

Legal challenge concerning drug purchasing initiated statute filed at Ohio Supreme Court

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Columbus, OH (February 29, 2016) – The Ohio Manufacturers’ Association (OMA), the Ohio Chamber of Commerce and the Pharmaceutical Research & Manufacturers of America (PhRMA), along with electors Mr. Keith Lake of the Ohio Chamber and Mr. Ryan Augsburger of the OMA today filed a legal challenge with the Ohio Supreme Court asking the Court to invalidate specific part-petitions submitted as part of a proposed initiated statute regarding drug pricing in Ohio. The initiative was recently transmitted by the Ohio Secretary of State to the General Assembly.

“There is clear evidence that proponents broke the law to the point of signatures falling below the legal threshold of consideration,” said attorney Kurt Tunnell, Managing Partner of the Bricker & Eckler law firm, which filed the action. “Our clients believe the Court needs to consider this challenge and render a judgment.”

The California-based petitioners behind the proposal hired PCI Consultants, Inc., a Los Angeles-based company that offers petition management services nationwide. PCI engaged sub-contractors for the Ohio project. The challenge identifies four areas of Ohio law with which a number of petition circulators failed to comply, and alleges that the signatures collected by those circulators are invalid and should be stricken. When the signatures that were unlawfully obtained are stricken, the petition has insufficient signatures to be considered by the General Assembly.

Specifically, the legal challenge alleges that, in violation of Ohio law, petition circulators or those who coordinated or oversaw other petition circulators listed false permanent residence addresses, unlawfully altered part-petitions, submitted false circulator statements and in some cases, were ineligible to circulate petitions due to felony convictions.

The following provides additional details about each of these violations:

- **False permanent residence addresses.** Ohio law requires that every part-petition include a signed “circulator statement” that includes the circulator’s permanent residence address. Several circulators listed non-residential addresses as their permanent residence address (e.g., motels, a commercial warehouse and a commercial mailing and shipping center). These addresses do not meet the statutory requirement to list a permanent residence address, which was inserted by the Ohio General Assembly to address a series of problems that arose in previous statewide petition efforts. Because these circulators provided false circulator statements in violation of Ohio law, their part-petitions are invalid and should be stricken.
- **Unlawful alterations of part-petitions.** Ohio law strictly governs who may alter part-petitions, limiting this authorization to the circulator of that part-petition, the signer of the part-petition or an attorney-in-fact for a disabled voter.

Of the more than 10,000 part-petitions submitted, roughly 5,600 were found to be uniformly altered with a thick black marker. In sworn testimony before multiple county boards of elections, circulators testified that neither they nor the signers struck any signatures and one individual hired to coordinate signature gathering testified that she was instructed to mark

“bad” signatures that the petition company did not want to pay circulators to collect. The Court must invalidate all part-petitions where evidence demonstrates that signatures were unlawfully stricken.

- **False circulator statements.** As part of the “circulator statement,” Ohio law requires circulators to attest to the number of signatures contained on the part-petition and affirm that he or she witnessed every signature. Each part-petition allowed for a maximum of 28 signatures. On over 1,400 part-petitions, circulators attest to witnessing 28 signatures, but the part-petition actually contains fewer than 28 signatures. Evidence indicates that circulation companies either unlawfully completed the circulator statement for the circulator, or instructed the circulators to write the number “28” in the statement, thus leaving the petition open to having additional unwitnessed signatures included after the fact. As a result, over 1,400 part-petitions contain false circulator statements, with circulators attesting to witnessing more signatures than actually appear on the part-petition. Thus, those part-petitions are invalid.
- **Ineligible felon circulators.** Ohio law prohibits convicted felons from serving as petition circulators. The law states that unless and until the felon has completed his or her sentence and satisfied post-release control, that felon remains ineligible to circulate ballot issue petitions. Five individuals who served as petition circulators appear to be ineligible to circulate part-petitions because they are convicted felons who did not complete their sentence or satisfied post-release control. Therefore, the part-petitions submitted by those circulators are invalid.

In order to meet the requirements for transmission to the General Assembly, the initiative petitioners needed to collect a total of 91,677 signatures (or three percent of the total vote cast for the office of governor at the last gubernatorial election), which must include a requisite number of signatures from a minimum of 44 Ohio counties.

“In this case, a California-based organization is pushing a law change in Ohio and asking Ohio citizens to support it through an initiated statute,” Tunnell said. “The organization hired paid circulators, many of them from outside the state, to collect signatures from Ohio citizens. Ohioans have the right to expect that proposals presented to them in this manner are done so by responsible circulators who are following the law.”

The filing asks the Court to strike all part-petitions that were collected in violation of Ohio law. Once illegally gathered part-petitions are disqualified, the petition fails to meet the requirements of the Ohio Constitution. As a result, the submission of the petition to the General Assembly was premature and the petitioners will be given a chance to gather more signatures in a lawful manner and resubmit a petition that complies with Ohio law.

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Related documents: The filing may not be immediately available online with the Court, however reporters may access the filing and key documents here: <http://bit.ly/1QmKtSy>