

ORIGINAL

Case No. 2012-0070

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In the  
**Supreme Court of Ohio**

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STATE EX REL. HEALTHY FAMILIES OHIO, INC., et al.,  
*Relators,*

v.

OHIO BALLOT BOARD, et al.,

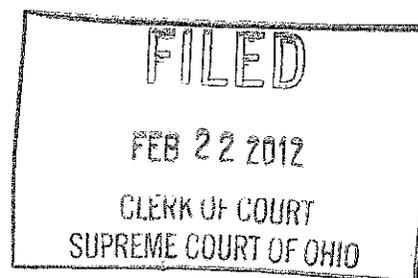
*Respondents.*

*Original Action Under Sec. 1g, Art. II, Ohio Constitution  
Original Action in Prohibition and Mandamus*

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**MOTION TO STRIKE RESPONDENTS PERSONHOOD OHIO,  
JAMES PATRICK JOHNSTON, FRANK WEIMER, DAVID  
DAUBENMIRE, AND TOM RADDELL'S RESPONSE TO  
RESPONDENTS OHIO BALLOT BOARD, SECRETARY OF  
STATE JON HUSTED, AND OHIO ATTORNEY GENERAL  
MIKE DEWINE'S MOTION TO DISMISS  
AND REQUEST FOR SANCTIONS AND ATTORNEYS' FEES  
PURSUANT TO CIV.R. 11**

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<p>Donald J. McTigue (0022849)  Mark A. McGinnis (0076275)  J. Corey Colombo (0072398)  MCTIGUE &amp; MCGINNIS LLC  545 East Town Street  Columbus, Ohio 43215  Phone: (614) 263-7000  Facsimile: (614) 263-7078  <a href="mailto:dmtigue@electionlawgroup.com">dmtigue@electionlawgroup.com</a>  <a href="mailto:mmcginnis@electionlawgroup.com">mmcginnis@electionlawgroup.com</a>  <a href="mailto:ccolombo@electionlawgroup.com">ccolombo@electionlawgroup.com</a></p> <p><i>Counsel for Relators</i></p>	<p>Michael J. Schuler (0082390)  Richard N. Coglianese (0066830)  Renata Y. Staff (0086922)  OHIO ATTORNEY GENERAL MIKE DEWINE  30 E. Broad St., 16<sup>th</sup> Floor  Columbus, Ohio 43215  (614) 466-2872, (614) 728-7592 – fax  <a href="mailto:Michael.schuler@ohioattorneygeneral.gov">Michael.schuler@ohioattorneygeneral.gov</a>  <a href="mailto:Richard.coglianese@ohioattorneygeneral.gov">Richard.coglianese@ohioattorneygeneral.gov</a>  <a href="mailto:Renata.staff@ohioattorneygeneral.gov">Renata.staff@ohioattorneygeneral.gov</a></p> <p><i>Counsel for Respondents Ohio Ballot Board, Ohio Secretary of State Jon Husted, and Ohio Attorney General Mike DeWine</i></p>
<p>Horatio Mihet (0075518)  LIBERTY COUNSEL  PO Box 540774  Orlando, Florida 32854  Phone: (800) 671-1776  Facsimile: (407) 875-0770  <a href="mailto:hmihet@lc.org">hmihet@lc.org</a></p> <p><i>Counsel for Respondents Personhood Ohio, James Patrick Johnston, Frank Weimer, David Daubenmire, and Tom Raddell</i></p>	

## MOTION AND MEMORANDUM IN SUPPORT

NOW COME Relators Healthy Families Ohio and Garrett M. Dougherty and hereby respectfully request that the Court strike Respondents Personhood Ohio, James Patrick Johnston, Frank Weimer, David Daubenmire, and Tom Raddell's ("Personhood Ohio Respondents") Response to Respondents Ohio Ballot Board, Secretary of State Jon Husted, and Ohio Attorney General Mike DeWine's ("State Respondents") Motion to Dismiss. Further, due to the flagrant disregard for this Court's rules, Relators also request that this Court impose sanctions and award costs and attorneys' fees associated with responding to the Personhood Ohio Respondents' Response to the State Respondents' Motion pursuant to Civ. R.11.

S.Ct.Prac.R. 10.5, governing complaints filed in original actions before this Court, provides that a respondent "shall file an answer to the complaint *or* a motion to dismiss within twenty-one days of service of the summons and complaint." *State ex rel. Johnson v. Richardson*, 2012-Ohio-57, ¶10. [Emphasis supplied.] The rule further provides that relators may "file a memorandum in opposition to a motion to dismiss .. within ten days of the filing of the motion." S.Ct.Prac.R. 10.5. Where a respondent chooses to file a motion to dismiss, rather than filing an answer, in response to a complaint, the rule does not contemplate the filing of a reply in support of the motion to dismiss. Rather, "the Supreme Court will either dismiss the case or issue an alternative or peremptory writ, if a writ has not already been issued." S.Ct.Prac.R. 10.5(C).

In response to the Complaint herein, the Personhood Ohio Respondents choose to file an Answer (filed on February 8, 2012), while the State Respondents choose to file a Motion to Dismiss (filed on February 9, 2012). Thereafter, Relators filed a Memorandum opposing the State Respondents' Motion to Dismiss, as contemplated by S.Ct.Prac.R. 10.5(B). At this point, the case is essentially stayed while this Court determines whether to dismiss the case or to issue an alternative or peremptory writ.

When a motion to dismiss is filed this Court's rules describe precisely what can be filed, *i.e.*, a memorandum in opposition, and by whom it can be filed, *i.e.*, the relator. This Court's rules expressly provide that "the relator may file a memorandum in **opposition** to a motion to dismiss ... within ten days of the filing of the motion." S.Ct.Prac.R. 10.5(B). [Emphasis supplied.] Personhood Ohio Respondents have ignored these clear provisions on both counts, by filing a response when they are not the relator and by filing a response not in opposition to, but in support of, the motion to dismiss.

Despite being captioned as a "response" to the State Respondents' Motion to Dismiss, Personhood Ohio's filing is nothing more than a thinly veiled attempt to file its own Motion to Dismiss, despite having already chosen to proceed via the filing of an Answer. In fact, the Answer filed by the Personhood Ohio Respondents fails to raise a single affirmative defense. Now, fourteen days after filing their Answer, the Personhood Ohio Respondents seek a second bite at the apple via the filing of a "response" to a

Motion to Dismiss filed by another Respondent in the case. Personhood Ohio Respondents' filing does not raise a single issue that has not already been raised, and briefed, by the State Respondents. Indeed, their "response" to the motion to dismiss is expressly filed in support of the motion, not against it, and repeats virtually everything that is in the State Respondents' motion. This Court should not tolerate such shenanigans.

Accordingly, Personhood Ohio's Response in support of the State Respondents' Motion to Dismiss should be stricken, sanctions should be imposed against Personhood Ohio Respondents, and Relators should be awarded their costs and attorneys' fees associated with preparing the instant Motion pursuant to Civ.R. 11.

Respectfully submitted,

  
Donald J. McTigue (0022849)  
Mark A. McGinnis (0076275)  
J. Corey Colombo (0072398)  
McTIGUE & MCGINNIS LLC  
545 East Town Street  
Columbus, Ohio 43215  
Tel: (614) 263-7000  
Fax: (614) 263-7078

*Counsel for Relators*

Certificate of Service

The undersigned counsel hereby certifies that the foregoing was served upon the following via electronic mail this 22nd day of February, 2012:

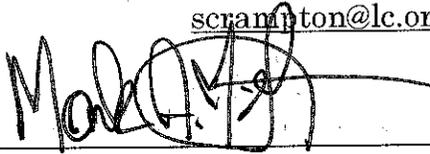
Michael Schuler, Assistant Attorney General  
[Michael.schuler@ohioattorneygeneral.gov](mailto:Michael.schuler@ohioattorneygeneral.gov)

Rich Coglianese, Assistant Attorney General  
[richard.coglianese@ohioattorneygeneral.gov](mailto:richard.coglianese@ohioattorneygeneral.gov)

Renatta Staff, Assistant Attorney General  
[Renata.staff@ohioattorneygeneral.gov](mailto:Renata.staff@ohioattorneygeneral.gov)

Horatio Mihet, Liberty Counsel  
[hmihet@lc.org](mailto:hmihet@lc.org)

Stephen Crampton, Liberty Counsel  
[scrampton@lc.org](mailto:scrampton@lc.org)



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Mark A. McGinnis,  
Attorney at Law