IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Ohio Environmental Council 556 East Town Street Columbus, OH 43215, SOBE Concerned Citizens, 525 Glacierview Drive Youngstown, OH 44509, Freshwater Accountability Project P.O. Box 473 Grand Rapids, OH 43522, Donna Ballinger 3014 Ottawa Street Middletown, OH 45044, and Sierra Club 2101 Webster St. Suite 1300 Oakland, CA 94612, Plaintiffs, -vs- The State of Ohio c/o Ohio Attorney General David Yost 30 E. Broad St., 14th Floor Columbus, OH 43215, and John Logue, Director, in his official capacity Ohio Environmental Protection Agency, 50 W Town St, Suite 700 Columbus, OH 43215, Defendants.	)	Case No. _____ JUDGE: **COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT**

COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT

The Ohio Environmental Council, SOBE Concerned Citizens, Freshwater Accountability Project, Donna Ballinger, and Sierra Club submit the following complaint for declaratory, preliminary, and injunctive relief:

NATURE OF THE CASE

1. This case concerns an unconstitutional action by the Ohio legislature that would deprive all Ohio communities and residents of the protections of Ohio's Air Nuisance Rule (ANR), Ohio Adm. Code 3745-15-07, and prevent them from using community gathered air monitoring data as evidence of air pollution violations.
2. These provisions were included in the State's budget bill for fiscal years 2026-27. Since none of the provisions bear any relationship to budget appropriations, they must be struck down under the Ohio Constitution.
3. Article II, Section 15(D) of the Ohio Constitution states that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." This constitutional provision is also known as the One Subject Rule.
4. The One Subject Rule exists to ensure the public is aware of legislative policy proposals and to prevent concealment of legislation as purported amendments in unrelated legislation.
5. The introduced version of H.B. 96, 136th General Assembly, titled "Make state operating appropriations for FY 2026-27," contained Ohio's state operating appropriations for FY

2026-27 and contained over 4,000 pages, covering various topics related to the subject of funding. *See* Ex. 1, H.B. 96, as Introduced.

6. The purpose of the biennial budget is to determine utilization of governmental resources and how budgetary funds are to be disbursed.
7. In the final enacted version of H.B. 96, revisions were added in the middle of the bill on pages 1432 through 1449, whereby legislators amended R.C. Chapter 3704 related to air quality and enforcement. The revisions have no bearing on fiscal or budgeting determinations for the State. *See* Ex. 4, H.B. 96.
8. The revision to R.C. 3704.0310 denies Ohioans the ability to enforce the ANR, codified at Ohio Admin. Code 3745-15-07, which prohibits emission of "smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property" (the "ANR Rescission").
9. Revisions to R.C. 3704.01, R.C. 3704.09, R.C. 3704.03, and R.C. 3704.031 (the "Community Air Monitoring Prohibition") also strip Ohioans of their ability to use community air monitoring data to protect themselves from noxious air pollution, including air nuisances. Specifically, R.C. 3704.01(H), and R.C. 3704.09(B)-(C) define community air monitoring and revise corresponding provisions in a manner that restricts the public, the director of the Ohio Environmental Protection Agency ("OEPA"), and local air pollution control authorities from using community air monitoring data to support fines, penalties, violations, lawsuits, and judicial, regulatory, or administrative enforcement actions. R.C. 3704.03(I)-(J) and R.C. 3704.031(B) also prohibit the director of OEPA from imposing a condition in a permit requiring community air monitoring and from contracting

with a private agency for the establishment, operation, or maintenance of community air monitoring when the data would be used for enforcement purposes.

10. The ANR Rescission and Community Air Monitoring Prohibition are referred to, collectively, as the "Air Pollution Amendment" herein.
11. The Air Pollution Amendment violates the One Subject Rule and deprives Plaintiffs of their constitutionally protected right to participate in the legislative process. The passage of the Air Pollution Amendment frustrates the Plaintiffs' missions of protecting the environment and public health, both for themselves and others.
12. The Plaintiffs in this matter, and their members, are directly harmed by the Air Pollution Amendment that was passed in violation of the One Subject Rule.

JURISDICTION AND VENUE

13. As this is an action for declaratory relief under Chapter 2721 of the Ohio Revised Code, this court has jurisdiction pursuant to Ohio Revised Code 2721.02(A).
14. Venue in this court is proper under Civ. R. 3(C)(2)-(3) and Civ. R. 3(C)(6) because the General Assembly adopted H.B. 96 in Franklin County, Plaintiff Ohio Environmental Council's principal place of business is in Franklin County, and Defendants State of Ohio and OEPA have their principal places of business in Franklin County.

PARTIES

15. Plaintiffs are organizations and an individual aggrieved by the Air Pollution Amendment and seek relief through the injunction of its provisions and ultimately, severance from H.B. 96.

16. SOBE Concerned Citizens ("SOBE CC") was founded in 2021 due to concerns surrounding the construction and operation of a pyrolysis plant in Youngstown and the harm of air pollution in the area. SOBE CC continues to raise awareness surrounding air quality issues and monitoring efforts in Youngstown, Ohio.
17. SOBE CC brings this action on its own behalf and on behalf of its members, including Lynn Anderson, Kayshia Washington, and Valeria Goncalves.
18. SOBE CC members Lynn Anderson, Kayshia Washington, and Valeria Goncalves all live in Youngstown, Ohio and are concerned about, and suffer from, air pollution impacts.
19. Ms. Anderson, Ms. Washington, and Ms. Goncalves all have community air monitors installed through a grant received by SOBE CC. They intend to use the data collected to enforce air quality laws in the event industries pollute to an unacceptable level.
20. Ms. Anderson and Ms. Washington have suffered health impacts as a result of air pollution from neighboring facilities. Ms. Anderson, Ms. Washington, and Ms. Goncalves intend to use the ANR to remedy those nuisances and ensure Clean Air Act compliance.
21. Ms. Anderson suffers from asthma and is concerned about the risk of cancer due to emissions from surrounding industrial facilities. She often encounters fumes and other noxious substances from the Vallourec steel plant migrating from the other side of town. Ms. Anderson has asthma, and air pollution can interfere with her ability to breathe. She is concerned that her health may continue to be harmed, adversely affected, and irreparably injured by the air pollution emissions coming from the steel plant. She has made reports several times to OEPA with concerns about air quality, in part thanks to the air monitor readings she has been able to record.

22. Ms. Anderson is particularly concerned about the restriction on community air monitoring because there is only one OEPA air monitor in her community. This existing air monitor is located at Youngstown State University approximately three miles away from Ms. Anderson's residence. The existing air monitor detects only PM 2.5, Ozone, SO2, and PM10 and does not monitor CO, NO2, Pb/Metals, and Toxics-VOCs.
23. Ms. Goncalves lives approximately two blocks away from the Vallourec Steel Plant. She often smells metal, natural gas, and other fumes in and around her residence that emanate from the nearby steel production. She often stays indoors because of the odors and air pollution concerns when she sees elevated levels of pollutants on her air monitor.
24. Ms. Goncalves believes the air emissions from the surrounding facilities have contributed to a decrease in the value of her and her neighbors' properties and to the economic downturn of her community.
25. Ms. Goncalves has used data collected from her air monitor to report violations to OEPA, calling them to report unsafe levels of pollution. Several of her neighbors have also used her data to call OEPA when they have noticed odors.
26. Ms. Washington's home is approximately one mile from the Vallourec steel plant. She has been diagnosed with fibroids, requiring surgery, ultimately resulting in a hysterectomy. She also has allergies and regular sinus infections.
27. The Community Air Monitoring Prohibition preempts the intended purpose of Ms. Washington's, Ms. Anderson's, and Ms. Goncalve's air monitoring data—enforcement.
28. Plaintiff Sierra Club is a national nonprofit organization of approximately 611,500 members nationwide dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and

resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment and to using all lawful means to carry out these objectives. The Ohio Chapter of the Sierra Club has over 17,000 members, including members whose physical, recreational, and aesthetic interests are harmed by air pollution and who advocate to improve air quality in Ohio.

29. Sierra Club brings this action on its own behalf and on behalf of its members, including Sierra Club members Marilyn Wall and Donna Ballinger.

30. Sierra Club has utilized the ANR in legal actions in the past and intends to use it in the future, should it remain in the State Implementation Plan ("SIP"). For example, in October 2014, Sierra Club sent a Notice of Intent to Sue under the Clean Air Act to AEP Generation Resources, Inc., then owner-and-operator of the Gavin Power Plant in Cheshire, Ohio and alleged the facility violated nuisance rules.

31. Sierra Club was also preparing to bring litigation pursuant to the ANR prior to the removal of the rule from Ohio's SIP in 2020.

32. If the ANR is removed from Ohio's SIP again, neither Sierra Club nor its members will be able to bring citizen enforcement actions regarding air pollution nuisances experienced by their members.

33. Plaintiff Donna Ballinger, who is also a Sierra Club member, lives in Middletown, Ohio and is concerned about and suffers from air pollution.

34. Ms. Ballinger's home is just hundreds of feet from an iron and steel manufacturing plant. For the past several years, Ms. Ballinger has faced near-daily exposure to air pollution emitted from the plant, which causes her to suffer health impacts. These injurious emissions and health impacts are ongoing.

35. Ms. Ballinger joined the Sierra Club in 2017 and since that time has taken steps to enforce and otherwise use the ANR to protect herself, her family, and her community. She, along with Sierra Club, sent a notice of intent to file a Clean Air Act citizen suit against the iron and steel plant near her home for violations, including violations of the ANR. The plant entered into a consent decree with the State of Ohio as a result. Ms. Ballinger sent a second citizen suit notice letter in 2018 because the consent decree did not abate nuisance conditions. Despite a second order from OEPA, the nuisance conditions in the vicinity of the plant continue and are ongoing.
36. Sierra Club member Marilyn Wall lives in Cincinnati, Ohio and is concerned about and suffers from air pollution.
37. Ms. Wall has been a member of the Sierra Club since 1978. Over the past 40 years, she has dedicated a substantial amount of her time toward protecting the natural environment and the public health in southwest Ohio, including Butler County and the metropolitan Cincinnati area.
38. Since the 1990s, Ms. Wall has been involved in efforts to enforce the ANR. For example, she has worked with several neighborhood groups to secure changes that reduced air pollution from local industrial plants through the use of the ANR and has participated in litigation to enforce the ANR.
39. Ms. Wall has worked with Ms. Ballinger to enforce the ANR against the iron and steel plant in Middletown since 2017. Because of her work protecting the Middletown community, Ms. Wall must be regularly exposed to air pollution from the iron and steel plant, which is highly irritating to her sinuses, and causes her to be concerned for her health.

40. Ms. Ballinger and Ms. Wall have worked to ensure the ANR remains enforceable by citizens. They, along with Sierra Club and Ohio Environmental Council, appealed U.S. EPA's unilateral removal of the ANR from the SIP to the U.S. Court of Appeals for the Sixth Circuit. They both advocated in support of U.S. EPA's 2024 proposal to reinstate the ANR into Ohio's SIP.

41. After the ANR was reinstated in early 2025, Ms. Ballinger and Ms. Wall resumed their efforts to enforce the ANR against the iron and steel plant in Middletown, Ohio.

42. But for the ANR Rescission, and other attempts to remove the ANR from federal law, Ms. Wall, Ms. Ballinger, and the Sierra Club would be enforcing the ANR to abate the nuisance conditions impacting Ms. Ballinger and her community. Instead, they must seek to undo the ANR Rescission so that OEPA does not seek to remove the ANR from Ohio's SIP. If the relief sought herein is granted, Sierra Club, Ms. Ballinger and Ms. Wall will resume their efforts to enforce the ANR.

43. As part of her efforts to enforce the ANR, Ms. Ballinger has used portable air monitoring technology to measure and collect data on the levels of air pollution at her home and in her community. She frequently measures levels of ultrafine particulate matter at levels scientifically demonstrated to be injurious to both healthy and vulnerable populations. Ms. Wall has also used the portable technology to measure air pollution levels in Middletown. Ms. Ballinger and Ms. Wall have also participated in other air monitoring and have plans to participate in another upcoming community air monitoring project in Middletown.

44. The Community Air Monitoring Prohibition also harms Sierra Club, Ms. Ballinger, and Ms. Wall by taking away the ability to use the air pollution data they have collected as evidence of the nuisance conditions caused by Middletown Works emissions.

45. Plaintiff Ohio Environmental Council ("OEC") is a non-profit organization headquartered in Columbus, Ohio with a mission to protect air, land, water, and democracy for all who call Ohio home. OEC has thousands of members across Ohio. This includes members who experience direct impacts from air pollution in their communities and who work to prevent negative impacts on the environment and public health, both individually and through their membership and trust in OEC's advocacy.

46. OEC has members who are greatly concerned about air quality, and OEC has been involved in air quality advocacy both at the state and federal levels on their behalf, including in litigation to protect the Air Nuisance Rule. Once H.B. 96 went into effect and OEPA issued the proposed rulemaking, OEC submitted comments opposing removal of the ANR. Because OEPA has a history of declining to bring litigation or undertake other enforcement measures, organizations like OEC are critical for notifying the public about proposed legislation impacting their interests.

47. OEC brings this action on its own behalf and on behalf of its members, including Kenneth Apacki and Dr. Tracee Laing.

48. OEC members Kenneth Apacki and Dr. Tracee Laing reside in Granville, Ohio, within Licking County, and are concerned about pollution from new industrial activity near their community.

49. Mr. Apacki is a mechanical engineer with decades of experience in multiple industries. Dr. Laing is a family practice physician and understands the health implications relating to environmental factors. Dr. Laing has seen how air pollution from technological industries has impacted other communities and their health.

50. Over the past few years, a number of new industrial facilities, including data centers and an Intel chip manufacturing facility, have been approved or proposed for construction in Granville, with some a few miles from Mr. Apacki's home.

51. Mr. Apacki and Dr. Laing collaborated with researchers from the Ohio State University and engineers from Google on a project that has installed 16 air monitors across their community. The monitors collect data and transmit it to a publicly available website (SimpleAQ.org).

52. Each of the monitors uses internet connection to record and store data and will continue to do so for at least 4 to 6 hours even if it loses internet connection. The monitors measure particulate matter, volatile organic compounds, nitrogen oxide levels, humidity, pressure, temperature, and the GPS tracks their location.

53. The total value of monitors put in service by Mr. Apacki, Dr. Laing, and their volunteers is approximately $7,000, not including donated items and volunteer time. The monitors Mr. Apacki and Dr. Laing currently use cost $185 per monitor, with additional chips needed for specific pollutants costing up to an additional $130 per monitor.

54. Mr. Apacki and Dr. Laing purchased these monitors in lieu of the EPA-grade monitors, which cost $50,000 each and, if they had to rely on the EPA-grade monitors, the project would have been impossible.

55. Mr. Apacki and Dr. Laing specifically installed these monitors to gather baseline and continuous air quality data to understand what impacts the new industries will have on their community's air quality and pollution levels, with the intention that this data could then be used in enforcement if these industrial developments are found to negatively affect their community's air quality.

56. Both OEC members intend to use this data to determine if enforcement lawsuits are needed and if they are, to file notices and bring lawsuits if violations are not enforced. They also intend to use the data for permit comments and other engagements with state agencies and governmental entities if the data reflects harmful effects on their community's air quality.
57. Both Mr. Apacki and Dr. Laing know that revoking their ability to use community air monitoring data will prevent them from seeking enforcement action, if the collected data presents evidence relevant for such a claim, and essentially renders their monitoring data project meaningless.
58. Mr. Apacki was not provided with any notice of the new limitations on community air monitoring data due to the implementation of H.B. 96, and he is now precluded from seeking redress for air pollution using self-procured air monitoring systems and his efforts are rendered void. Due to the failure to provide notice of the Air Pollution Amendment, Mr. Apacki was not able to testify against the Community Air Monitoring Prohibition to protect his interests.
59. Plaintiff Freshwater Accountability Project ("Freshwater Accountability") is a nonprofit organization that protects Ohio communities from industrial pollution through community awareness and enforcing environmental laws. Freshwater Accountability is concerned about air pollution affecting their mission and members and has educated numerous residents about air quality.
60. Freshwater Accountability brings this action on its own behalf and on behalf of its members, including Leatra Harper.

61. Freshwater Accountability member Ms. Harper lives in Bowling Green, Ohio, but previously lived in Guernsey County, where she was exposed to hydraulic fracturing in 2011.
62. In Guernsey County, she lived near unconventional oil and gas development, including frack pads, compressor stations, and pipelines and she and her husband suffered health impacts from air pollution, including burning eyes and headaches.
63. Ms. Harper has S-pod air monitors installed through a grant Freshwater Accountability received from the U.S. EPA. Freshwater Accountability's monitors have been active for two years. They share their data with Region 3 of the U.S. EPA regularly and monitor on both the Ohio and West Virginia sides of the Ohio River Valley. Neither OEPA nor U.S. EPA has any monitors near Freshwater Accountability's monitors, to the best of Ms. Harper's knowledge.
64. Freshwater Accountability also installed PurpleAir monitors around the site to monitor a proposed PTT Global Cracker Plant from 2018-2023.
65. Freshwater Accountability has collected air monitoring data with the specific intent to hold industrial polluters accountable for endangering human health or the environment with their monitors. The Community Air Monitoring Prohibition destroys their ability to protect their community from harmful air conditions.
66. As Director of Freshwater Accountability, Ms. Harper intends to use the ANR to ensure the Williams Compressor Station in Salem Township, Ohio complies with the Clean Air Act, though the rule was rescinded in 2020 before she could use it.

67. As Director of Freshwater Accountability, Ms. Harper signed on to the law firm AltmanNewman Co., LPA's April 24, 2024, comment supporting the restoration of the ANR.

68. Ruling the Air Pollution Amendment unconstitutional and severing its provisions from H.B 96 would redress Plaintiffs' injuries by ensuring the ANR remains a tool for the public to protect itself from dangerous public nuisances when the OEPA does not act and ensuring that community air monitoring data is able to be used for enforcement purposes.

69. Plaintiffs request preliminary and permanent injunctive relief enjoining the enforcement of the Air Pollution Amendment, preventing the State from moving forward with the removal of the ANR and permitting Ohioans to continue using their community air monitoring data for enforcement actions. An injunction is necessary to prevent irreparable harm to the Plaintiffs and their members by remedying the violation of their constitutional rights and restoring their ability to use the protective tools impacted by the Air Pollution Amendment.

70. The organizational Plaintiffs were also deprived of the opportunity to fully educate their membership about the Air Pollution Amendment because it was slipped into what ultimately was passed as 3,000+ page budget bill unrelated to air quality or the environment, an action which violated the One Subject Rule.

71. Defendant OEPA is a state agency charged with protecting Ohio's air, land, and water resources, and public health across the state. OEPA is responsible for implementing the Air Pollution Amendment.

72. Defendant State of Ohio is a sovereign entity on whose behalf H.B. 96 was enacted, passed by the Ohio General Assembly, and signed by the Governor with provisions that violate the One Subject Rule.

FACTS COMMON TO ALL CLAIMS

The History of Ohio's Air Nuisance Rule

73. Since 1894, Ohio courts have recognized air nuisances like smoke, soot, and gases. The ANR carries this precedent into modern regulation. Removal of the ANR through a last-minute addition to the State's budget bill strips a critical safeguard—federal enforcement by residents—and ignores over a century of Ohio precedent.

74. The ANR was deliberately included in the State of Ohio's first SIP, which was approved by U.S. EPA in 1972 and again in 1974 (after the first submittal was vacated for unrelated reasons). *See* 37 Fed. Reg. 10842, 10886-87 (May 31, 1972) and 39 Fed. Reg. 13,539 (Apr. 15, 1974).

75. Because the ANR is in Ohio's SIP, the Clean Air Act ("CAA") allows Ohio citizens to enforce that Rule in federal court by filing citizen suits under 42 USC § 7604.

76. In 1984, the ANR was revised to "includ[e] an exemption for sources of odor which are not currently regulated under other portions of the SIP" and to remove references to "comfort" and "related terms and phrases." 49 Fed. Reg. 32,181, 32,181 (Aug. 13, 1984). This revision deliberately aligned the ANR with criteria pollutants standards to ensure it was directly tied to the National Ambient Air Quality Standards ("NAAQS"). The amended ANR was re-approved by the U.S. EPA as part of the SIP.

77. The ANR was deliberately included and reapproved as part of Ohio's SIP on multiple occasions over the ensuing decades. For example, OEPA made stylistic changes to the ANR as part of the five-year state regulatory review process under R.C. Chapter 119 that were effective in July 2015. During this review process Ohio did not suggest the ANR was

included in the SIP in error, and OEPA specifically rejected industry comments urging its removal.

78. That all changed in November 2020 when U.S. EPA, at the secret request of a law firm acting on behalf of an Ohio polluter—a company that was then facing a federal citizen suit for alleged violations of the ANR—unilaterally and unlawfully removed the Rule from Ohio's SIP.

79. Because the U.S. EPA's action removing the ANR was factually and legally flawed, Donna Ballinger, Marilyn Wall, Ohio Environmental Council, and Sierra Club (petitioners) sought review from the United States Court of Appeals for the Sixth Circuit. *See Sierra Club v. EPA*, Case No. 21-3057 (6th Cir. filed Jan. 18, 2021).

80. After petitioners explained in briefing the numerous legal and factual inaccuracies provided by industry, U.S. EPA asked for a remand to reconsider its removal of the ANR from the Ohio SIP. The Sixth Circuit agreed with Petitioners and granted the petition at *Sierra Club v. United States EPA*, 60 F.4th 1008 (6th Cir. 2023), remanding the action to U.S. EPA to review whether the agency had properly removed the ANR from the SIP.

81. One such inaccuracy demonstrated by petitioners in the Sixth Circuit action was the incorrect assertion that the ANR is not enforceable by citizens in court. The Sixth Circuit rejected this, finding that the ANR "can be (and has been) used in CAA citizen suits." *Sierra Club v. United States EPA,* 60 F.4th 1008, 1018 (6th Cir. 2023). The Sixth Circuit also rejected the idea that citizens can combat ANR violations in state court, finding "State nuisance lawsuits are not a sufficient substitute for CAA citizen suits." *Id.* at 1019-20.

82. After the Sixth Circuit action and remand, the U.S. EPA reinstated the ANR in early 2025, finding it had erred in removing the ANR in 2020 because it had failed to consider that the

ANR was a tool to enforce NAAQS under the CAA, and it did not conduct a required anti-backsliding analysis. 89 Fed. Reg. 13304 (Feb. 22, 2024); 90 Fed. Reg. 6811 (Jan. 21, 2025).

83. The restoration of the ANR to the Ohio SIP was the direct result of advocacy by Sierra Club, OEC, Ms. Ballinger, and Ms. Wall in the Sixth Circuit.

The Introduction of H.B. 96

84. On February 11, 2025, H.B. 96 was introduced in the Ohio House. *See* Ex. 1, H.B. 96, as Introduced.

85. The purpose of H.B. 96 is to establish budgeting and allocations for government operations in fiscal years 2026-2027 for Defendant State of Ohio and, as introduced, was over 4,000 pages long.

The ANR Rescission

86. On June 10, 2025, the ANR Rescission was added to the legislation, and passed by the Senate on June 11, 2025. *See* Ex. 3, H.B. 96, June 11, 2025 Version.

87. The ANR Rescission amended R.C. 3704.0310 to read:

> (A) As used in this section:
>
> > (1) "Air nuisance rule" means a rule adopted by the director of environmental protection that declares any of the following to be a public nuisance:
> >
> > (a) The emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property;
> >
> > (b) The emission or escape into the open air from any source or sources of odors whatsoever that is subject to regulation under Chapter 3704. of the Revised Code and is operated in such a manner to emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property;

(c) Activities that are substantially similar to those described in divisions (A)(1)(a) and (b) of this section.

(2) "State implementation plan" means the state implementation plan regarding national ambient air quality standards required to be submitted under section 110 of the "Clean Air Act," 42 U.S.C. 7410.

(B) If the state implementation plan includes an air nuisance rule, the director of environmental protection shall remove the air nuisance rule from the plan and take such steps as are necessary to do so.

On and after the effective date of this section, the director shall not include an air nuisance rule in the state implementation plan or rely upon an air nuisance rule to implement or enforce ambient air quality standards adopted pursuant to the federal Clean Air Act.

88. Under H.B. 96, the removal of the ANR from Ohio's SIP deprives Ohio residents of their ability to file federal citizen suits to enforce the ANR against industrial polluters for emissions endangering public health and safety, when OEPA cannot or will not enforce air nuisance laws. Citizen enforcement has been an integral part of Ohio's State Implementation Plan for over 50-years, except for the 4-year period when it was illegally removed from that plan.

The Community Air Monitoring Prohibition

89. The Community Air Monitoring Prohibition included in H.B. 96 significantly limits OEPA's and Ohio residents' ability to use community air monitoring data for enforcement purposes:

a. H.B. 96 amends R.C. 3704.01(H) by adding a definition of community air monitoring, and reads:

(H) "Community air monitoring" means any measurement or quantification of ambient air concentrations of an air contaminant, including both one-time monitoring events and multi-sampling events. "Community air monitoring" does not include any of the following:

(1) Monitoring conducted using monitoring devices identified in the most recent approved version of the United States environmental protection

agency's document entitled "List of Designated Reference and Equivalent Methods";

(2) Monitoring conducted using monitoring devices identified in the most recent approved version of the United State environmental protection agency's document entitled "Air Monitoring Network Plan" that are installed and operated in accordance with 40 C.F.R. 58 by the environmental protection agency or by a local air pollution control authority under the terms of a delegation agreement entered into under section 3704.111 of the Revised Code;

(3) Any measurement or quantification of ambient air concentrations of an air contaminant that is specifically identified or described in and either required or allowed to be used for the particular air contaminant source or source category for which it is being used under any of the following:

(a) The federal Clean Air Act;

(b) Any implementation plan promulgated or approved before the effective date of this amendment;

(c) Any permit, variance, or order issued before the effective date of this amendment or any renewal thereof after the effective date of this amendment;

(d) Any other permit, variance, or order issued on or after the effective date of this amendment, if the use of the measurement system, testing equipment, tool, or process was proposed, requested, or voluntarily accepted by the air contaminant source or sources subject to that permit, variance, or order.

(4) Any monitoring system installed and used by the environmental protection agency or by a local air pollution control authority under the terms of a delegation agreement entered into under section 3704.111 of the Revised Code, including, but not limited to, all of the following:

(a) A monitoring system used to measure polyfluoroalkyl substances (PFAS) in ambient air or precipitation, using a technique approved for that purpose by the United States environmental protection agency;

(b) A monitoring system used to measure contaminants identified by the American conference of governmental industrial hygienists using methodologies consistent with the procedures identified under method guidelines 1 and 2 of the United States occupational safety and health administration;

(c) A monitoring system used to investigate and respond to any accidents, spills, or releases under the authority of any emergency response program developed and implemented under Chapter 3750.

of the Revised Code or Chapter 3745-104 of the Administrative Code;

(d) A monitoring system used to investigate any release that exceeds the reporting quantities under 40 C.F.R. 302

(e) A monitoring system used to measure any of the compounds identified under section 112(b) of the federal Clean Air Act or Chapter 3745-114 of the Administrative Code;

(f) A monitoring system used under the national atmospheric deposition program;

(g) A monitoring system used to measure contaminants consistent with the "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries," 40 C.F.R. 63, Subpart CC.

b. R.C. 3704.09, which adds restrictions on using community air monitoring data for enforcement, permitting, and rulemaking, reads, in part:

(B) Data produced from community air monitoring shall not be used as evidence to support either of the following:

(1) A fine, penalty, or notice of violation against any person for violations of or noncompliance with the federal Clean Air Act, this chapter, the rules adopted thereunder, or any other applicable law, rule, or regulation for which the state has primary enforcement authority;

(2) An administrative, regulatory, or judicial enforcement action, lawsuit, or proceeding for violations of or noncompliance with the federal Clean Air Act, this chapter, the rules adopted thereunder, or any other applicable law, rule, or regulation for which the state has primary enforcement authority.

(C) Data produced from community air monitoring shall not be considered or relied upon by the environmental protection agency or a local air pollution control authority in any rulemaking action or in any action relating to the issuance of an installation permit or operating permit unless such consideration or reliance is requested by the owner or operator of the air contaminant source requesting the permit.

c. R.C. 3704.031, which restricts the director of OEPA from requiring community air monitoring prior to issuing permits, was amended to read, in part:

(B) Prior to the issuance or renewal of a permit or a variance under division (F), (G), or (H) of section 3704.03 of the Revised Code, the director shall not require an applicant to conduct community air monitoring.

d. R.C. 3704.03(I)-(J) is amended, in part, to read:

> (I) [...] For sources where a specific monitoring, record-keeping, or reporting requirement is specified for a particular air contaminant from a particular air contaminant source in an applicable regulation adopted by the United States environmental protection agency under the federal Clean Air Act or in an applicable rule adopted by the director, the director shall not impose an additional requirement in a permit that is a different monitoring, record-keeping, or reporting requirement other than the requirement specified in the applicable regulation or rule for that air contaminant except as otherwise agreed to by the owner or operator of the air contaminant source and the director. [...]
>
> (J) Establish, operate, and maintain monitoring stations and other devices designed to measure air pollution and enter into contracts with any public or private agency for the establishment, operation, or maintenance of such stations and devices, except that the director shall not enter into contracts with any private agency for the establishment, operation, or maintenance of community air monitoring where the intended use of the data produced by such monitoring stations and other devices would violate divisions (B) or (C) of section 3704.09 of the Revised Code;

90. The Community Air Monitoring Prohibition expressly and arbitrarily excludes community air monitoring from enforcement and permitting actions, as well as rulemakings, by OEPA and Ohioans.

91. Community air monitoring is an integral part of enforcement of the CAA and protection of the public, including Plaintiffs, from poor air quality and nuisances. Reasonably priced community air monitors fill the gaps where U.S. EPA-grade monitors are not located. These "monitoring deserts" are common in fenceline communities like Ms. Ballinger's. Without data from community air monitoring programs like the community-led programs undertaken by Plaintiffs, significant gaps will exist in air pollution data for geographic regions of Ohio lacking U.S. EPA-certified monitors.

92. Unless the Community Air Monitoring Prohibition is struck down, the ability of Plaintiffs and community members to use the data they collect for its intended purpose will be impaired, and those seeking legal action for pollution detected by their community air monitors, including using it to bring a citizen suit to enforce the ANR, will not have their data available for use to support such actions. Absent community air monitoring data,

OEPA too will be significantly hindered in its ability to remedy air pollution in monitoring deserts, leaving industries free to pollute without recourse, creating air nuisances and violating the CAA in the process.

H.B. 96 is passed and signed into law containing the Air Pollution Amendment in violation of the One Subject Rule

93. H.B. 96 was passed on June 25, 2025. *See* Ex. 4, H.B. 96.

94. On April 9, 2025, H.B. 96 passed the House and contained the Community Air Monitoring Prohibition. *See* Ex. 2, H.B. 96, April 9, 2025 Version.

95. On June 10, 2025, the Senate Finance Committee finished a revised version of H.B. 96, and, for the first time, included the ANR Rescission as part of H.B. 96.

96. On June 11, 2025, the Senate passed H.B. 96 as amended (*see* Ex. 3, H.B. 96, June 11, 2025 Version), but the House rejected the Senate's amended version, triggering a conference committee to resolve the disagreement.

97. On June 25, 2025, the Conference Committee reconciled the two versions, which ultimately contained the Air Pollution Amendment, just 15 days after the ANR Rescission was added.

98. Governor DeWine signed H.B. 96 on June 30, 2025, making the Air Pollution Amendment effective on September 30, 2025. Governor DeWine could have vetoed the unconstitutional Air Pollution Amendment but did not.

99. Once finalized, H.B 96 ultimately became a 3,156 page budget bill with no relationship to air quality or the environment. *See* Ex. 4, H.B. 96. It includes the Air Pollution Amendment at issue here, which has no impact on State operating appropriations.

100. Because Ohio residents had no reason to expect provisions concerning air quality and the environment to be buried in a bill pertaining to state operating appropriations, they were deprived of the opportunity to testify about the Air Pollution Amendment, including no opportunity to testify on singular legislation that included the Air Pollution Amendment under one subject pertaining to air pollution.

101. Moreover, the ANR Rescission was added only *after* public hearings were held on the bill, which means the public had zero opportunity to comment on that provision, even if they had known the ANR Rescission was included. Only certain individuals were able to provide "invited comments" at one of the two Conference Committee hearings that occurred immediately before H.B. 96's final passage.

102. On August 5, 2025, OEPA started the process to remove the ANR from Ohio's SIP, as required by the ANR Rescission.

103. On October 6, 2025, Plaintiffs and Plaintiffs' counsel jointly submitted public comments to Defendant OEPA in opposition of the proposed removal of the ANR from Ohio's SIP. *See* Ex. 5, *Joint Comments on Draft SIP Removal of OAC 3745-15-07* (Oct. 6, 2025).

104. While Defendant OEPA has started the process to remove the Air Nuisance Rule from the SIP pursuant to the ANR Rescission, the ANR will remain federally enforceable unless and until the U.S. EPA approves the SIP change.

105. The restrictions on community air monitoring data usage contained in the Community Air Monitoring Prohibition were effective on September 30, 2025, and Ohioans, as well as OEPA, can no longer rely upon that data to redress CAA violations, including ANR violations.

Irreparable Harm to Plaintiffs Resulting from the Air Pollution Amendment

106. Plaintiffs will suffer irreparable harm from the Air Pollution Amendment.

107. The ANR Rescission strips a statutory right that allows citizens to bring necessary lawsuits in federal court against industrial polluters for emissions causing an air nuisance, endangering public health and safety—a protection the CAA provides.

108. Fenceline communities will be especially impacted by the ANR Rescission, including Ms. Ballinger, who suffers along with her community from the impacts of neighboring industrial facilities' harmful emissions.

109. With the ANR intact, Plaintiffs have been able to seek protection for themselves, along with their members and communities, from industrial actors that regularly violate air quality standards, and have used it repeatedly.

110. With the ANR placed in jeopardy, Plaintiffs, as well as their members, will suffer irreparable harm, having lost a critical legal mechanism to protect themselves and their communities from air pollution nuisances.

111. Absent relief from this court, the ANR Rescission will force the director of OEPA to continue the already-in-progress process to request approval from U.S. EPA to remove the ANR from Ohio's SIP.

112. Further, the Community Air Monitoring Prohibition restricts OEPA's, Plaintiffs' and all Ohio residents' ability to use community air monitoring data for enforcement purposes, therefore restricting their ability to protect themselves from industrial pollution. Plaintiffs use data from community air monitors that monitor levels of harmful emissions and pollutants. Plaintiffs' purpose in collecting that data is to ensure emissions and pollutants stay below levels that are harmful to human health, and to support enforcement actions

should the situation necessitate it. By prohibiting the use of community air monitoring to support enforcement actions, such as ANR citizen suit claims, the Community Air Monitoring Prohibition frustrates the purpose of Plaintiffs' air monitors, rendering them effectively useless.

113. Plaintiffs' inability to use community air monitoring data to encourage enforcement actions not only frustrates the purpose of their monitors but also creates a potential risk of worsened air quality and unchecked Clean Air Act violations. Elevated levels of gases, dirt, debris, fumes, vapors, and particulate matter all can exacerbate pre-existing health conditions, such as asthma, from which SOBE Concerned Citizens member Lynn Anderson suffers.

OHIO CONSTITUTIONAL REQUIREMENTS

Violations of One Subject Rule

114. Section 15(D) of Article II of the Ohio Constitution provides that "no bill shall contain more than one subject, which shall be clearly expressed in its title" and is commonly referred to as the One Subject Rule.

115. The One Subject Rule exists specifically to prevent what has occurred here, where provisions pertaining to air quality (the Air Pollution Amendment) have been buried in an otherwise unrelated 3,000-plus page budget bill.

116. The purpose of H.B. 96, as evidenced by its short-title, is to "make state operating appropriations for fiscal years 2026-27." The Air Pollution Amendment is not related to state operating appropriations and has no impact on the State's budget. Therefore, the Air Pollution Amendment is an unconstitutional violation of the One Subject Rule.

FIRST CLAIM FOR RELIEF

Declaratory Judgment – The Air Pollution Amendment in H.B. 96 Violates the One Subject Rule of Article II, Section 15(D) of the Ohio Constitution

117. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 116 above as if fully rewritten herein and additionally allege the following:

118. Section 15(D), Article II of the Ohio Constitution provides:

> (D) No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revised or amended unless the new act contains the entire act revived, or the section sections amended, and the section or sections amended shall be repealed.

119. H.B. 96's primary purpose is to establish and allocate the budget for Ohio's state government. The Ohio General Assembly included the Air Pollution Amendment, which pertains to air quality, amongst provisions concerning the subject of state budget allocations, for no discernible, practical, rational, or legitimate reason.

120. The Air Pollution Amendment is distinct and separate from the State's requirement to pass a balanced budget containing funding priorities of the state government under H.B. 96. There is no common purpose or relationship between the Air Pollution Amendment and the budgetary subject matter of H.B. 96. It is apparent the Air Pollution Amendment was tactically included in H.B. 96 to assure the Amendment's passage, including the ANR Rescission and the Community Air Monitoring Prohibition, where it might not have passed individually.

121. Accordingly, the Air Pollution Amendment violates the One Subject Rule, found in Section 15(D), Article II of the Ohio Constitution.

122. Under R.C. 2721, Plaintiffs are entitled to a declaratory judgment that H.B. 96's Air Pollution Amendment is unconstitutional under the One Subject Rule.

SECOND CLAIM FOR RELIEF

Claim for Preliminary and Permanent Injunction

123. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 122 above as if fully rewritten herein and additionally allege the following:

124. The Air Pollution Amendment will deny Plaintiffs' their rights and avenues for legal relief because it prevents Plaintiffs from filing federal citizen suits to enforce the ANR, prevents them from being able to use community air monitoring data for enforcement actions with monitors they have already purchased and data they have already collected, and leaves Plaintiffs unable to protect themselves from poor air quality and air nuisances, unless this Court grants Plaintiffs the injunctive relief sought.

125. The ANR Rescission has already launched a regulatory process to remove the ANR. Allowing the regulatory process to remove the ANR, already underway at OEPA, to proceed pursuant to H.B. 96 will result in the removal of the ANR from Ohio's SIP, preventing Plaintiffs from using the ANR to protect themselves from the harms of air pollution.

126. Allowing the Community Air Monitoring Prohibition to remain Ohio law unconstitutionally denies data collected through Plaintiffs' community air monitors to be used as evidence by OEPA and other regulatory bodies. Plaintiffs now cannot use monitors they have already purchased and data they have already collected, or intend to collect, to protect themselves from air pollution that endangers their health and property and those of their community, either by alerting air pollution authorities or by bringing an ANR action.

127. As a direct and proximate cause of the passage of H.B. 96 and the Air Pollution Amendment, Plaintiffs and Plaintiffs' members will suffer irreparable harm for which there is no adequate remedy at law.

128. Plaintiffs have a substantial likelihood of success on the merits of the underlying claims in this action.

129. Issuance of injunctive relief for the Plaintiffs based on the facts, as set forth in this Complaint, will not harm the Defendants or any third parties, as injunctive relief will merely preserve the status quo and the State cannot be harmed when an unconstitutional amendment does not go into effect.

130. The public interest is best served by the issuance of the injunctive relief that Plaintiffs seek in this Complaint because it is in the public interest to prevent a violation of the Ohio Constitution and because Plaintiffs are being irreparably harmed by the Air Pollution Amendment.

131. Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendants from implementing the Air Pollution Amendment in H.B. 96 that removes the Air Nuisance Rule from Ohio's SIP and removes the ability to use community air monitoring data for the purposes laid out above.

WHEREFORE, Plaintiffs respectfully request this Court:

132. Declare unconstitutional the provisions of H.B. 96 which require OEPA to remove the Air Nuisance Rule from Ohio's SIP and which define and restrict the use of community air monitoring, specifically H.B. 96's revisions to R.C. 3704.01(H), R.C. 3704.03(I) and (J), R.C. 3704.031, R.C. 3704.0310, and R.C. 3704.09(B) and (C).

133. Grant preliminary and permanent injunctive relief enjoining the Defendants from rescinding the Air Nuisance Rule and restricting community air monitoring as required by H.B. 96.

134. Award attorney fees and costs under R.C. 2335.39, and grant all other relief this Court finds just and proper.

Respectfully submitted,

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INDEX OF EXHIBITS TO COMPLAINT

1	H.B. 96, as Introduced
2	H.B. 96, April 9, 2025 Version
3	H.B. 96, June 11, 2025 Version
4	H.B. 96
5	Joint Comments on Draft SIP Removal of OAC 3745-15-07 (Oct. 6, 2025)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Complaint for Preliminary Injunction, Permanent Injunction, and Declaratory Judgment was served 24th day of October 2025 via electronic mail on the following Counsel for Defendants:

Julie M. Pfeiffer
Section Chief, Constitutional Offices
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Email: julie.pfeiffer@OhioAGO.gov

/s/ Miranda Leppla
Miranda Leppla