

OMA Files Amicus Brief in New Ohio Drug Price Relief Act Case

The Decision in OMA’s Petition Challenge Case (Ohio Supreme Court Case No. 2016-0313)

On August 15, 2016, the Ohio Supreme Court issued a decision in an action brought by the OMA, the Ohio Chamber and PhRMA (“OMA Parties”), challenging petition circulation practices in connection with the Ohio Drug Price Relief Act (“ODPRA”). The Ohio Supreme Court held, among other things, that that thousands of part-petitions submitted by the Committee contained false circulator attestations, did not comply with Ohio law, and contained an overcounting of signatures that constituted “an open invitation to fraud.” *Ohio Manufacturers’ Association v. Ohioans for Fair Drug Price Relief Act*, Slip Op. 2016-Ohio-5377 (“Slip Op.”), ¶ 44. The Court determined that the actions of the proponents of the ODPRA (“the Committee”) were not “a case of minor or negligent miscounts,” but rather a series of “systematic overcounts” that left boards of elections with “no way to know how many signatures the circulators actually witnessed” and “no guarantee that someone did not later add the signatures of legitimate electors.” *Id.*

The Court also determined that although there was evidence of improper “strikethroughs” (i.e., deleted signatures) on thousands of part-petitions, Ohio law does not require those part-petitions to be invalidated.

Finally the Court held that some petition circulators did not comply with the requirement that they provide their permanent residential address and invalidated the petitions they circulated. But, the Court did not invalidate the petitions of two circulators whose petitions were also challenged on this ground.

Ultimately, the Court determined that “OMA has demonstrated that 10,303 signatures that were counted as valid should not have been counted” and found that the Petition was short

by 5,044 signatures. *Id.*, ¶ 46. The Committee was permitted 10 days, until August 25, 2016, to “cure” this deficiency.

New LawsUIT by Committee Against Secretary of State (Ohio Supreme Court Case No, 2016-1235)

Two days after the Court issued its decision in the OMA’s Petition Challenge case, the Committee filed a mandamus action in the Ohio Supreme Court. In this action, the Committee sought to recover more than 25,000 signatures that had previously been stricken by the Secretary and county boards of elections because signatures had been deleted by persons not authorized to do so. This action was similar to a previous mandamus action brought by the Committee and dismissed by the Court, without prejudice, on June 15, 2016. In short, the Committee was asking the Court to “undo” the deficiency judgment it had just issued.

Even though the Committee is seeking placement on the 2017 ballot, it moved for expedited consideration and the Court granted the motion, with all briefing to be completed by August 26, 2016.

Because the OMA, the Ohio Chamber, and PhRMA have a substantial interest in defending the judgment they obtained in the Challenge Proceeding, they filed an amicus curiae brief in this lawsuit. In their amicus brief, the OMA Parties assert that the instant action is an improper attack on the judgment in the Petition Challenge case and raise several procedural reasons why the action has no merit and should be dismissed. First, the Committee failed to utilize the only proper procedure for bringing its claims – a challenge action under the Ohio Constitution. Second, the relief the Committee seeks (a writ of mandamus) is not available because it has an adequate remedy at law. Third, by not bringing their claims sooner or asserting them in the OMA’s Petition Challenge case, they are barred from bringing them now – after the

Court has already ruled and determined the deficiency. As stated in the amicus brief, “This new mandamus action is the wrong proceeding, at the wrong time, and seeks the wrong remedy.”

Because the Court has put this case on an extremely expedited schedule, it is anticipated that the Court will decide the case in the near future.