

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.,

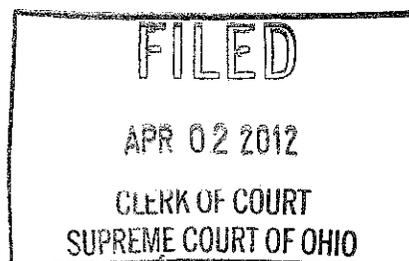
*Respondents.*

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

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MOTION FOR RECONSIDERATION AND/OR CLARIFICATION  
OF THIS COURT'S MARCH 21, 2012 ENTRY GRANTING  
MOTION TO DISMISS OF RESPONDENTS OHIO BALLOT  
BOARD, SECRETARY OF STATE JON HUSTED, AND OHIO  
ATTORNEY GENERAL MIKE DEWINE

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**MOTION AND MEMORANDUM IN SUPPORT**

NOW COME Relators Healthy Families Ohio and Garrett M. Dougherty pursuant to Supreme Court Practice Rules 11.2 and 14.4 and hereby respectfully move this Court for reconsideration and/or clarification of its March 21, 2012 decision granting Respondents Ohio Ballot Board, Secretary of State Jon Husted, and Attorney General Mike Dewine's Motion to Dismiss ("State Respondents").

To be clear, Relators are not asking this Court to reverse its decision to grant the State Respondents' Motion to Dismiss. Rather, Relators seek this Court's reconsideration of its decision to do so without issuing an opinion and/or clarification of the basis upon which the Motion to Dismiss was granted.

Specifically:

With regard to the First Challenge/Claim, *i.e.*, that the petition failed to contain the full text of Article 1, Sec. 1, of the Ohio Constitution – Was State Respondents' Motion to Dismiss granted on the ground that: (1) bringing the challenge/claim was premature because the initiative petition has not yet been filed with the Secretary of State; or on the ground that (2) the initiative petition is not required to contain the full text of Article I, Sec. 1 of the Ohio Constitution because this Court determined that the proposed amendment would not amend Article I, Sec. 1, of the Ohio Constitution if adopted? The answer to this question is important for determining whether

Relators have a basis for filing a later challenge containing this claim after the initiative petition has been filed with the Secretary of State.

With regard to the Second Challenge/Claim, *i.e.*, that the summary does not contain a fair and truthful statement of the proposed amendment – Was State Respondents’ Motion to Dismiss granted because: (1) the grant of jurisdiction to this Court under Ohio Rev. Code 3519.01 is unconstitutional; (2) the grounds set forth in the Amended Complaint do not establish that the Attorney General abused his discretion in finding that the proposed summary was a fair and truthful statement of the Proposed Amendment, or; (3) writs of mandamus or prohibition and/or a challenge under Article II, Sec. 1g, of the Ohio Constitution are not appropriate remedies for such a challenge/claim relating to the Attorney General’s determination? The answer to this question is important for determining whether Relators can seek relief for this claim through the filing of a declaratory judgment action in the common pleas court.

With regard to the Third Challenge/Claim, *i.e.*, that the initiative petition contains more than one proposed amendment to the Ohio Constitution – Was State Respondents’ Motion to Dismiss granted because: (1) the proposal does not propose more than one amendment to the Ohio Constitution; (2) the Ohio Ballot Board did not abuse its discretion in finding that the proposal does not propose more than one amendment, or; (3) writs of mandamus or prohibition and/or a challenge under Article II, Sec. 1g, of the

Ohio Constitution are not appropriate remedies for such a challenge/claim relating to a ballot board determination of the single versus multiple amendment question? The answer to this question is important for determining whether Relators can seek relief for this claim through the filing of a declaratory judgment action in the common pleas court.

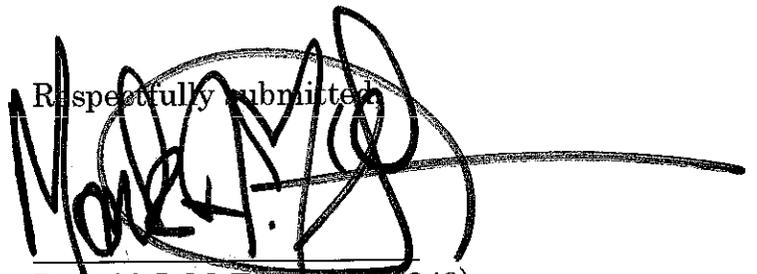
The distinctions in the Court's reasoning for granting the State Respondents' Motion to Dismiss do make a difference. If the Motion was granted based on the substantive, rather than procedural or jurisdictional, arguments it sets forth, *res judicata* may bar Relators from advancing the claims contained in the Amended Challenge/Complaint in another forum or at another time before this Court. If the State Respondents' Motion to Dismiss was granted because another Court has jurisdiction over some or all of the claims, it is imperative that Relators act quickly to bring those claims in a court which has jurisdiction over them in order to avoid *laches*. If some or all of the claims are premature, this Court may have jurisdiction to hear some, or all, of the claims, but only after the initiative petition has been filed with the Secretary of State.

Without an answer to these questions, Relators are left with a Hobson's Choice: either do nothing at the risk of not advancing otherwise meritorious claims, or; file declaratory judgment actions with respect to the second and third claims in the common pleas court and a challenge under Art. II, Sec. 1g, of the Ohio Constitution with respect to the first claim after

the initiative petition has been filed with the Secretary of State. Clarification of the Court's decision not only provides clarity to Relators, the State Respondents, and the Petitioners, it promotes judicial economy by preventing multiple and possibly needless actions from being filed in this Court and in the court of common pleas, and possibly saving all parties the time and expense of litigating multiple actions related to the initiative petition in an effort to "cover their bases." Given the lack of case law on these issues, setting forth the basis of the Court's decision rendered herein will also serve petitioners and challengers as well as the Attorney General, Ohio Ballot Board, and Secretary of State on future petitions.

Reconsideration of the decision not to issue an opinion in this matter is necessary to inform how this matter, and future matters involving statewide petitions, will be handled. Accordingly, Relators respectfully request that the Motion for Reconsideration be granted and that the Court issue an opinion herein clarifying the reason or reasons upon which the State Respondents' Motion to Dismiss was granted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Donald J. McTigue', is written over the 'Respectfully submitted,' text. The signature is highly cursive and loops around the text.

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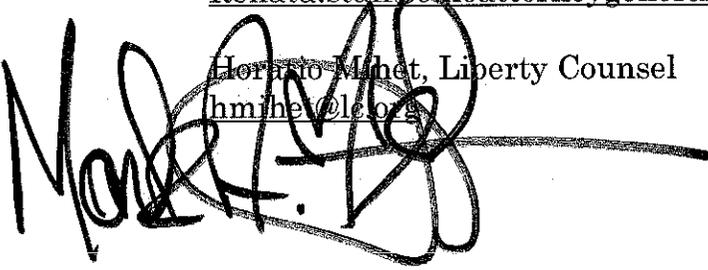
Certificate of Service

The undersigned counsel hereby certifies that the foregoing was served upon the following via electronic mail this 2nd day of April, 2012:

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