

IN THE SUPREME COURT OF OHIO

The Ohio Manufacturers' Association :  
33 N. High Street :  
Columbus, Ohio 43215 :

The Ohio Chamber of Commerce :  
230 E. Town Street :  
Columbus, Ohio 43215 :

Pharmaceutical Research :  
and Manufacturers of America :  
950 F. Street NW, Suite 300 :  
Washington, D.C. 20004 :

Keith A. Lake :  
461 Bellfroy Drive :  
Westerville, Ohio 43082 :

Ryan R. Augsburger :  
1960 W. Fifth Avenue :  
Columbus, Ohio 43212 :

Relators, :

v. :

Ohioans for Drug Price Relief Act, :  
by and through its Committee: :

William S. Booth :  
1243 Wilson Drive :  
Dayton, Ohio 45402 :

Daniel L. Darland :  
3811 N. Main Street :  
Dayton, Ohio 45405 :

Tracy L. Jones :  
5903 Bear Creek Drive :  
Bedford Heights, Ohio 44146 :

Latonya D. Thurman :  
2618 N. Cassady Ave. :  
Columbus, Ohio 43219 :

Case No. \_\_\_\_\_

Original Action Under Article II,  
Section 1g of the Ohio Constitution

and

Hon. Jon Husted :  
In his official capacity as :  
Ohio Secretary of State :  
180 East Broad Street, 16th Floor :  
Columbus, Ohio 43215 :  
:  
Respondents. :

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**CHALLENGE TO INITIATIVE PETITION**  
**UNDER ARTICLE II, SECTION 1g OF THE OHIO CONSTITUTION**  
*(With Accompanying Motion For Appointment of a Master Commissioner*  
*For Purpose of Overseeing Discovery and Conducting An Evidentiary Hearing)*

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*Counsel for Relators*

Now come the Relators, and for their Challenge, aver as follows:

### **NATURE OF THE ACTION AND JURISDICTION**

1. This is an original action commenced pursuant to this Court's original and exclusive jurisdiction under Article II, Section 1g of the Ohio Constitution, which grants to this Court the "original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions \* \* \*."

2. Relators seek an order and/or judgment from this Court invalidating specific part-petitions of the initiative petition (the "Petition") filed with Respondent Secretary of State Jon Husted ("Secretary") on December 22, 2015 proposing to enact Section 194.01 of the Ohio Revised Code, sometimes referred to as "The Ohio Drug Price Relief Act," where: (1) the part-petition was circulated by a circulator who listed a false permanent residence address; and (2) the part-petition has been altered by someone not authorized to alter part-petitions.

3. Either of the above-referenced claims advanced by the Relators affects such a sufficient number of signatures to render the submission of the Petition to the General Assembly under Article II, Section 1b premature.

4. Because the Petition is demonstrably deficient, the Committee responsible for The Ohio Drug Price Relief Act (the "Committee") should be required to cure the Petition by gathering additional signatures in accordance with Ohio law before the Petition may be submitted to the Ohio General Assembly.

5. The Petition proposes an initiated statute and cannot qualify to the ballot until it: (1) contains a sufficient number of valid signatures on the initial petition; and (2) is considered by the General Assembly; and (3) if the Act is not passed by the General Assembly, a sufficient number of valid supplementary signatures are collected and verified. Article II, Section 1b, Ohio

Constitution. As such, the Petition has not yet qualified to the ballot for 2016, 2017, or any year, and no election is imminent. No voters are deprived of a right to vote on the Petition as it has not yet qualified to the ballot.

## PARTIES

6. Relator Ohio Manufacturers' Association ("OMA") is a statewide nonprofit trade association whose membership consists of over 1,400 manufacturing companies. Ohio manufacturing is responsible for 18% of Ohio's gross domestic product and contributes to the quality of life in Ohio by providing 670,000 jobs for Ohio workers with an annual payroll of \$37 billion, the highest total annual wages of any Ohio industry sector. The OMA advocates to protect and grow Ohio manufacturing by driving down costs of doing business and regulatory burdens that affect Ohio's competitive advantage.

7. Relator Ohio Chamber of Commerce ("Ohio Chamber") is Ohio's largest and most diverse business advocacy organization. The Ohio Chamber represents members of virtually every industry throughout Ohio, including retail, transportation, manufacturing, healthcare, and others. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate. As an independent point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public policy arena.

8. Relator Pharmaceutical Research and Manufacturers of America ("PhRMA") is a voluntary nonprofit association of the country's leading research-based pharmaceutical and biotechnology companies. PhRMA members discover, develop, manufacture, and market almost all new prescription medications in this country. PhRMA member companies spent an estimated \$51.2 billion in 2014 to discover and develop new medicines. Since 2000, more than 500 new

medicines have been approved by the Food and Drug Administration (“FDA”) – a record 51 in 2014 alone. PhRMA seeks to encourage a business environment that inspires and rewards investment in research and development, while recognizing the unique risks and costs of our industry’s marketplace.

9. Relator Ryan R. Augsburger is a qualified elector of the State of Ohio residing in Franklin County, Ohio. He takes no position on the substance of the Petition, but firmly believes that election laws must be followed in order to ensure the integrity of the process. He has not signed the Petition.

10. Relator Keith A. Lake is a qualified elector of the State of Ohio residing in Delaware County, Ohio. He takes no position on the substance of the Petition, but firmly believes that election laws must be followed in order to ensure the integrity of the process. He has not signed the Petition.

11. Respondent Jon Husted, Ohio Secretary of State is the Chief Elections Official of the State of Ohio. Under R.C. 3501.05(K), the Secretary has the statutory responsibility to determine and certify the sufficiency of all initiative petitions.

12. Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman comprise the Committee responsible for the Petition and all matters relating to its circulation.

#### **ALLEGATIONS SUPPORTING CHALLENGES AND CLAIMS FOR RELIEF**

13. In order to appear on the ballot, the Committee must meet certain constitutional and statutory requirements. Initially, the Committee must submit at least 91,677 valid signatures, which is 3 percent of the total vote cast for the office of governor in the last gubernatorial election. *See* Article II, Section 1b, Ohio Constitution. Additionally, the

Committee must submit valid signatures equal to at least 1.5 percent of the total vote cast for governor at the most recent gubernatorial election in at least 44 of the 88 counties. *See* Article II, Section 1g, Ohio Constitution.

14. Furthermore, the Petition must comply with various other constitutional and statutory requirements in order for the proposed law to be submitted to the electors.

15. Although ninety (90) percent of the signatures were collected by mid-November, the Committee waited until December 22, 2015 to file the Petition with the Secretary. (*See* Appendix 1, Exhibit A, a true and accurate copy of the Affidavit of Matthew Walsh.)<sup>1</sup> By waiting to file the Petition until immediately before the holidays, Relators created an enormous strain on the Secretary and boards of elections, perhaps intentionally calculated to ensure that the time for review of part-petitions was severely limited.<sup>2</sup> In fact, when the Secretary discovered problems and sent part-petitions back to county boards of elections for further review (described *infra*), Respondents filed suit in both the federal district court (*Jones v. Husted*, S.D. Ohio No. 2:16-cv-00038) and this Court (*State ex rel. Jones v. Husted*, Ohio Supreme Court No. 2016-0020), further demonstrating their intent to create a pressure system designed to rush the Petition through the system without careful review.

16. The Secretary sent the part-petitions to Ohio's 88 county boards of elections and requested that they review the signatures and send their results to the Secretary no later than December 30, 2015. (*See* Appendix 1, Exhibit C, a true and accurate copy Directive 2015-40.)

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<sup>1</sup> All exhibits are included in the Appendices (Volumes 1-28), which are being filed simultaneously with this pleading.

<sup>2</sup> In contrast, an initiative petition for the "Fresh Start Act" also circulated last year and was filed with the Secretary on September 29, 2015. The Secretary forwarded the part-petitions to the boards of elections, which had a full month to review the part-petitions. That initiative was certified and transmitted to the General Assembly on January 5, 2016. (*See* Appendix 1, Exhibit B, a true and accurate copy of Directive 2015-18.)

Boards were thus required to review and return part-petitions just four (4) business days later and at a time when many boards, having just completed the 2015 General Election activities, were operating on reduced holiday schedules and with limited staff.

17. Subsequently, the Secretary learned that thousands of part-petitions contained numerous irregularities, including alterations on the face of the part-petitions and false circulator statements.

18. As a result, the Secretary issued Directive 2016-01 (the "Directive") on January 4, 2016, which instructed the county boards of elections to conduct a more thorough review of the part-petitions, suggesting evidentiary hearings in consultation with their respective county prosecutors. The Directive gave the boards of elections until January 29, 2016 to report their findings to the Secretary. (*See* Appendix 1, Exhibit D, a true and accurate copy of Directive 2016-01.)

19. Pursuant to the Directive, a number of boards of elections conducted a "thoughtful review" of the part-petitions on their face or conducted quasi-judicial hearings to elicit testimony from petition signers, petition circulators, and/or petition circulation management companies. (*See* Appendix 1, Exhibit E, a true and accurate copy of the Secretary's February 4, 2016 Letter to the General Assembly ("Feb. 4, 2016 Ltr".))

20. On February 4, 2016, the Secretary certified the Petition as containing 96,936 total valid signatures, and containing signatures from 47 counties that met or exceeded the requisite 1.5 percent signature totals. (*See* Appendix 1, Exhibit F, a true and accurate copy of the Secretary's February 4, 2016 Certification.)

21. On February 4, 2016, the Secretary transmitted the Petition to the General Assembly. But, he did so "with reservations" based on the "unprecedented quantity of

suspicious ‘strikethroughs’ of signatures on the part-petitions and other factual circumstances suggesting improper, potentially fraudulent circulator attestations” as stated in his Transmittal Letter. (See Appendix 1, Exhibit E.)

22. The Secretary noted that the “sworn testimony” from some boards of elections “paints a picture of how the laws protecting the integrity of the sacred right to petition one’s government were abused in this instance.” (See Appendix 1, Exhibit E, at 2.)

**A. Challenge based on false permanent residence addresses**

23. R.C. 3501.38(E)(1) provides that in the circulator’s statement, “the circulator shall identify the circulator’s name, the *address of the circulator’s permanent residence*, and the name and address of the person employing the circulator \* \* \*.” (Emphasis added.)

24. Similarly, the circulator’s statement on each part-petition specifically requires that the circulator sign each part-petition and affix the “Address of circulator’s permanent residence.” (See Appendix 1, Exhibit G, a true and accurate copy of an example of the “permanent residence address” language on each part-petition.)

25. Further, R.C. 3519.06 states that no part-petition is properly verified if the circulator statement is “false in any respect.”

26. Permanent residence address is defined in R.C. 3503.06(C)(2)(a) as “[t]hat place \* \* \* in which the person’s habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.”

27. This Court has held that a post office box is not legally sufficient as a permanent residence. *Kyser v. Bd. of Elections of Cuyahoga Cty.*, 36 Ohio St.2d 17, 23, 303 N.E.2d 77 (1973).

28. Several Petition circulators listed non-residential addresses, such as hotels, a commercial warehouse, and even a commercial mailing and shipping center as their permanent residence address.

29. Fifi Harper was a circulator who submitted part-petitions containing approximately 3,750 signatures statewide and listed 4022 E. Greenway Rd. #11312, Phoenix, Arizona 85032 as her permanent residential address. That location is a Pack, Ship and Print Center in the middle of a commercial strip mall. (See Appendix 2 – Appendix 8, Exhibits H-1 through H-7, a true accurate copy of all part-petitions circulated by Ms. Harper statewide.)

30. Ms. Harper does not permanently reside at the Pack, Ship and Print Center located at 4022 E. Greenway Rd. #11312, Phoenix, Arizona 85032. There are no residences at that location and no one lives there. (See Appendix 9, Exhibit I, a true and accurate copy of the Affidavit of Joseph Abate.)

31. The part-petitions circulated by Ms. Harper are invalid and should be stricken because she does not permanently reside at 4022 E. Greenway Rd. #11312, Phoenix, Arizona 85032. (See Appendix 2 – Appendix 8, Exhibits H-1 through H-7.)

32. Once these part-petitions are stricken, the Committee does not have a sufficient number of valid signatures in Knox, Morrow, Licking, and Scioto Counties, which reduces the number of qualifying counties to just 43, rather than the 44 counties required under the Ohio Constitution. (See Appendix 9 – Appendix 11, Exhibit J, a true and accurate copy of the Affidavit of David Hasman and exhibits thereto, which summarizes the number of invalid signatures at issue and the impact of such disqualification on each county.)

33. Roy Jackson was a circulator who submitted part-petitions containing approximately 487 signatures statewide and listed 2100 Brice Road, Reynoldsburg, Ohio 43068 as his permanent residential address. That location is a Days Inn Hotel.

34. Mr. Jackson does not permanently reside at the Days Inn Hotel located at 2100 Brice Road, Reynoldsburg, Ohio 43068. Upon information and belief, Mr. Jackson stayed there for a few days during the circulation effort, but does not reside there. (See Appendix 12, Exhibit K, a true and accurate copy of the Affidavit of Bridget Purdue Riddell.)

35. Kelvin Moore was a circulator who submitted part-petitions containing approximately 690 signatures statewide and listed 3143 West 33rd Street, Cleveland, Ohio 44109 as his permanent residential address. The Cuyahoga County Auditor's Office states that this location is a commercial warehouse building.

36. Upon information and belief, Mr. Moore does not permanently reside at the commercial warehouse building located at 3143 West 33rd Street, Cleveland, Ohio 44109. (See Appendix 12, Exhibit L, a true and accurate copy of the Affidavit of Christopher P. Ereg.)

37. Part-petitions with addresses other than a permanent resident address violate Ohio law and must be stricken. All part-petitions circulated by the foregoing circulators are invalid and must be stricken.

**B. Challenge based on unlawful alterations on part-petitions**

38. R.C. 3501.39(A)(3) provides, in relevant part, that “[t]he secretary of state or a board of elections shall accept any petition described in section R.C. 3501.38 of the Revised Code unless \* \* \* the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.” (Emphasis added.)

39. R.C. 3519.06(C) provides that: “No initiative or referendum part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence \* \* [t]hat the statement is altered by erasure, interlineation, or otherwise \* \* \*.”

40. Of the 10,032 part-petitions submitted statewide, approximately 5,598 of them were uniformly altered by someone striking through signatures on the part-petition using a thick black magic marker. (See Appendix 13 – Appendix 23, Exhibit M-1 through M-11, true and accurate copies of part-petitions from the Lucas County Board of Elections; Appendix 24, Exhibit N-1, true and accurate copies of DRW Campaigns LLC part-petitions from the Mahoning County Board of Elections; Appendix 25 – Appendix 26, Exhibit N-2 through N-3, true and accurate copies of Ohio Petitioning Partners, LLC part-petitions from the Mahoning County Board of Elections.)

41. R.C. 3501.38(G) and (H) authorize only three people to strike signatures in this manner before a petition is filed: (1) the circulator; (2) the signer; and (3) an attorney in fact for a disabled voter acting pursuant to R.C. 3501.382.

42. Several county boards of elections took sworn testimony from circulators who verified that signatures were not stricken by the circulator, signer, or an attorney in fact, and that there were no interlineations or struck-out signatures present when the circulators submitted their part-petitions.

43. The Cuyahoga County Board of Elections heard sworn testimony from Pamela Lauter, who testified that she is the owner of Ohio Petitioning Partners, LLC (“OPP”) and was hired as a “coordinator” by PCI Consultants, Inc. (“PCI”), the lead contractor for the Committee. Lauter testified that in her capacity as a coordinator, she personally struck signatures from part-petitions, calling it “purging” or “purging the deck.” (See Appendix 27, Exhibit O, a true and

accurate copy of the Transcript of Proceeding from Cuyahoga County Board of Elections (“Tr.”) 126, ¶ 2; 127, ¶ 8; 148, ¶ 21.)

44. In questioning by Chairman Steve Cuckler during a hearing before the Delaware County Board of Elections, circulator Deborah Hill testified about this “purge” as well:

A: As far as I know from the time I’ve been a petitioner, there’s been a purging process. Every single petition in this state has been put through it.

Q: Okay. A purging problem. What do you mean by that, purging? Based on your experience - - -

A: Striking bad signatures. (See Appendix 28, Exhibit P, a true and accurate copy of the Transcript of Proceeding from Delaware County Board of Elections 35, ¶¶ 6-8, ¶¶ 11-13.)

45. In Cuyahoga County, Lauter testified further:

Q: “So your staff goes through and checks them, and then if [the signatures] are bad, what do you do?”

A: “And it’s usually myself, actually. If they are Summit County and they are not from Cuyahoga County a line can go through it.”

Q: “You’ll put a line through it?”

A: “I put a line through it. Or, depending on the contractor that hires me as a subcontractor, and the guidelines that they set before, some companies want to use a black washable marker and they use a washable marker purposely, so that everything can be seen behind it, so that anybody looking at it knows why it’s been stricken \* \* \*”

(See Appendix 27, Exhibit O, Tr. 125, ¶¶ 6-19).

46. Lauter further testified that “every contractor that I’ve worked for has a different rule. Some contractors may say, don’t line out a thing, and others will say, strike out the ones.”

(See Appendix 27, Exhibit O, Tr. 126, ¶¶ 13-16.) When asked further about the practice by Board Member Hastings, Lauter acknowledged that she was instructed to strike signatures in this manner:

Q: "Are you aware that the State law only permits either the circulator, an attorney in fact, or the individual that signed, to mark out the petition? Do you understand that's the law in Ohio?"

A: "Well, yes and no. Here was my understanding, and obviously, I may or may not be right on this. My understanding was if you, ma'am, have decided you did not want your name to appear on the petition, for whatever personal reason you decided after you signed it, then you or I would have to strike it out \* \* \*. But if it never counted in the first place, in other words, if she comes up to me, or he comes up to me, and we're signing in Cuyahoga, and I realize when you put your county, that you put down Lake County, oh God, I'm so sorry, you've got the wrong county in the wrong book. Let me get you the right book, and her and I both know that that doesn't count, because it's in the wrong book."

Q: "Shouldn't State election officials make that determination?"

A: "Well, now see, that's where there was a grey area that maybe we were all taught improperly from the beginning."

(See Appendix 27, Exhibit O, Tr. 138, ¶¶ 18-25; 139, ¶¶ 1-18.)

47. In addition to her testimony as to the practices of OPP, Lauter also worked for a second company called DRW Campaigns LLC ("DRW") and specifically testified as to her practice in Cuyahoga County as a coordinator for DRW during this same petition effort:

Q: "Other people working for DRW at your side, to your left or your right on any given day, it was their policy or was their instruction to you as an employee for them, to do exactly that, is to strike those petitions?"

A: "If they didn't count, yes, they were supposed to mark them off, absolutely."

Q: "So somebody other than the circulator was striking the petitions?"

A: "That would be me."

Q: "Yes."

A: "Yes."

Q: "You or somebody just like you for DRW, were told to strike those petitions?"

A: "Exactly."

(See Appendix 27, Exhibit O, Tr. 148, ¶¶ 6-20.)

48. In his Transmittal Letter, the Secretary noted this issue and invalidated thousands of signatures submitted in Cuyahoga County based on the testimony of Lauter, which the Secretary found to be “reliable, substantive evidence.” The Secretary thus invalidated every part-petition that was circulated by DRW and OPP in Cuyahoga County. (See Appendix 1, Exhibit E.)

49. The Secretary observed that it was unlikely that these “improper practices by DRW and OPP under the direction of the PCI were limited to” Cuyahoga County. (See Appendix 1, Exhibit E.)

50. Indeed, the Secretary noted that PCI advertises that it will “actively cross off all invalid signatures by hand” with their “proprietary database system” for the purpose of saving “money by not paying for unnecessary invalid signatures.” (See Appendix 1, Exhibit E.)

51. PCI’s own website boasts that “we actively cross-off all invalid signatures.” (See Appendix 28, Exhibit Q, a true and accurate copy of a PDF printout of the PCI webpage, <http://www.progcamp.com/services/qualifying.html>, accessed February 23, 2016.)

52. The Secretary further noted that Lauter testified to performing the same activity in other counties, including Mahoning and Lucas counties, but concluded that “absent similar sworn testimony before those [other] boards of elections, [he] lack[ed] sufficient evidence to invalidate part-petitions beyond those in Cuyahoga County.” (See Appendix 1, Exhibit E.)

53. While the Secretary may not have had before him the Mahoning and Lucas County part-petitions that were subsequently reviewed and altered in the manner in which Ms. Lauter testified, they are included here as Appendices 13 through 23, Exhibits M-1 through M-11 and Appendices 24-26, Exhibits N-1 through N-3.

54. Regarding these part-petitions, Lauter specifically testified in Cuyahoga County to her familiarity as an independent contractor for DRW and her own company, OPP. (See

Appendix 27, Exhibit O, Tr. 137-138, ¶¶ 1-6; Tr. 147-149.) She also testified that she engaged in this practice in the Youngstown and Toledo areas:

“I am Ohio Petitioning Partners. So I was a coordinator for the Youngstown area and I also collected signatures in Cuyahoga County.” [See Appendix 27, Exhibit O, Tr. 115, ¶20-22.]

\* \* \*

“[m]y main concentration was to run the Youngstown office. So until, probably, until like October, I wasn’t even in the Cuyahoga County area, except this is where I live, obviously. I was driving back and forth to Youngstown. Once I left the Youngstown office, I did some collecting of signatures here and there, but I was not a coordinator in Cuyahoga County, I was a coordinator in Toledo, and I was only a petitioner in Cuyahoga County.” [See Appendix 27, Exhibit O, Tr. 116, ¶¶ 15-25; Tr. 117, ¶ 1.]

55. DRW was listed as the payor on 293 part-petitions containing a total of 4,117 valid signatures verified by the Lucas County Board of Elections. (See Appendix 13 – Appendix 23, Exhibits M-1 through M-11.)

56. DRW and OPP were listed as the payors on 64 part-petitions containing 864 valid signatures verified by the Mahoning County Board of Elections. (See Appendix 24 – Appendix 26, Exhibits N-1 through N-3.)

57. The Chairman of the Mahoning County Board of Elections wrote to the Secretary that he was “quite disturbed to see the many redactions (line-outs) and inaccurate circulator statements regarding the number of signatures witnessed.” The Chair also noted at the hearing that striking signatures could disenfranchise some who signed, but registered later and thereby became eligible. (See Appendix 28, Exhibit R, a true and accurate copy of the letter from the Mahoning County Board of Elections to the Secretary dated January 28, 2016.)<sup>3</sup>

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<sup>3</sup> In fact, the Butler County Prosecutor found precisely what the Mahoning County Board worried about: Only 79.59% of the signatures marked out in this manner were actually invalid.

58. Based on the evidence already adduced from the Cuyahoga County Board of Elections, standing alone, the evidence already gathered in Mahoning and Lucas Counties creates a deficiency in the signatures required to transmit the Petition to the General Assembly.

59. All part-petitions where signatures were stricken by someone other than a circulator, signer, or attorney in fact should be invalidated.

**C. Challenge based on false circulator statements**

60. In addition to the two issues noted above, either one of which renders the submission of the Petition to the General Assembly under Article II, Section 1b premature, several additional deficiencies are present. Revised Code 3501.38(E) requires that “the circulator [of a part-petition] ***shall indicate the number of signatures contained on it, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature*** \* \* \*.” (Emphasis added.)

61. Further, “[n]o initiative or referendum part-petition is properly verified if it appears on the face thereof \* \* \* [that the circulator’s] statement is false in any respect.” R.C. 3519.06(D).

62. Upon information and belief, in excess of 1,400 part-petitions contain false circulator affidavits because the circulators have attested, under penalty of election falsification, to witnessing more signatures than appear on the actual part-petition. (See Appendix 9 – Appendix 11, Exhibit J.)

63. Each part-petition allowed for a maximum of 28 signatures.

64. It is well-established by this Court that the requirement for a circulator to attest to the number of signatures collected is a ***mandatory requirement*** subject to ***strict***, not substantial,

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(See Appendix 28, Exhibit S, a true and accurate copy of the Butler County Prosecuting Attorney letter dated January 25, 2016; see also Appendix 1, Exhibit E, fn. 2.)

compliance. *State ex rel. Barton v. Butler Cty. Bd. of Elections*, 44 Ohio St.2d 33, 35, 336 N.E.2d 849 (1975) (“We hold that the inclusion of the circulator’s statement as required by R.C. 3501.38(E) must be strictly complied with.”); *State ex rel. Commt. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶38, quoting *Prince v. Franklin Cty. Bd. of Elections*, 10th Dist. No. 98AP-495, 1998 Ohio App. LEXIS 6290, \*14 (Dec. 24, 1998) (“Although there is no *mens rea* requirement under R.C. 3501.38(E), where a circulator attests that he witnessed all signatures on a part-petition when in fact he knows he did not, he cannot be attesting to such a statement in a manner other than knowingly.”).

65. This Court has noted that the requirement that “the circulator state in the jurat the number of signatures personally witnessed by him, is a protection against signatures being added later” and “[a]s such, it is a substantial, reasonable requirement.” *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St.2d 233, 234, 281 N.E.2d 186 (1972); *see also Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶11; 1989 Ohio Atty.Gen.Ops. No. 1989-049 (“The requirement that the circulator indicate the number of signatures is now an express legislative directive in R.C. 3501.38(E).”); *State ex rel. Applegate v. Franklin Cty. Bd. of Elections*, S.D. Ohio No. C2-08-092, 2008 U.S. Dist. LEXIS 8886, \*14-15 (Feb. 6, 2008).

66. A circulator’s failure to properly attest to the number (or proper number) of signatures on a petition is a fatal defect. Ohio law provides that a part-petition is not properly verified if the petition is either “not properly filled out” or “is false in any respect.” R.C. 3519.06(A) and (D).

67. Upon information and belief, a number of circulators in question did not truthfully attest to having witnessed the number of signatures claimed. The testimony indicates instead that even though most part-petitions did not have 28 signatures, circulation companies either (a) completed the circulator attestation for the circulator or (b) instructed the circulators to write the number "28" in the circulator's statement. These part-petitions fail to comply with the law and should be invalidated.

68. The Franklin County Board of Elections heard sworn testimony from Adrienne Collins, who testified that she worked as a circulator for the "Elite Campaign Company." Collins testified that her boss, an individual named Dean, told her to "mark 28 in the box always," even when she had not collected 28 signatures. (*See* Appendix 28, Exhibit T, Transcript of Interview of Adrienne Raishawn Collins by Franklin County Board of Elections, p. 16, lines 19-20.)

69. Collins further testified related to her completion of the circulator statements:

Q: But initially you put 28 [on the circulator statement]?

A: Yes.

Q: Okay. With that 28 there - -

A: But it's not 28. It's like, 17 maybe, a little bit under 28. There was one page I didn't complete that day. [Dean] said go ahead and put the 28 there and turn it in. (*See* Appendix 28, Exhibit T, p. 7, lines 6-12.)

\* \* \*

Q: What I am trying to get clarified here is this. When did you put 28 there?

A: This was the day that I was given—that I quit. I told him, I'm going home. This is not right. I only have 16 signatures, but I am going home. I'm done.

Q: Okay.

A: Well, he said, Put 28 there in that box. It will be fine. I said, Why am I

putting 28 here when it's only 16 signatures here? He said, Because its 28 boxes, rectangles. (See Appendix 28, Exhibit T, p. 17, line 11-12; lines 18-21.)

70. Kevin Hawkins, another circulator from Franklin County, also offered similar testimony:

Q: Flip back to the [circulator] statement. Now, see where you have 28 there?

A: Yes.

Q: It says you witnessed 28?

A: Yes.

Q: Did you witness 28 signatures there?

A: No.

(See Appendix 28, Exhibit U, Transcript of Interview of Kevin Hawkins by the Franklin County Board of Elections, p.10, lines 5-11).

71. The Secretary's Elections Manual and this Court's precedent only allow for minor, isolated discrepancies that were the product of arithmetic error, where there is a reasonable explanation provided, and the potential for fraud is not promoted.

72. This Court has never allowed any degree of miscount – higher or lower – unless some plausible explanation of signature miscounts was proffered. See *State ex rel. Curtis v. Summit Cty. Bd. of Elections*, 143 Ohio St.3d 1457, 2015-Ohio-3787, 37 N.E.3d 1, ¶¶8-10 (allowing undercount where one part-petition and one signature was at issue and the board of elections received evidence from both the signer and circulator that the discrepancy in the number of signatures attested to resulted from one signer striking his own signature); *State ex rel. Schwarz v. Hamilton Cty. Bd. of Elections*, 173 Ohio St. 321, 323, 181 N.E.2d 888 (1962) (allowing miscount related to a single signature on one part-petition where the board of elections

received an “uncontradicted and plausible explanation” from the circulator that he witnessed every signature, but attested to one less than he witnessed because one signer was from a different county); *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St. 3d 167, 172, 602 N.E.2d 615 (1992) (holding that signatures should be counted where the evidence showed that the overcounts occurred because the circulator crossed out signatures and there was no indication the error promoted fraud).

73. The reason for requiring an accurate statement of signatures is to guard against fraud. That concern for fraud is heightened where, as here, circulators are paid on a per signature basis.

74. If a circulator collects one signature on a part-petition but represents on the circulator statement that the part-petition contains 28 signatures, anyone—including a circulation company who is paid by the Committee to obtain the most signatures possible—has *both motive and opportunity* to fraudulently add more signatures to the part-petition after it has been signed by the circulator (either by having other electors sign the remaining empty lines of the part-petition, or worse yet, forging signatures on the remaining empty lines of the part-petition). The circulation company has paid the circulator for one or two signatures, but has now been paid for collecting what would appear to be 28 signatures.

75. This Court must invalidate all part-petitions where the circulator statement is “not properly filled out” and/or “false.” R.C. 3519.06(A) and (D).

#### **D. Challenge to part-petitions circulated by ineligible felons**

76. Revised Code 2961.01(B) provides that any person who pleads guilty to a felony or is adjudged guilty of a felony “is incompetent to circulate or serve as a witness for the signing

of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition.”

77. Pursuant to R.C. 2967.16(C)(1) and 2010 Ohio Atty.Gen.Op. No. 2010-002, that incapacity to circulate petitions remains unless and until the felon: (1) has completed his or her prison term and has not been placed under post release control sanctions; (2) has been granted a final release by the adult parole authority; or (3) has completed the period of community control sanction(s).

78. Notwithstanding the foregoing, five individuals who circulated part-petitions appear to be ineligible to do so. These five individuals collected approximately 1,420 signatures on the Petition, but appear to be ineligible to circulate for a variety of reasons:

- One served time for abduction and related charges but is currently a Parole Violator at Large wanted by the Department of Rehabilitation and Corrections;
- One was on parole for felonious assault;
- One was on probation for cocaine related offenses;
- Another was on probation for burglary; and
- Another was on post-release control as a result of a series of theft offenses and a conviction for unlawful sexual contact with a minor.

This Court should strike all part-petitions circulated by individuals who are shown to be ineligible for this reason.

## PRAYER FOR RELIEF

Wherefore, Relators respectfully ask the Court to grant the following relief:

A. Issue an order (i) setting a deadline for discovery and date for an evidentiary hearing in this matter; (ii) appoint a master commissioner to preside over such discovery and hearing; and (iii) establish a date for the submission of briefs.

B. Issue an order and/or judgment declaring all part-petitions and signatures thereon invalid where a false permanent residence address is contained on the part-petition;

C. Issue an order and/or judgment declaring the part-petitions and signatures thereon invalid where an unlawful alteration is contained on the part-petition;

D. Issue an order and/or judgment declaring the part-petitions and signatures thereon invalid where a false circulator statement is contained on the part-petition;

E. Issue an order and/or judgment declaring the part-petitions and signatures thereon invalid where such part-petition has been circulated by a felon who is not eligible to circulate such part-petition;

F. Issue an order and/or judgment that the Petition fails to meet the requirements of Article II, Section 1b of the Ohio Constitution;

G. Assess the costs of this action against Respondents;

H. Award Relators their attorney fees and expenses; and

I. Award such other relief as may be just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served via personal service,  
on February 29, 2016 upon:

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