apply for absentee ballots beginning January 1 or ninety days before Election Day, whichever is earlier. Ohio Rev. Code § 3509.03(D). Boards begin mailing absentee ballots to all voters, including incarcerated voters, the day after voter registration closes. Ohio Rev. Code §§

3509.01(B)(2), 3503.19(B)(2)(d). Voters, including incarcerated voters, may submit their ballots any time up until noon on the third day before the Election. Ohio Rev. Code §§ 3509.03(D), 3509.08(A). Voters may also cast ballots in person, either early at the Boards of Elections, *see* Ohio Rev. Code §§ 3509.01-.10, or on Election Day at an assigned polling place, *see* Ohio Rev. Code § 3501.32. Because Plaintiffs' proposed class includes *only* individuals arrested the weekend before Election Day, *see* Compl. ¶ 44, Doc. 1 at PageID 9, all putative plaintiffs had many opportunities to vote early in person.

It is true that confined voters typically do not vote on Election Day, and Plaintiffs make much of this fact. But like any other election process, absentee voting for jailed individuals must eventually end. Tellingly, Plaintiffs are unable cite any authority for the proposition that the deadline for jailed voting must extend all the way to Election Day. Further, Plaintiffs' confinement stands wholly apart from voting. Law-enforcement officers arrested Plaintiffs because they had probable cause to believe that Plaintiffs committed a criminal offense, not because Ohio sought to keep Plaintiffs from voting.

At day's end, whether viewed holistically, from the perspective of incarcerated voters only, or from the perspective of just Plaintiffs Mays and Nelson, Ohio's absentee-ballot-request deadline does not ban or severely burden voting. Opportunities to vote abound, and any burden on voting is minimal.

3. Plaintiffs fail to engage with Ohio's interests in placing a reasonable deadline on jailed voting.

On the other side of the *Anderson-Burdick* ledger, Plaintiffs largely fail to engage with Ohio's interests in the absentee-ballot-request deadline. Plaintiffs claim that the Secretary's interest serves "no compelling interest," invoking strict scrutiny rather than *Anderson-Burdick* balancing. Pl's Opp'n at 18, Doc. 65 at PageID 4189. Under this heightened standard, Plaintiffs

claim, the law fails because the boards of elections *could* administer Election Day voting at jails. *See id*. Under Plaintiffs' framing, it appears that anything less than administrative impossibility cannot amount to a "compelling interest."

Plaintiffs misunderstand the applicable legal standard. The *Anderson-Burdick* test requires the court to balance the precise interests set forth by the State against the burden on the right to vote, "taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). The state need not articulate a "compelling interest" unless Plaintiffs can show a severe burden on voting. *See id.* Plaintiffs' briefing rests entirely on the Court's deeming the deadline a voting ban, the most severe voting restriction imaginable. But as the Secretary has set forth at length, the deadline does not ban voting and in fact imposes a minimal burden on the right to vote.

Because the voting burden is minimal, Ohio need not show that it has a compelling interest in the absentee-ballot deadline. Nor does it need to show that the deadline "is indispensably necessary to avoid either an election catastrophe or an absolute impossibility of performance." *Diaz v. Cobb*, 541 F. Supp. 2d 1319, 1332 (S.D. Fla. 2008). The State's important regulatory interests in avoiding costs and easing the burden on the boards of elections, *see* Def's Mtn. at 23-29, Doc. 54 at PageID 2056, are "sufficient to justify" this reasonable and generally applicable restriction. *Anderson*, 460 U.S. at 788. Plaintiffs never contend that the ballot-request deadline fails to advance these interests—they contend only that these interests are not "compelling." But under the facts of this case, the Secretary need not make that showing.

C. Plaintiff's approach to as-applied challenges would lead to electoral chaos.

Anderson-Burdick does not "tie the hands" of States in prescribing election rules. *Burdick*, 504 U.S. at 433. It follows that legal review, even if "as applied," must still account for the need for generally-applicable election rules. A post-*Crawford* decision out of the Tenth Circuit is a helpful case study. *Curry v. Buescher*, 394 F. App'x. 438 (10th Cir. 2010). There, a prospective candidate brought an "as applied" challenge to Colorado's requirement that independent candidates be unaffiliated for a year before their candidacy petition. *Id.* at 439, 443 n.6. The challenger argued that, because she was an established candidate who had clashed with her former party the requirement lacked justification as applied to her circumstances. *Id.* at 446. The Tenth Circuit rejected such a narrow lens. The court held that it was "beyond cavil" that it was "without authority to legislate" a "case-by-case inquiry into whether operation of the disaffiliation requirement is warranted." *Id.* It therefore upheld the disaffiliation requirement, even as applied, because the states interests outweighed the candidate's interests in an exception to "the statutory deadline." *Id.*

In this case, Plaintiffs ask for an unworkable test. Accepting their version of an "as applied" challenge would impose consequences far beyond this case's facts. Under Plaintiffs' test, an "as applied" challenge views a deadline's burden from the perspective of a voter that has already missed the deadline. That vantage point then dictates the result: because that voter can no longer vote, the burden is "severe," meaning strict scrutiny, meaning near-certain invalidation. So, it follows, the State must create an as-applied exception to the deadline for the voters who missed the deadline because anything less is a voting ban. This approach is nonsensical. Indeed, it is exactly the type of hands-tying framework *Anderson-Burdick* is meant to avoid. *See Burdick*, 504 U.S. at 433-34.

Think about the impact of Plaintiffs' test on election administration. If every voter who misses a deadline can assert an as-applied challenge to that deadline, the Secretary would lose his ability to enforce election statutes. Any time a voter missed a deadline, the Secretary would be obliged to create an exception to that deadline for voters on a case-by-case, as-applied basis. This would mean many Supreme Court cases were wrongly decided. For example, if Plaintiffs' approach prevails, the Court in *Rosario* would have had to permit an as-applied exception to New York's registration deadline. Because missing the deadline "banned" the plaintiffs from voting, the state must create an as-applied exception for those plaintiffs. Likewise, in *Crawford*, the Court would have had to create an as-applied exception for all Indiana voters who could not comply with the voter identification law. Because the ID law "banned" such voters from casting ballots, an as-applied exception was required. But of course, the Court did not grant any relief to plaintiffs in *Rosario* or *Crawford*. *See Rosario*, 410 U.S. at 758 (declining to grant relief because plaintiffs' disenfranchisement was caused by plaintiffs' "own failure to take timely steps to effect their enrollment"); *Crawford*, 553 U.S. at 202 (concluding that the voter identification statute did not impose excessively burdensome requirements on any class of voters).

Unsurprisingly, the real test is far more realistic. Every election law "is going to exclude, either de jure or de facto, some people from voting; the constitutional question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004). "[E]venhanded restrictions that protect the integrity and reliability of the electoral process itself" pass this test. *Crawford*, 553 U.S. at 189-90 (quoting *Anderson*, 460 U.S. at 788 n.9). Here, the generally applicable ballot-request deadline is reasonable in light of the state's interest in administering orderly elections. The

Court should follow *Anderson-Burdick* balancing and reject Plaintiffs' invitation to grant voter-by-voter, as-applied relief every time an election deadline passes.

II. Election Day access to voters differentiates hospitals from jails and justifies the State's disparate treatment of the voters in each facility.

Plaintiffs' opposition to the Secretary's motion for summary judgment on Plaintiffs' equal protection claim hinges on the following false assertion: "The Secretary does not explain what *relevant* difference exists between late-jailed and late-hospitalized voters to warrant offering the latter more voting opportunities than the former." Pl's Opp'n at 15, Doc. 65 at PageID 4186. This is, of course, untrue. As the Secretary set forth in his motion, and indeed, as Plaintiffs acknowledge throughout their opposition brief, *access* differentiates incarcerated voters from hospitalized voters.

Unlike hospitals, when entering jails and making contact with inmates, board employees must follow specialized and restrictive procedures. In Butler County, the board employees must present the jail with voters' names. A jail employee then "take[s] [them] to where [they] need to be." Smith Dep. 42:9, Doc. 52-3 at PageID 1604. The board employees wait while the jail locates those inmates and sets a contingency plan "if somebody is gone." Fisher Dep. 58:9, Doc. 52-4 at PageID 1750. Similarly, in Franklin County, the board employees present the jail with a letter "stat[ing] they're allowed to come in the building." Trowbridge Dep. 96:5-6, Doc. 51-1 at PageID 908. These barriers to even *entering* the jail facilities would present an enormous obstacle to Election Day voting, where board employees would have to enter, vote the inmates, and return to the Board of Elections in less than five hours.

Access to potential voters once inside the facility also distinguishes jails from hospitals. Plaintiffs note that "the evidence shows that the Board of Elections employees must roam the halls of the hospitals to locate voters." Pl's Opp'n at 16, Doc. 65 at PageID 4187. This ability to

wander throughout hospitals stands in marked contrast to county jails. Once inside a jail, board employees have little to no freedom of movement, which prevents them from quickly locating voters and providing them ballots. In jails, board employees must wait for inmates to be brought to them under guard. In Franklin County, a deputy "escort[s]" the board employees to the jail's chapel, while other deputes "will get the inmates out of their cell and bring them to the chapel to vote." Trowbridge Dep. 96:9, 14-15, Doc. 51-1 at PageID 908. Similarly, in Butler County, the jail employees have to locate the inmates who wish to vote and "bring them out one at a time so they can vote with the appropriate people that stand there." Fisher Dep. 57:21-22, Doc. 52-4 at PageID 1750. When this Court ordered temporary relief for Plaintiffs Mays and Nelson, the Montgomery County Board of Elections employees had to wait in a specified area while jail staff located Plaintiffs and escorted them to a voting place. Cavender Dep. 14:7-20, Doc. 52-5 at PageID 2410. Board employees cannot roam the jails to locate individuals who have requested absentee ballots. Indeed, even Plaintiffs admit that "the inmates all come to one place to vote" in the jails. Pl's Opp'n at 16, Doc. 65 at PageID 4187. Tight Election Day timelines would only exacerbate this voter-access problem.

These access differences matter for purposes of Election Day absentee voting, and Ohio may accordingly treat jailed and hospitalized voters differently. And contrary to Plaintiffs' assertion, *Obama for America* does not demand a different result. *See Obama for Am. v. Husted*, 697 F.3d 423 (6th Cir. 2012). In that case, the Sixth Circuit determined that military voters differ from non-military voters in many ways. For example, military and overseas voters' "absence from the country is the factor that makes them distinct," and could justify certain exceptions and special accommodations. *Id.* at 435. But when it comes to voting early in person at the boards of elections, a military voter is no different than any other voter. That is, when

military or overseas voters are *not* overseas and can vote early in their home counties, they act no differently than other voters and Ohio's justifications for treating them differently simply melt away. *Id*. But here, for purposes of a law requiring hand delivery of absentee ballots to voters on Election Day, *see* Ohio Rev. Code § 3509.08(B), access to the voters matters. Ohio may treat a group of voters who are difficult to access in a brief window on short notice, like jailed voters, differently from voters who are easier to access under the same time constraints. *See Jolivette v. Husted*, 694 F.3d 760, 771 (6th Cir. 2012) (because independent and partisan candidates access the ballot differently, the state may treat them differently).

Ultimately, Plaintiffs recognize that jails and hospitals present fundamentally different levels of access to election officials, acknowledging additional burdens in "provid[ing] clearance to election officials, monitor[ing] and bring[ing] jailed voters to election officials, and eliminate[ing] opportunities for contraband" in the county jails. Pl's Opp'n at 19, Doc. 65 at PageID 4190. These differences doom their equal protection claim.

III. Other states' laws show the substantial power given to states to regulate elections without violating the Constitution.

Plaintiffs cite certain other states' absentee-ballot-request deadlines in an effort to show the unreasonableness of Ohio's laws. Pl's Opp'n at 3-4, Doc. 65 at PageID 4174-75. But these statutes only reveal that states have expansive rights to regulate elections and that states have done so in myriad ways that suit their particular needs. *See Storer v. Brown*, 415 U.S. 724, 730 (1974) (describing the states' power to regulate elections as "substantial").

For example, Alaska allows voters to submit their absentee ballots via electronic submission. Because of this instantaneous option, the division of elections will accept electronic absentee-ballot requests until 5:00 p.m. the day before Election Day. Voters requesting absentee ballots by mail—as Ohio offers—must submit their requests "not less than 10 days before the

election for which the absentee ballot is sought." Alaska Stat. § 15.20.081(b). Different methods call for different deadlines.

Other states cited by Plaintiffs offer later deadlines for submitting absentee-ballot requests, but limit the pool of voters who may request absentee ballots. *See, e.g.*, 15 Del. Code § 5502 (setting forth eight categories of voters eligible to request absentee ballots); Mass. Gen. Laws ch. 54 § 86 (listing the justifications for requesting an absentee ballot); N.Y. Elec. Law § 8-400(1) (listing four categories of absentee voters). Limiting the pool of absentee voters cuts the number of applications, thus allowing a later deadline for absentee-ballot requests.

Ohio's three-day gap between the absentee-ballot-request deadline and Election Day stands well within the national mainstream and provides more opportunities to voters than many states. *See, e.g.*, Ala. Code § 17-11-3(a) (setting the absentee-ballot-request deadline at five days before Election Day); Colo. Rev. Stat. 1-2-201(3)(b)(iii) (eight days); Fla. Stat. § 101.62(2) (ten days if requesting a ballot by mail); Haw. Rev. Stat. § 15-4 (seven days); Idaho Code § 34-1002(7) (eleven days if requesting a ballot by mail); Ind. Code § 3-11-4-3(a)(4) (twelve days if requesting a ballot by mail); Kan. Stat. Ann. § 25-1122(f) (seven days); La. Stat. Ann. § 18:1307 (four days); Neb. Rev. Stat. § 32-941 (eleven days); Nev. Rev. Stat. § 293.313 (seven days); N.M. Stat. Ann. § 1-6 (four days); N.C. Gen. Stat. § 163A-1308(a) (seven days); R.I. Gen. Laws § 17-20-2.1(c) (twenty-one days); S.C. Code Ann. § 7-15-330 (four days); Tex. Elec. Code § 86.0015(b-1) (eleven days); Wis. Stat. § 6.86(1)(b) (five days).

States have substantial power to regulate their elections, including setting absentee-ballot-request deadlines, without transgressing the Constitution.

CONCLUSION

For these reasons and for the reasons set forth in the Secretary's Motion for Summary Judgment, the Secretary requests that the Court grant his motion and dismiss Plaintiffs' claims.

Respectfully submitted,
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s/ Julie M. Pfeiffer

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, 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/ Julie M. Pfeiffer
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