IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Ohio Environmental Council, et al.,	:	
Plaintiffs,	:	Case No. 23-CV-2403
-vs-	:	
	:	JUDGE COCROFT
THE STATE OF OHIO, et al.,	:	
Defendants.	:	

MERIT BRIEF OF PLAINTIFFS OHIO ENVIRONMENTAL COUNCIL, BUCKEYE ENVIRONMENTAL NETWORK, OHIO VALLEY ALLIES AND SIERRA CLUB

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I. INTRODUCTION

After months of considering House Bill 507 ("H.B. 507"), first as a poultry bill and then as a bill limited to the topics of agriculture and food purity, the Senate substituted a multi-subject bill during the lame-duck session that the General Assembly enacted a mere six days later. This new, last-minute H.B. 507 mandated the leasing of public lands for oil and gas development and defined green energy to include energy produced from natural gas. The Senate's last-minute, substantive, and vital alteration of H.B. 507 violates the one-subject rule and three-consideration rule enshrined in Ohio's Constitution, upon which Plaintiffs and their members rely. Accordingly, and for the reasons explained herein, Plaintiffs ask this Court to grant declaratory relief finding H.B. 507 unconstitutional and therefore void.

II. STATEMENT OF FACTS

A. Background on Ohio's Legislative Process

The Ohio Constitution is the fundamental law of the state of Ohio. Article II of Ohio's Constitution governs the general assembly and Ohio's legislative process. Article II requires every bill to be limited to one subject clearly stated in its title. Article II, Section 15(D). Each chamber of the General Assembly must consider every bill on three different days, unless two-thirds of the members of the chamber in which the bill is pending suspend this requirement. Article II, Section 15(C). Every consideration of a bill, or action suspending the three-consideration requirement, must be recorded in the legislative journal for the respective chamber. Amendments that "vitally" alter a bill must also receive three considerations in each chamber. *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225, 233-34, 631 N.E. 2d 582 (1994). Committee activity is not recorded in the legislative journal.

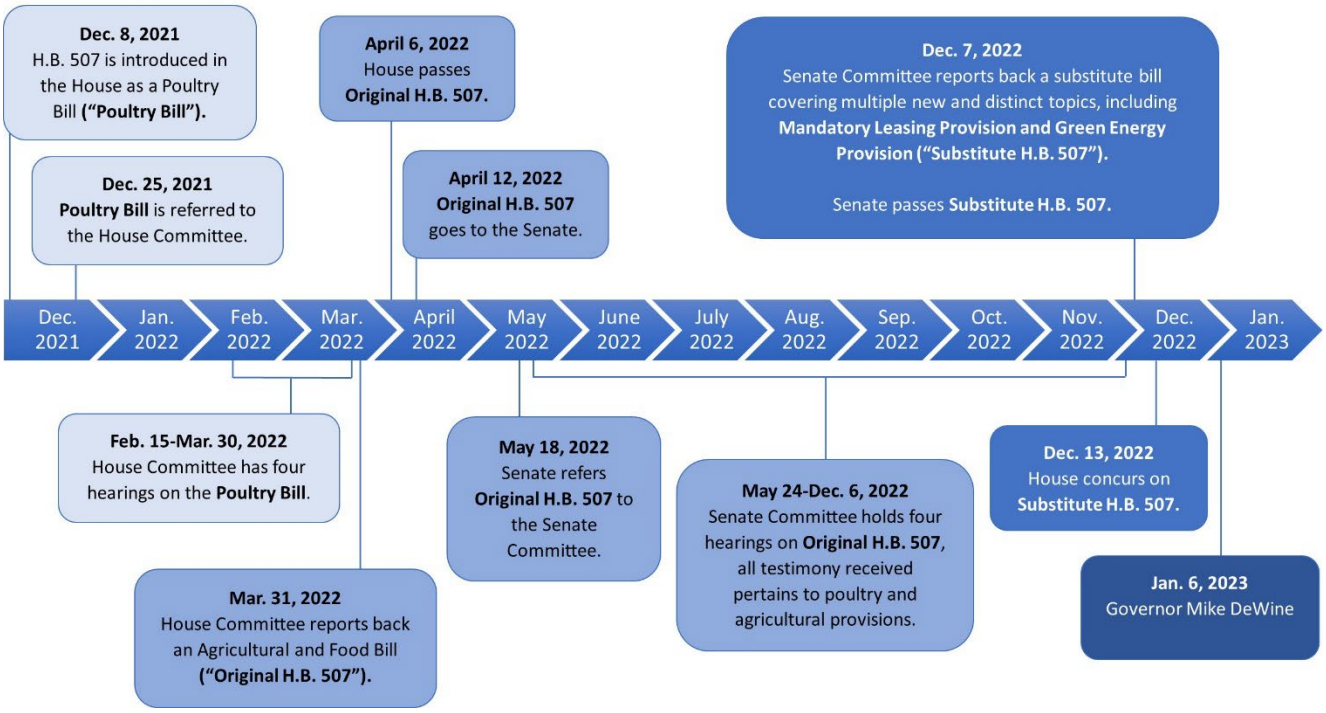
The first reading of a bill's title upon its introduction in a chamber constitutes the bill's first consideration. The chamber's referral of the bill to one of its standing committees constitutes the second consideration. The chamber's debate and final vote on a bill, after the committee reports a bill back, constitutes the third consideration. After three considerations in one chamber, the other chamber must consider the bill three times before it becomes law. *See* Ohio Legislature, *The Legislative Process*, https://www.legislature.ohio.gov/publications/the-legislative-process (accessed May 2, 2023).

After a bill passes both chambers, the Speaker of the House and President of the Senate sign the bill, which then becomes an act presented to the Governor for signature. An act signed by the Governor becomes effective 91 days after it is filed with the Secretary of State for final enrollment. *Id*. Once the Governor signs a bill, public advocacy cannot change the language of the act or stop it from becoming effective.

B. Legislative History of H.B. 507

The timeline below provides the legislative history of H.B. 507 based on each chamber's legislative journals and the Ohio General Assembly's webpage for Committee Activity. *See* Ohio Legislature, *House Bill 507 Committee Activity*, https://www.legislature.ohio.gov/legislation/134/hb507/committee (accessed May 3, 2023) [hereinafter "Committee Activity"].

Timeline of H.B. 507



LEGEND	
	Poultry Bill
	Original H.B. 507
	Substitute H.B. 507
	H.B. 507

1. First introduced in the House as a Poultry Bill, H.B. 507 passed the House as an Agriculture & Food Purity Bill.

When first introduced on December 8, 2021, H.B. 507 was just over a page long and titled "A Bill to amend section 925.62 of the Revised Code to revise the number of poultry chicks that may be sold in lots." Compl. ¶¶ 61-62; Dec. 8, 2021 House Journal at 2107 (Compl. exhibit No. 16); H.B. 507 As Introduced (Compl. exhibit No. 14). Purposed to address supply chain issues in agriculture, H.B. 507—a chicken bill "so simple, it only changes one word in the Ohio Revised Code"—reduced the minimum amount of lots of poultry younger than four weeks of age that may be sold, given away, or otherwise distributed from six to three lots. *See* Compl. ¶

63; H.B. 507 As Introduced (Compl. Exhibit No. 14); Statement of Representative Kyle Koehler to House Committee (Feb. 15, 2022), exhibit No. 1. Upon its introduction in the House, the chicken bill was referred to the House Standing Committee on Agriculture and Conservation ("House Committee"). *See* Compl. ¶ 64.

On March 31, 2022, the House Committee reported back a substitute version of H.B. 507 and recommended its passage. *Id*. ¶ 64; Mar. 31, 2022 House Journal at 2656 (Compl. Exhibit No. 17). The House's substitute version amended Title 9 of the Revised Code, pertaining to agriculture, and Title 37, pertaining to food purity. Compl. ¶¶ 65-67. On April 6, 2022, after three considerations, the House passed this version of the bill that pertained solely to agriculture and food purity ("Original H.B. 507"). *Id.* (Compl. Exhibit No. 19).

2. The Senate considered Original H.B. 507 twice and held public hearings on Original H.B. 507—all related only to Agriculture & Food Purity.

Original H.B. 507 went to the Senate on April 12, 2022, and the Senate referred the bill to its standing committee on Agriculture and Natural Resources ("Senate Committee") on May 18, 2022. *See* Apr. 12, 2022 Senate Journal at 1990, exhibit No. 2; May 18, 2022 Senate Journal at 2011-12, exhibit No. 3; *See* Compl. ¶ 70. Thus, the Senate considered Original H.B. 507 on two separate days: (1) the day of its introduction in the Senate and (2) the day of its referral to committee.

The Senate Committee had four hearings on Original H.B. 507. *See* Committee Activity. All testimony at these hearings pertained to the poultry provision and other agricultural provisions. *Id.* The Senate Committee remained in control of Original H.B. 507 for over seven months without altering the bill.

3. The Senate Committee transformed H.B. 507 by adding new distinct subject-matter including the Mandatory Leasing Provision and the Green Energy Provision.

In the less than 24 hours between the Senate Committee's final hearing on Original H.B. 507 on December 6, 2022, and December 7, 2022, the Senate Committee bloated the 20-page Original H.B. 507 to an 80-page bill covering numerous distinct subjects ("Substitute H.B. 507"). *See* Committee Activity*; see also* Dec. 7, 2022 Senate Journal at 2293-94 (Compl. exhibit No. 20); Substitute H.B. 507 (Compl. exhibit No. 21); Compl. ¶¶ 71-80. Substitute H.B. 507 diverged from Original H.B. 507's subjects of agriculture and food purity, adding entirely new subjects, including: electric utilities, the licensing of environmental health specialists, the licensing of auctioneers, the towing and storage of motor vehicles by conservancy district police departments, and the leasing of Ohio's public lands for oil and gas development. Substitute H.B. 507 at 1 (Compl. exhibit No. 21).

Substitute H.B. 507 included two provisions of particular concern to Plaintiffs: (1) the "Mandatory Leasing Provision" and (2) the "Green Energy Provision." The Mandatory Leasing Provision requires state agencies to lease public lands "in good faith" to any interested party meeting minimal statutory requirements. Substitute H.B. 507 at 2-3 (Compl. exhibit No. 21); Compl. ¶¶ 47-48. Ohio's Legislative Service Commission's Final Analysis of the bill states that "[t]he act **requires**, **rather than authorizes**, every state agency to lease agency-owned or controlled oil and gas resources for development," and that "[t]he state agency **must** enter into the lease in good faith…" Exhibit No. 4 at 10 (emphasis added). The inclusion of "in good faith" does not provide the State with discretion not to lease. Such a reading would render meaningless the bill's change of the word "may" to "shall." "Good faith" means the "observance of reasonable commercial standards of fair dealing in a given trade or business," as demonstrated

by behavior "that conforms with justified expectations." *See State ex rel. Ohio History Connection v. Moundbuilders Country Club Co*., 2022-Ohio-4345, ¶ 31, *reconsideration denied*, 168 Ohio St.3d 1477, 2022-Ohio-4586, 199 N.E.3d 561. The phrase "shall lease" sets the expectation that the State must lease. Its "in good faith" modifier makes clear that the State must comply with that expectation by proceeding with leasing according to reasonable commercial standards of fair dealing in the oil and gas industry.

The Green Energy Provision defines "green energy" as follows: "any energy generated by using an energy resource that does one or more of the following: (a) Releases reduced air pollutants, thereby reducing cumulative air emissions; (b) Is more sustainable and reliable relative to some fossil fuels. 'Green Energy' includes energy generated by using natural gas as a resource." Substitute H.B. 507 at 84-85 (Compl. exhibit No. 21); Compl. ¶ 2.

4. The Senate passed Substitute H.B. 507 on the same day it was reported out of Committee, the House concurred six days later, and Governor Mike DeWine signed H.B. 507 into law.

On December 7, 2022—during a lame duck session—the Senate Committee reported Substitute H.B. 507 back to the full Senate for the first and only time and recommended its passage. The Senate passed Substitute H.B. 507 that same day. Dec. 7, 2022 Senate Journal at 2281-82, 2293-94 (Compl. exhibit No. 20). The House then passed Substitute H.B. 507 on December 13, 2022, just six days later. Dec. 13, 2022 House Journal at 3171-73 (Compl. exhibit No. 22). Governor Mike DeWine signed H.B. 507 into law on January 6, 2023. Answer ¶ 88.

III. ARGUMENT

Plaintiffs pray for (1) a declaration that H.B. 507 is unconstitutional under the one-subject rule; and (2) a declaration that H.B. 507 is unconstitutional under the three-consideration rule. R.C. 2721.03 provides that "any person whose rights, status, or other legal relations are

affected by a * * * statute" may have determined "any question of construction or validity arising under the [statute] * * * and obtain a declaration of rights, status, or other legal relations under it." "The remedy afforded by the Declaratory Judgments Act is to be liberally construed and freely applied." *Sessions v. Skelton*, 163 Ohio St. 409, 419, 127 N.E.2d 378, 56 O.O. 370 (1955); R.C. 2721.13. Plaintiffs are entitled to a declaration that H.B. 507 is unconstitutional because the statute violates the one-subject rule and three-consideration rule of the Ohio Constitution, they have standing to bring this present action, and this action presents a real, justiciable controversy necessitating speedy relief to preserve the rights of Plaintiffs and their members. *See Burger Brewing Co. v. Liquor Control Comm., Dept. of Liquor Control,* 34 Ohio St. 2d 93, 97, 296 N.E.2d 261 (1973).

A. H.B. 507 Violates the One-Subject Rule by Containing Unrelated Topics that Share No Rational or Legitimate Connection.

The one-subject rule of Article II, Section 15(D) of the Ohio Constitution provides that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." The purpose of the one-subject rule is to prevent "logrolling," the practice of several minorities combining proposals, and thus consolidating votes to obtain a majority for a bill where no single proposal could have obtained approval. *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 142-43, 464 N.E.2d 153 (1984). "The one-subject provision attacks logrolling by disallowing unnatural combinations of provisions in acts, *i.e.*, those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one—logrolling." *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335, ¶ 71, quoting *Dix* at 143. "[I]dentification of a bill's subject is a question of law," requiring no fact finding. *See State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, 56 N.E.3d 913, ¶ 21. Accordingly, a court must assess an act's constitutionality based entirely "on the particular

language and subject of the act rather than extrinsic evidence of fraud or logrolling." *Riverside v. State*, 190 Ohio App.3d 765, 2010-Ohio-5868, 944 N.E.2d 281, ¶ 39 (10th Dist.).

An act containing provisions lacking a common purpose for no "discernible practical, rational, or legitimate reason" "must necessarily be held to be invalid in order to effectuate the purpose of the [one-subject] rule." *Dix* at 145. The Ohio Supreme Court explained that one-subject rule issues:

> can be perceived as points along a spectrum. At one end, closely related topics unite under a narrowly denominated subject. As the topics embraced in a single act become more diverse, and as their connection to each other becomes more attenuated, so the statement of subject necessary to comprehend them broadens and expands. There comes a point past which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such. It becomes a ruse by which to connect blatantly unrelated topics. At the farthest end of this spectrum lies the single enactment which endeavors to legislate on all matters under the heading of "law."

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451, 499, 715 N.E.2d 1101 (1999). The Court in *Sheward* held that a tort and civil justice reform statute fell toward the latter end of the spectrum and violated the one-subject rule because the bill amended a sweeping variety of "blatantly unrelated" titles and Revised Code chapters. *Id.* at 498. Even in the context of appropriations bills, where courts give more leeway in combining separate topics, the Ohio Supreme Court has found one-subject violations where there was no rational reason for the combination. *See State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶¶ 32-35.

Like the bill at issue in *Sheward*, H.B. 507 contains completely unrelated topics and amends unconnected titles and chapters of the Revised Code. When first introduced in the House in December of 2021, H.B. 507 had the following title: a bill "[t]o amend section 925.62 of the Revised Code to revise the number of poultry chicks that may be sold in lots." H.B. 507 As

Introduced at 1 (Compl. exhibit No. 14). Consistent with the title, the bill only amended R.C. 925.62 to change the minimum number of young poultry lots that can be sold from six to three lots. *Id*. In April of 2022, the House amended and passed a substitute bill with the following title:

> To amend sections 913.04, 913.28, 915.01, 915.03, 915.14, 915.18, 915.20, 925.21, 925.62, 3715.041, 3715.07, 3715.27, 3715.33, 3715.36, and 3715.99; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3715.36 (3715.34); and to repeal sections 913.27, 915.04, 915.05, 915.06, 915.07, 915.08, 915.19, 915.21, 925.26, 925.27, 925.28, 925.52, 925.56, 925.61, 3715.14, 3715.15, 3715.16, 3715.17, 3715.18, 3715.19, 3715.20, 3715.34, 3715.35, and 3715.37 of the Revised Code to revise specified provisions of agriculture law.

Original H.B. 507 at 1 (Compl. exhibit No. 18); Answer ¶ 66. The title only referenced the subject of agriculture law and the amendments dealt entirely with food storage and safety. *See id*; *see also* Ohio Legislative Service Commission, Bill Analysis, Version: As Passed by the House, exhibit No. 5. Original H.B. 507 **did not** include any provisions governing energy, utilities, or natural resources. H.B. 507 stayed that way until the lame duck session of December of 2022, when the Senate abruptly amended H.B. 507—more than tripling its size and dramatically altering its scope—to contain multiple new and unrelated subjects. The Senate gave its substitute bill the following title:

> To amend sections 155.33, 913.04, 913.28, 915.01, 915.03, 915.14, 915.18, 915.20, 921.26, 925.21, 925.62, 3715.041, 3715.07, 3715.27, 3715.33, 3715.36, 3715.99, 3717.33, 3717.52, 4505.101, 4505.104, 4513.60, 4513.601, 4513.61, 4513.62, 4513.63, 4513.64, 4513.65, 4513.66, 4513.69, 4707.02, 4928.01, and 4928.645; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3715.36 (3715.34); and to repeal sections 913.27, 915.04, 915.05, 915.06, 915.07, 915.08, 915.19, 915.21, 925.26, 925.27, 925.28, 925.52, 925.56, 925.61, 3715.14, 3715.15, 3715.16, 3715.17, 3715.18, 3715.19, 3715.20, 3715.34, 3715.35, and 3715.37 of the Revised Code to revise specified provisions of agriculture law, to define green energy, to exclude natural gas from receiving renewable energy credits, to revise the law governing environmental health specialists and environmental health specialists in training, and to allow conservancy district police departments to take specified actions regarding the towing and storage of motor vehicles.

Substitute H.B. 507 at 1-2 (Compl. Exhibit 21); Answer ¶ 74. The title itself expresses five new subjects in addition to agriculture law. The amendments also included the leasing of public lands for oil and gas development (the Mandatory Leasing Provision), although this is not clearly expressed in the title. Substitute H.B. 507 at 1 (Compl. exhibit No. 21). The Senate and the House then passed Substitute H.B. 507, which the Governor signed into law unchanged. *Compare* Substitute H.B. 507 (Compl. exhibit No. 21), *with* H.B. 507 as Enacted, (Compl. exhibit No. 24). Altogether, H.B. 507 amends 34 sections of the Revised Code under seven separate and unrelated titles, combining, among other things, chapters governing poultry sales and food storage with chapters governing leasing oil and gas on public lands and energy and utilities. *See* H.B. 507 as Enacted at 39 (Compl. exhibit No. 24). The Ohio Legislature's website lists the different subject areas of the final bill as follows: agriculture; agriculture: animals; agriculture: food regulations; commerce, environment and natural resources: oil and gas; human health and services: public health; public safety; transportation: motor vehicles; and utilities. Ohio Legislature, House Bill 507, Summary, https://www.legislature.ohio.gov/legislation/134/hb507 (accessed April 26, 2023) [hereinafter "H.B. 507 Summary"].

There is no practical, rational, or legitimate reason for H.B. 507 to cover this broad and varied subject matter. Requiring the leasing of public lands for oil and gas production and amending the Public Utilities Code to define power generated from natural gas as "green energy" bear no relationship to the original poultry provision governing minimum chickens sold, or to the cold storage of foods (*see* H.B. 507 at 5-9 (Compl. exhibit No. 24), (amending R.C. 915.01, 915.03, 915.14, 915.18, 915.20, 921.26, and 925.21)), or to the enforcement of motor vehicle

laws (*see* H.B. 507 at 15-31, (Compl. exhibit No. 24), (amending to R.C. 4505.101, 4513.60-1413.66, 4513.69)).

Courts have consistently found one-subject rule violations where the different topics are not connected in any rational way. *State, ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St.3d 145, 148, 580 N.E.2d 767 (1991) (a bill that primarily addressed the judicial system violated the one-subject rule by including an amendment to the State's liquor control law); *Linndale v. State*, 2014-Ohio-4024, 19 N.E.3d 935, ¶ 18 (10th Dist.) (texting-while-driving provision was unrelated to other portions of a bill originally regarding the number of judges or courts in the state); *Akron Metro. Hous. Auth. Bd. of Trustees v. State*, 10th Dist. Franklin No. 07AP-738, 2008-Ohio-2836, ¶ 23 (holding that revisions to separate laws relating to housing authority boards, charter school extracurricular activities, and county and township local zoning authority shared "no relationship or common purpose" with each other).

There is no legitimate reading of the term "agriculture" that includes oil and gas development, energy, or utilities. The Ohio Revised Code defines "agriculture" as follows:

> As used in any statute except section 303.01 or 519.01 of the Revised Code, "agriculture" includes farming; ranching; aquaculture; algaculture meaning the farming of algae; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production; and any additions or modifications to the foregoing made by the director of agriculture by rule adopted in accordance with Chapter 119. of the Revised Code.

R.C. 1.61. Thus, the Revised Code's definition of agriculture "as used in any statute" does not contain any reference to natural gas leasing, drilling, or production, or to energy generation and

utilities. The title of H.B. 507 itself lists different subjects apart from agriculture, as does the Ohio Legislature's Website in its Summary section. *See* H.B. 507 Summary.

Courts have consistently rejected attempts to cure one subject rule violations with broad topic areas. *See Nowak* at ¶ 61 (rejecting the argument that a bill's topics all dealt with individuals' ownership interest in both real and personal property, finding the topic was overly broad and could not provide rationale for combining the topics); *Hinkle* at 148 (rejecting the argument that a bill covering judicial offices and a provision in liquor control law governing the local option for the sale of liquors all fall under election matters, stating the combination "is akin to saying that securities laws and drug trafficking penalties have sales in common—the connection is merely coincidental."); *Akron* at ¶ 21 (rejecting the argument that all topics within a bill were tied together by the common theme of "modifying local authority," and accepting the trial court's reasoning that such an argument was "far too vague…").

Any attempt to connect the range of topics in H.B. 507 under one subject is "a ruse by which to connect blatantly unrelated topics." *Sheward*, 86 Ohio St.3d at 499, 715 N.E.2d 1101. Altogether, H.B. 507 combined subjects from agriculture, to energy and utilities, to the development of oil and gas resources on public land, for no "discernible practical, rational, or legitimate reason," and thus "must necessarily be held to be invalid in order to effectuate the purpose of the [one-subject] rule." *See Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335, at ¶ 44; *Dix*, 11 Ohio St.3d at 145, 464 N.E.2d 153.

B. H.B. 507 Violates the Three-Consideration Rule of the Ohio Constitution.

Article II, Section 15(C) of the Ohio Constitution provides that "[e]very bill shall be considered by each house on three separate days …" "[W]here it can be proven that the bill in question was not considered the required three times, the consequent enactment is void and

without legal effect." *Hoover v. Bd. of Cty. Commrs., Franklin Cty*., 19 Ohio St. 3d 1, 3, 482 N.E.2d 575 (1985). Plaintiffs can prove a violation of the three-consideration rule where, as here, "the legislative journal does not reflect the requisite three considerations in each house of the bill in the form in which it was eventually enacted." *Id*. at 5. The three-consideration rule applies "unless two-thirds of the members elected to the house in which it is pending suspend this requirement," which must be recorded in the appropriate Legislative Journal. *Id*.; Ohio Constitution, Article II, Section 15(C).

The purpose of the three-consideration rule is "to prevent hasty action and to lessen the danger of ill-advised amendment at the last moment." *Voinovich*, 69 Ohio St. 3d at 233, 631 N.E. 2d 582 (quoting *Hoover* at 8 (Douglas, J., concurring)). The three-consideration rule "provides time for more publicity and greater discussion and affords each legislator an opportunity to study the proposed legislation, communicate with his or her constituents, note the comments of the press and become sensitive to public opinion." *Id.* at 233-34. Thus, the three-consideration rule helps "to ensure well-reasoned legislation." *Hoover* at 8 (Douglas, J., concurring).

Amendments that "vitally alter" the substance of a bill such that there is "no longer a common purpose or relationship between the original bill and the bill as amended" require three considerations. *Voinovich* at 233; *see also Youngstown City School Dist. Bd. of Edn. v. State,* 2020-Ohio-2903, 161 Ohio St. 3d 24, 161 N.E.3d 483, ¶ 15 ("a court's key consideration should be whether the bill maintained a common purpose both before and after its amendment").

To determine whether legislation violates the three-consideration clause, a court must look "to the underlying purpose of the three-consideration provision." *Voinovich* at 233. The legislative history of H.B. 507 exhibits the precise "hasty action" and "ill-advised amendment[s] at the last moment" that the three-consideration rule is purposed to prevent. *See id.* at 233-34.

Between H.B. 507's introduction in the House in December of 2021 and the Senate's final committee hearing on December 6, 2022, all activity regarding H.B. 507 related to the bill's poultry provisions or other provisions directly pertaining to agriculture and food purity. *See* Timeline of H.B. 507, *supra* at 3. It was not until December 7, 2022, that the Senate reported back Substitute H.B. 507, a vitally-altered bill containing 60 more pages of amendments pertaining to at least six different subjects, including the leasing of public lands for oil and gas development, the licensing of food establishments, motor vehicle enforcement, the licensing of auctioneers, and public utilities. *See* Substitute H.B. 507 (Compl. exhibit No. 21).

The Senate's amendments in Substitute H.B. 507 share no common purpose with Original H.B. 507. *See* part III.A, *supra*. Ohio's Sixth District addressed comparable legislation in *Community Hosps. & Wellness Ctrs. v. State*, 2020-Ohio-401, 151 N.E.3d 1113 (6th Dist.). In *Community Hospitals,* the Sixth District found the addition of a statutory provision known as Ohio's Price Transparency Law, which involved requirements for providers of medical services to furnish cost estimates, had vitally altered a bill that otherwise pertained to budget and operations of the workers' compensation program. *Id*. ¶¶ 2, 71. In its reasoning, the court rejected the State's argument that the bill had a common subject of "the way care is paid for and provided in Ohio," and found that the bill, though it retained its original substance, had been vitally altered by the addition of new, distinct subject matter lacking any common purpose with the original bill. *Id.* at ¶¶ 50, 71. The same is true of H.B. 507: the Senate's extensive and far-reaching amendments including the Green Energy Provision and the Mandatory Leasing Provision share no common purpose with Original H.B. 507's agriculture and food purity issues.

Much like the hasty addition of the Price Transparency Law in *Community Hospitals*, the vast majority of H.B. 507—including the Green Energy Provision and the Mandatory Leasing

Provision—went from non-existent to enacted in a period of **six days**. The Senate held no committee hearings on Substitute H.B. 507, preventing public input on the amendments. *See* Committee Activity. The day after holding its last hearing on Original H.B. 507, the Senate reported out and passed Substitute H.B. 507. Dec. 7, 2022 Senate Journal at 2281-82, 2293-95 (Compl. exhibit No. 20). The House concurred only six days later, on the same day the House first introduced Substitute H.B. 507, again preventing public input. Dec. 13, 2022 House Journal at 3171-73 (Compl. exhibit No. 22). The Legislative Journal does not reflect a suspension of the three-consideration requirement for H.B. 507, and only reflects a single consideration of Substitute H.B. 507 in each chamber. Accordingly, Ohio's enactment of H.B. 507 violated the three-consideration rule and is therefore "void and without legal effect." *Hoover*, 19 Ohio St. 3d at 3-5, 482 N.E.2d 575; Ohio Constitution, Article II, Section 15(C).

C. Plaintiffs Have Standing to Bring the Present Action.

"Standing is defined at its most basic as a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Moore v. Middletown*, 133 Ohio St. 3d 55 (2012), 2012-Ohio-3897, 975 N.E.2d 977, ¶ 21 (internal citations omitted). To establish traditional standing, a party must show that it has "suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief." *Id*. at ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Plaintiffs have both direct organizational standing and associational standing.

1. Plaintiffs have direct organizational standing.

Plaintiffs have direct organizational standing because Ohio's unconstitutional passage of H.B. 507 caused Plaintiffs direct injury by (1) frustrating Plaintiffs' missions and (2) forcing Plaintiffs to divert resources to counteract the impact of Ohio passing H.B. 507 without adhering

to constitutional protections. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 102 S. Ct. 1114, 1124, 71 L. Ed. 2d 214 (1982) (finding that the diversion of organizational resources to counteract an unlawful action or the impairment of an organization's ability to carry out its mission is sufficient to confer standing); *see also Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 15 (10th Dist.) (finding a political party to have standing to challenge a voting law, citing *Common Cause Indiana v. Lawson*, 937 F.3d 944, 950 (7th Cir.2019) ("[a] voting law can injure an organization enough to give it standing by compelling [it] to devote resources to combatting effects of that law that are harmful to the organization's mission")); *Fair Hous. Council v. Village of Olde St. Andrews,* 210 F. App'x 469, 475 (6th Cir. 2006) ("[C]osts related to prelitigation investigation can form the basis for standing.").

Ohio's enactment of H.B. 507 without adhering to the three-considerations clause and one-subject rule of Ohio's Constitution caused Plaintiffs to divert resources to rapidly respond to the last-minute amendments to H.B. 507 and frustrated Plaintiffs' ability to have any meaningful opportunity to prevent these amendments from becoming law. Plaintiffs are environmental advocacy and education organizations. *See, e.g.,* Decl. of Bucher at ¶ 6 (Compl. exhibit No. 1); Decl. of Groff ¶¶ 9-10 (Compl. exhibit No. 6); Decl. of J. Hunkler ¶¶ 8-9 (Compl. exhibit No. 8); Compl. ¶ 31. The rapid addition of the Green Energy Provision and the Mandatory Leasing Provision in H.B. 507 caused Plaintiffs to spend "additional resources" and "divert time and resources immediately and quickly" to inform Ohioans of the impacts of the bill. *See* Decl. of Bucher at ¶¶ 14, 20 (Compl. exhibit No. 1). Plaintiffs also diverted resources from previously scheduled activities and programming to respond to member questions about H.B. 507. *Id*. at ¶ 16. Plaintiffs rely on the General Assembly following constitutional procedure to plan their education and advocacy efforts. *Id*. at ¶ 18. Thus, Plaintiffs had to "spend additional time and

resources to inform the public of the impacts of legislators not following the requirements in the Ohio Constitution—and how members can advocate within those different rules." *Id*. at ¶ 17. Lastly, Ohio's constitutional violations caused Plaintiffs to expend considerable pre-litigation expenses to challenge this unlawful action. *Id*. at ¶ 21.

Further, Ohio's violation of the one-subject rule and three-consideration rule injured Plaintiffs by depriving them of the advocacy and education opportunities afforded by Ohio's constitutionally protected legislative process. *See* Decl. of J. Hunkler at ¶ 15 (Compl. exhibit No. 8) ("Because the version of H.B. 507 as enacted was only considered by each house * * * on one day, I was not able to effectively educate members of Ohio Valley Allies about H.B. 507 until after it was passed."); Decl. of Groff ¶ 16 (Compl. exhibit No. 6) (explaining that the many subjects in H.B. 507's title and rapid amendments prevented Buckeye Environmental Network ("BEN") from identifying H.B. 507 as a bill relevant to BEN and BEN's members, delaying education and advocacy); *id*. at ¶¶ 19-22 (stating that the passage of H.B. 507 without following constitutional requirements deprived BEN of organization and advocacy opportunities); Decl. of Bucher at ¶ 18 (Compl. exhibit No. 1) ("The OEC relies on the Ohio Constitution and the Ohio General Assembly's own written procedure for educating its members on the legislative process.").

The substance of H.B. 507 also frustrates Plaintiffs' missions and forces Plaintiffs to divert resources to address the impacts of the unlawful legislation. For example, the Green Energy Provision undermines Plaintiffs' missions, which include advocating for a just transition to renewable energy. *See* Compl. ¶ 32; *see also* Decl. of J. Hunkler at ¶ 10 (Compl. exhibit No. 8) ("the transition to renewable energy in the Ohio River Valley is also part of the mission of Ohio Valley Allies" and "this definition [of green energy] will be used by electric utilities to

ensure that Ohio's reliance on natural gas and other fossil fuels for energy remains permanent"); Decl. of Bucher at ¶ 6 (Compl. exhibit No. 1); Decl. of Groff at ¶ 11 (Compl. exhibit No. 6).

Declaratory judgment rendering the amendments to H.B. 507 void would redress Plaintiffs' injuries by preventing any further action pursuant to the Green Energy Provision and the Mandatory Leasing Provision and by ensuring the State follows the constitutional process to pass legislation. *See* Decl. of Bucher at ¶ 29 (Compl. exhibit No. 1); Decl. of Groff ¶ 29 (Compl. exhibit No. 6); Decl. of J. Hunkler at ¶ 33-34 (Compl. exhibit No. 8); Compl. ¶ 132.

2. Plaintiffs have associational standing.

In addition to each Plaintiff having direct organizational standing, Plaintiffs all have standing to bring this action on behalf of their members. A plaintiff has associational standing when "(1) its members would otherwise have standing to sue in their own right, (2) the interests that [it] seeks to protect are germane to [its] purpose, and (3) neither the claim[s] asserted nor the relief requested [require] the participation of individual members in the lawsuit." *State, ex rel. Food & Water Watch v. State*, 153 Ohio St.3d 1, 2018-Ohio-555, 100 N.E.3d 391, ¶ 18. To establish standing to attack the constitutionality of a legislative enactment, members must show that they have "suffered or [are] threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." *Sheward*, 86 Ohio St. 3d at 469-70, 715 N.E.2d 1062; *see also Ohio Trucking Assn. v. Charles,* 2012-Ohio-5679, 134 Ohio St. 3d 502, 983 N.E.2d 1262, ¶¶ 5-6.

a. Ohio's unconstitutional actions injured Plaintiffs' members.

When constitutional rights are threatened or impaired, irreparable injury is presumed. *See Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.); *see also*

Community Hosps. & Wellness Ctrs. v. State, Williams C.P. No. 16 CI 128, 2019 WL 994511, at *4 (Feb. 13, 2019), *aff'd*, 2020-Ohio-401, 151 N.E.3d 1113 (6th Dist.) (applying the presumption of irreparable injury to violations of the one-subject rule and three-considerations clause). Ohio's enactment of H.B. 507 in violation of constitutional protections deprived Plaintiffs' members—many of whom will be profoundly impacted by the consequences of the Mandatory Leasing Provision and the Green Energy Provision—of constitutionally-protected opportunities to advocate for their interests prior to the law's enactment.

Plaintiffs have standing because their individual members have suffered constitutional injuries different from those suffered by the general public. *Sheward*, 86 Ohio St. 3d 451, 469-70, 715 N.E.2d 1062; *see Magda* at ¶ 38; *Community Hosps.* at *4. Plaintiffs' members live, work, recreate, and worship in and near Ohio's state lands and advocate for renewable energy. For many of them, oil and gas development is personal. OVA director Jill Hunkler considers herself a "fracking refugee." She has been forced to move homes twice due to fracking and its accompanying pollution, traffic, odors, and noise. Decl. of J. Hunkler ¶ 5 (Compl. exhibit No. 8). OVA member Patrick Hunkler rarely visits his hometown of Barnesville – and no longer drinks the municipal water there – because it has been heavily fracked. Decl. of P. Hunkler ¶ 14 (Compl. exhibit No. 9). Ohio Environmental Council ("OEC"), BEN, and Sierra Club members are afraid that the oil and gas infrastructure that they see, smell, and try to avoid outside of parks will encroach on these spaces that currently serve as vital escapes. *See, e.g.*, Decl. of Sabo ¶ 11 (Compl. exhibit No. 2); Decl. of Groff ¶ 5 (Compl. exhibit No. 6); Decl. of Justus ¶ 9 (Compl. exhibit No. 13); *see also* maps of oil and gas activity surrounding state lands (Compl. exhibit Nos. 25-28) (illustrating public lands as sanctuaries in regions otherwise blanketed by oil and gas activity).

Further, many members have been environmental advocates for decades. *See, e.g.,* Decl. of Groff ¶ 5 (Compl. exhibit No. 6); Decl. of P. Hunkler ¶ 5 (Compl. exhibit No. 9); Decl. of Backs ¶ 5 (Compl. exhibit No. 10); Decl. of McCosker ¶¶ 2-4 (exhibit No. 6); Decl. of Curran ¶ 3 (exhibit No. 7). BEN member Roxane Groff has been tracking leasing on state lands for oil and gas development since the General Assembly passed R.C. 155.33 in 2011, and Sierra Club member Loraine McCosker has been "actively engaged on public lands issues for 18 years." Decl. of Groff ¶ 5 (Compl. exhibit No. 6); Decl. of McCosker ¶¶ 2-4 (exhibit No. 6). Both at the behest of their organizations and on their own accord, Plaintiffs' members have called and met with legislators, participated in committee hearings on legislation, submitted comments for rulemakings and leases, and otherwise are involved in the legislative process. *See, e.g.*, Decl. of Bucher ¶ 7 (Compl. exhibit No. 1); Decl. of Groff ¶ 18 (Compl. exhibit No. 6); Decl. of P. Hunkler ¶¶ 9-10 (Compl. exhibit No. 9); Decl. of McCosker ¶¶ 4-5 (exhibit No. 6).

Plaintiffs' members rely on the constitutional protections of the one-subject rule and the three-consideration rule to engage in their advocacy activities. *See* Decl. of Groff ¶ 14 (Compl. exhibit No. 6) ("[n]otice about the subject matter of a bill better allows me to educate my elected officials about the impacts of proposed legislation and to advocate for or against legislation that will impact me, my community, and Ohio's natural environment."); Decl. of Bucher ¶ 17 ("When the General Assembly doesn't follow the legislative requirements of the Ohio Constitution, it creates confusion for our members, who were informed of one legislative process, yet the General Assembly utilized a different, unconstitutional process.").

Plaintiffs' members suffered direct and concrete injury when Ohio deprived them of the educational and advocacy opportunities baked-in to the constitutional requirements of the three-consideration rule and the one-subject rule. For example, because the title of H.B. 507 did not

reference the mandatory leasing provision, Ms. Groff was not able to identify H.B. 507 as a bill relevant to her interests, and was unable to effectively educate her elected officials, friends, and neighbors about the impact of the Mandatory Leasing Provision and Green Energy Provision. Decl. of Groff ¶ 17 (Compl. exhibit No. 6). Ms. Groff also did not have time to organize her friends and neighbors against H.B. 507 because Substitute H.B. 507 was only considered on one day in each house of the General Assembly. *Id*. ¶ 19. Patrick Hunkler, a member of OVA, and Jean Backs, a member of OVA and BEN, both of whom regularly engage with their elected officials on legislation, did not find out about the Mandatory Leasing provision of H.B. 507 until after it passed because it covers many subjects and did not receive proper, constitutional consideration on three separate days. Decl. of P. Hunkler ¶¶ 9-10 (Compl. exhibit No. 9); Decl. of Backs ¶¶ 9-10 (Compl. exhibit No. 10).

Plaintiffs' members, who regularly engage in the legislative process on bills that impact public health and the environment, are injured by the lack of education and advocacy opportunities that resulted from Ohio's violation of the one-subject rule and three-consideration rule when it enacted H.B. 507. *See Dix,* 11 Ohio St.3d 141, 143, 464 N.E.2d 153; *Sheward,* 86 Ohio St. 3d 451, 495-97, 715 N.E.2d 1062; *Voinovich*, 69 Ohio St. 3d at 233-34, 631 N.E. 2d 582; *Hoover*, 19 Ohio St. 3d at 8, 482 N.E.2d 575 (Douglas, J., concurring).

b. The Mandatory Leasing Provision injures Plaintiffs' members.

The Mandatory Leasing Provision does not allow the state discretion in leasing state parks, such as Salt Fork State Park, where leasing is imminent. *See* H.B. 507 at 1 (Compl. Ex. 24); Compl. at ¶¶ 16, 47, 125-126. Instead, the law requires agencies to lease formations within state land. *See* H.B. 507 at 1 (Compl. Ex. 24). Accordingly, Plaintiffs' members face threatened direct and concrete injuries – including property injuries, business and professional injuries,

recreational and aesthetic injuries, and procedural injuries – from the leasing of state lands for oil and gas development and production. These injuries are traceable to the Mandatory Leasing Provision and redressable by a declaration that H.B. 507 is unconstitutional and therefore void.

i. Property Injuries

Plaintiffs have many members who own property near state parks and other state lands. "The rights to acquire, use, enjoy, and dispose of property are among the most revered in our nation's law and traditions," and limitations on a property owners' rights due to unconstitutional government action can confer standing. *Moore*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶¶ 37-40.

OEC member Terry Sabo lives so close to Salt Fork State Park that she "can smell the campfires in the summertime." Decl. of Sabo ¶ 7 (Compl. exhibit No. 2). Ms. Sabo and her husband relocated from Canton, Ohio to Cambridge, Ohio in part because of its proximity to Salt Fork, where she has been recreating since the 1970s. *Id*. ¶ 9. Oil and gas companies have already approached Ms. Sabo about an oil and gas lease and have threatened that she will be force-pooled into leasing due to Encino's intention to obtain a lease from the Ohio Department of Natural Resources for fracking under Salt Fork State Park. *Id*. ¶ 9; *see also* Compl. at ¶¶ 112-114 (explaining Ohio's forced pooling laws). Thus, the Mandatory Leasing Provision threatens Ms. Sabo's property interest in the mineral rights she currently owns as part of her property. Oil and gas activity in and near Salt Fork State Park would not only diminish the recreational and aesthetic values of the park that Ms. Sabo holds dear but would disrupt her quiet enjoyment of her home due to increased truck traffic and noise, light, and air pollution. *Id*. ¶ 11.

OVA member Mr. Hunkler and BEN and OVA member Ms. Backs own a property one mile away from Egypt Valley Wildlife Area and near Salt Fork State Park and Barkcamp State

Park. Decl. of P. Hunkler ¶ 25 (Compl. exhibit No. 9); Decl. of Backs ¶ 25 (Compl. exhibit No. 10). Mr. Hunkler and Ms. Backs are also extremely concerned about increased truck traffic and surface development in the properties surrounding these parks disrupting their quiet enjoyment of their property and reducing its value. Decl. of P. Hunkler ¶ 25 (Compl. exhibit No. 9); Decl. of Backs ¶ 25 (Compl. exhibit No. 10).

Sierra Club member Zachary Justus lives a "seven-minute drive" from Killbuck Marsh Wildlife Area. Decl. of Justus ¶ 8 (exhibit No. 8). The Marsh is a "natural filtration system" for Mr. Justus's water supply, and he is concerned that any harm to the Marsh from drilling, as well as any spills connected with oil and gas development, will contaminate the only source of drinking water for Mr. Justus and his neighbors. *Id*. Mr. Hunkler and Ms. Backs express similar concerns about their property near Egypt Valley. Well water is the only source of drinking water on that property, and they are concerned that oil and gas activities will contaminate this water, rendering the property unusable. Decl. of P. Hunkler ¶ 25 (Compl. exhibit No. 9); Decl. of Backs ¶ 25 (Compl. exhibit No. 10).

These threatened property injuries are based on well-known and well-documented impacts of oil and gas development. Oil and gas development "has a profound impact on surrounding communities," including increases in noise, air, light, and water pollution. Compl. ¶ 10; *see also id*. ¶¶ 108-112 (describing the impacts of fracking on homeowners and communities, including noise from "five weeks of 24-hour drilling to drill a well" along with "consistent low rumbles" from compressor stations; the release of "methane, volatile organic compounds, nitrous oxides, particulate matter, and various hazardous air pollutants"; damage to human health from artificial lighting; thousands of truck trips per well just to deliver necessary fluids; and the permanent alternation of subsurface geology). "Even slight injury is sufficient to confer

standing," and the property injuries that plaintiffs' members attest to are profound. *See Ohio Democratic Party*, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 19.

ii. Business and Professional Injuries

Plaintiffs' members also have business and professional interests in state parks and other state lands that the Mandatory Leasing Provision jeopardizes. Plaintiffs who suffer concrete and particularized injuries in their business or line of work due to a law or state action suffer an injury in fact that is unique from the general public. *See Ohio Licensed Beverage Assn. v. Ohio Dep't of Health*, 10th Dist. Franklin No. 07AP-490, 2007-Ohio-7147, ¶ 15. OEC member Mark Brunton and his wife own Burr Oak Getaways, offering boat rentals, guided lake tours, fishing excursions, and other "eco-tourism" services near Burr Oak State Park. Decl. of Brunton ¶ 7 (Compl. exhibit No. 5). Mr. Brunton hires local, at-risk youth for internships with his companies. *Id*. ¶ 8. Mr. Brunton's businesses rely on "clean water, clean air, forests teeming with wildlife and the stillness of sound" to attract tourists to book his services. *Id*. ¶ 13. "Leasing the public lands and allowing increased extraction will fundamentally change the eco-tourism industry," interrupting the peace, quiet, solitude, and fresh air that draws customers to Mr. Brunton's services at Burr Oak Getaways and other park businesses. *Id*.

iii. Aesthetic and Recreational Injuries

Both Ohio Courts and the Supreme Court of the United States have long recognized aesthetic and recreational injuries as concrete and particularized to establish standing. Plaintiffs establish injury in fact when they prove "that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *See Friends of the Earth v. Laidlaw Environmental Services*, 528 U.S. 167, 182, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (internal quotations omitted); *State ex rel. Food & Water*

Watch & FreshWater Accountability Project v. State, 10th Dist. Franklin No. 14AP-958, 2016-Ohio-3135, ¶ 67, *aff'd sub nom. State, ex rel. Food & Water Watch v. State*, 2018-Ohio-555, 153 Ohio St. 3d 1, 100 N.E.3d 391; *Am. Canoe Assn. v. City of Louisa Water & Sewer Comm.*, 389 F.3d 536, 541 (6th Cir. 2004).

Plaintiffs' members regularly hike, backpack, bike, swim, kayak, canoe, raft, camp, picnic, fish, hunt, birdwatch, track animals, and take wildflower walks in Ohio's state parks, and many have been doing so for decades. *See, e.g.,* Decl. of Imhoff ¶¶ 6, 10-11 (Compl. exhibit No. 3); Decl. of Bacha ¶ 6-7, 11 (Compl. exhibit No. 4); Decl. of Brunton ¶ 12 (Compl. exhibit No. 5); Decl. of J. Hunkler ¶¶ 17-18, 30 (Compl. exhibit No. 8); Decl. of P. Hunkler ¶ 15, 18-19 (Compl. exhibit No. 9); Decl. of Backs ¶ 15 (Compl. exhibit No. 10); Decl. of McCosker ¶ 6 (exhibit No. 6); Decl. of Curran ¶ 4-5 (exhibit No. 7); Decl. of Justus ¶ 4 (exhibit No. 8). Many members attest to the recreational and aesthetic values of Ohio's state parks and wilderness areas, which are some of the last parts of the state untouched by oil, gas, and other industries. *E.g.,* Decl. of Brunton ¶ 13 (Compl. exhibit No. 5) (explaining that state park visitors are drawn from "highly-populated and industry-rich areas because they want to enjoy the natural environment in our wilderness-type areas and escape the sites, smells, and sounds of industry"); Decl. of Curran ¶ 5 ("There are a lot of psychological benefits for me when I am out in nature. It doesn't feel like I am surrounded by brick and mortar.") (exhibit No. 7); Decl. of Imhoff ¶¶ 7, 10, 13 (Compl. exhibit No. 3); Decl. of J. Hunkler ¶ 4 (Compl. exhibit No. 8); Decl. of P. Hunkler ¶ 15 (Compl. exhibit No. 9); Decl. of Backs ¶ 15 (Compl. exhibit No. 10). Members also attest, based on their own experiences of the traffic, odors, noise, light, and air pollution caused by fracking and other oil and gas development, that the Mandatory Leasing Provision will lessen these aesthetic and recreational values. *E.g.*, Decl. of McCosker ¶ 13 (exhibit No. 6)

(noting the harm to "skinny roads" in Appalachia from fracking traffic); Decl. of Sabo ¶ 11 (Compl. exhibit No. 2) (recalling being able to see a flare from a well pad from 14 miles away); Decl. of Imhoff ¶ 17 (Compl. exhibit No. 3) ("A quiet environment is key to an enjoyable hunting experience, and oil and gas development will increase noise and air pollution, impacting that quiet experience.").

Many members will stop visiting parks, visit less often, or cease to participate in certain activities at parks if they are leased for oil and gas development. Sierra Club member Ms. McCosker attests: "I go to these state parks for quiet and peace; that would be eliminated if construction and oil and gas drilling were to begin." Decl. of McCosker ¶ 12 (exhibit No. 6). Many members express concerns about air and water pollution from leasing and drilling. In particular, Ms. McCosker and Ms. Curran have asthma and are extremely concerned that any increased industrial activity in and around parks will make it physically dangerous for them to visit and recreate in parks, taking away some of the few remaining safe locations they have for recreating. Decl. of McCosker ¶ 11 (exhibit No. 6); Decl. of Curran ¶ 9 (exhibit No. 7); *see also* Decl. of Bacha ¶ 11 (Compl. exhibit No. 4) (expressing concerns about her infant son's exposure to pollution if parks are drilled); Decl. of Imhoff ¶ 15 (Compl. exhibit No. 3) (expressing concerns about hydrocarbon pollution) Decl. of Backs ¶ 20, 37 (Compl. exhibit No. 10) (expressing safety concerns about water pollution from fracking); Compl. ¶ 109 (describing air pollution from fracking). Members who hunt, fish, birdwatch, and track wildlife are extremely concerned about the disruption of habitats from oil and gas drilling. *E.g.,* Decl. of Imhoff ¶ 16 (Compl. exhibit No. 3); Decl. of J. Hunkler ¶¶ 23, 27 (Compl. exhibit No. 8); Decl. of Backs ¶ 37 (Compl. exhibit No. 10); Decl. of Curran ¶ 8 (exhibit No. 7); Decl. of Justus ¶ 11 (exhibit No. 8); *see Lujan*, 504 U.S. at 566, 112 S.Ct. 2130, 119 L.Ed.2d 351 ("It is clear that the person who

observes or works with a particular animal threatened by a federal decision is facing perceptible harm, since the very subject of his interest will no longer exist."). Still others are concerned that increased truck traffic will prevent them from safely accessing the parks, even if they do wish to continue visiting; the access roads for state parks are often narrow, winding, and unpaved, and sharing these roads with oil and gas industry trucks makes them even less safe. *E.g.,* Decl. of Sabo ¶ 11 (Compl. exhibit No. 2); Decl. of Imhoff ¶ 15 (Compl. exhibit No. 3); Decl. of J. Hunkler ¶ 19 (Compl. exhibit No. 8); Decl. of Backs ¶ 25 (Compl. exhibit No. 10); Decl. of McCosker ¶ 13 (exhibit No. 6); Decl. of Curran ¶ 8 (exhibit No. 7). Members base these concerns on their own experiences with oil and gas development, and the well-documented and commonly-known effects of fracking. Compl. ¶¶ 107-112; Section III.C.2.i., *supra*.

iv. Procedural Injuries

Plaintiffs' members also attest that the Mandatory Leasing Provision of H.B. 507 forces leasing without public participation or the consideration of their recreational, aesthetic, educational, property, business, and professional interests in public lands, depriving members of any ability to advocate to protect their interests in public lands. *E.g.*, Decl. of Sabo ¶ 12 (Compl. exhibit No. 2); Decl. of Imhoff ¶¶ 18, 21, 23 (Compl. exhibit No. 3); Decl. of Bacha ¶ 16 (Compl. exhibit No. 4); Decl. of Brunton ¶ 11 (Compl. exhibit No. 5); Decl. of Groff ¶ 27 (Compl. exhibit No. 6); Decl. of J. Hunkler ¶ 32 (Compl. exhibit No. 8); Decl. of P. Hunkler ¶ 39 (Compl. exhibit No. 9); Decl. of Backs ¶ 39 (Compl. exhibit No. 10); Decl. of McCosker ¶¶ 15-16 (exhibit No. 6); Decl. of Curran ¶¶ 11-12 (exhibit No. 7); Decl. of Justus ¶ 13 (exhibit No. 8).

c. The Green Energy Provision injures Plaintiffs' members.

Plaintiffs' members have concrete educational and professional interests that the Green Energy Provision will destroy or diminish. OVA director Ms. Hunkler expressed concern that

electric utilities will use the Green Energy Provision to "ensure that Ohio's reliance on natural gas and other fossil fuels for energy remains permanent." Decl. of J. Hunkler ¶ 10 (Compl. exhibit No. 8). BEN member and advisory board member Ms. Groff expressed concern that electric utilities will use the Green Energy provision "to ensure Ohio's continued reliance on gas and other fossil fuels for energy and to slow our State's adoption of clean, renewable energy sources." Decl. of Groff ¶ 11 (Compl. exhibit No. 6). As environmental advocates, the interests of Ms. Hunkler, Ms. Groff, and other members of plaintiff-organizations in the Green Energy Provision are different from the public at large. *Sheward*, 86 Ohio St. 3d 451 at 469-70, 715 N.E.2d 1062; *see, e.g.,* Decl. of Groff ¶ 5 (Compl. exhibit No. 6); Decl. of J. Hunkler ¶¶ 6-8 (Compl. exhibit No. 8).

d. Ohio caused Plaintiffs' members' injuries by unconstitutionally enacting H.B. 507, and the declaratory and injunctive relief requested will redress their injuries.

Plaintiffs' members attest that Ohio's unconstitutional enactment of H.B. 507 caused the above-described injuries, and that the declaratory and injunctive relief requested will redress these injuries. *Sheward* at 469-70.

Plaintiffs' constitutional injuries are only redressable by a declaration that H.B. 507 is unconstitutional. *E.g.*, *Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335, ¶ 24 (a statute that violates the one-subject rule "must necessarily be held to be invalid in order to effectuate the purpose of the [one-subject] rule"); *Hoover*, 19 Ohio St. 3d at 3, 482 N.E.2d 575 (a statute that violates the three-consideration rule is "void and without legal effect"); *see also State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, 147 Ohio St. 3d 1, 59 N.E.3d 1240, ¶ 49 (holding that a constitutional injury from a statute or other state action is redressable by a declaration that the statute or state action at issue is unconstitutional).

The relief requested will redress Plaintiffs' members' injuries by barring leasing pursuant to the Mandatory Leasing Provision. Invalidating the Mandatory Leasing Provision will return the State's discretion to reject leases and provide the opportunity for consideration of environmental and economic concerns and public participation in leasing, restoring members' ability to meaningfully advocate for their interests in public lands. Decl. of Sabo ¶ 12 (Compl. exhibit No. 2); Decl. of Imhoff ¶ 23 (Compl. exhibit No. 3); Decl. of Bacha ¶ 25 (Compl. exhibit No. 4); Decl. of Brunton ¶ 14 (Compl. exhibit No. 5); Decl. of Groff ¶ 29 (Compl. exhibit No. 6); Decl. of J. Hunkler ¶¶ 32-34 (Compl. exhibit No. 8); Decl. of P. Hunkler ¶¶ 39-41 (Compl. exhibit No. 9); Decl. of Backs ¶¶ 39-41 (Compl. exhibit No. 10); Decl. of McCosker Decl. ¶¶ 15-16 (exhibit No. 6); Decl. of Curran ¶¶ 11-12 (exhibit No. 7); Decl. of Justus ¶ 15 (exhibit No. 8).

A declaration that H.B. 507 is unconstitutional would also remediate the educational and advocacy harm from the Green Energy Provision by preventing any further action using this legal definition of "green energy." Decl. of Groff ¶ 29 (Compl. exhibit No. 6); Decl. of J. Hunkler ¶¶ 32-34 (Compl. exhibit No. 8).

3. This suit is germane to Plaintiffs' organizational purposes and does not require the participation of individual members.

Plaintiffs also meet the second and third requirements for associational standing. Plaintiffs each have missions that involve environmental conservation and education, including the protection of public lands and the promotion of clean energy. *See* Decl. of Bucher at ¶¶ 6-7 (Compl. exhibit No. 1) ("The OEC is an environmental education and advocacy organization * * * It fights for clean air and water, clean energy, and protected public lands."); Decl. of Groff at ¶¶ 9-10 (Compl. exhibit No. 6) (BEN's mission is to "support environmental and environmental justice organizing and to protect Ohio's native forests"); Decl. of J. Hunkler at ¶¶ 8-9 (Compl. exhibit No. 8) (OVA's mission is to educate the public about the "polluting and destructive oil

and gas and petrochemical industries" and to "promote peace, clean energy solutions, and a more harmonious way of life"); Compl. ¶ 31 (Sierra Club's mission is to "protect[] the wild places of the earth" and "advocate[] for a just transition to renewable energy"). Moreover, Plaintiffs rely on the one-subject rule and three-consideration rule to fulfill their missions. *See, e.g.,* Decl. of Bucher at ¶ 18 (Compl. exhibit No. 1); Decl. of Groff at ¶ 16 (Compl. exhibit No. 6); Decl. of J. Hunkler at ¶ 15 (Compl. exhibit No. 8).

Additionally, neither the claims asserted nor the relief requested require the participation of individual members of these organizations in the lawsuit. No individual member of an organization is indispensable to this lawsuit, and the declaratory and injunctive relief requested will not involve the participation of individual members. *See, e.g., United Food & Commercial Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 546, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996) ("individual participation is not normally necessary when an association seeks prospective or injunctive relief for its members"); *Ohio Licensed Beverage Assn.*, 10th Dist. Franklin No. 07AP-490, 2007-Ohio-7147, ¶ 17 (holding that there was "no apparent reason why the claims or relief asserted requires the participation of individual members" in challenge to administrative rule seeking declaratory and injunctive relief).

IV. CONCLUSION

For the reasons stated herein, this Court should grant Plaintiffs' requested relief and issue a declaratory judgment finding H.B. 507 unconstitutional under Ohio's three-consideration rule and one-subject rule, and therefore void.

Respectfully submitted this 5th day of May, 2023 by,

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Counsel for Plaintiff Ohio Environmental Council

INDEX OF EXHIBITS TO BRIEF ON THE MERITS

Exhibit No.	Title
1.	Statement of Rep. Koehler to the House Committee (Feb. 15, 2022)
2.	April 12, 2022 Ohio Senate Journal
3.	May 18, 2022 Ohio Senate Journal
4.	Ohio's Legislative Service Commission's H.B. 507 Final Analysis
5.	Ohio Legislative Service Commission's H.B. 507 Bill Analysis, Version: As Passed by the House
6.	Declaration of Loraine McCosker, Sierra Club Member
7.	Declaration of Christine Curran, Sierra Club Member
8.	Declaration of Zachary Justus, Sierra Club Member

CERTIFICATE OF SERVICE

I, Megan Hunter, certify that a copy of the foregoing **MERIT BRIEF OF PLAINTIFFS OHIO ENVIRONMENTAL COUNCIL, BUCKEYE ENVIRONMENTAL NETWORK, OHIO VALLEY ALLIES, AND SIERRA CLUB** was served on this 5th day of May, 2023 via electronic mail and via the Court's electronic filing system on the following counsel for the Defendants:

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/s/ Megan M. Hunter
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