

IN THE SUPREME COURT OF OHIO

The Ohio Manufacturers' Association :
et al., :
 : **Case No.** _____
 Relators, :
 :
 :
 v. : **Original Action under Section 1g,**
 : **Article II of the Ohio Constitution**
 :
 Ohioians for Drug Price Relief Act, :
 et al., :
 :
 Respondents. :

**RELATORS' MOTION FOR APPOINTMENT OF A MASTER COMMISSIONER
FOR PURPOSE OF OVERSEEING DISCOVERY
AND CONDUCTING AN EVIDENTIARY HEARING, IF NECESSARY**

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I. INTRODUCTORY STATEMENT AND FACTUAL BACKGROUND

This case is a challenge to an initiative petition, filed pursuant to Section 1g, Article II of the Ohio Constitution, which challenges a petition called the “Ohio Drug Price Relief Act” (the “Petition”). This challenge asks the Court to invalidate thousands of specific part-petitions that violate Ohio law.

Unlike other petition challenges this Court has considered under Section 1g, Article II which involved *supplemental* part-petitions and signatures filed in the weeks just before a general election, this challenge is to *initial* part-petitions and signatures. Because of this distinction, *there is no Constitutional deadline facing the Court and, thus, far more time for the Court to consider and rule upon this challenge than has been the case with past challenges.* The only deadline constitutionally mandated is that all challenges to *supplemental* petitions be resolved by this Court no later than 85 days prior to the general election. But this is a challenge to *initial* part-petitions and signatures for an initiated statute. Because there is no requirement or guarantee that this issue appear on the general election ballot this year, this Court can allow the parties sufficient time to collect evidence and address the issues raised in this Challenge.

The Petition was required to contain at least 91,677 valid signatures (which is 3% of the total votes cast for the office of governor in the last gubernatorial election), and among such signatures must also be valid signatures equal to at least 1.5 percent of the total votes cast for governor in the last gubernatorial election in at least 44 of Ohio’s 88 counties. *See* Section 1g, Art. II, Ohio Constitution. The Secretary has certified that the Petition contains 96,936 signatures, with the requisite minimum signatures from 47 counties. As such, the Petition contains 5,259 signatures more than required and the requisite minimum signatures from three more counties than required.

Relators' Challenge includes four grounds for invalidating part-petitions: (1) false circulator addresses; (2) unlawfully altered part-petitions; (3) false circulator statements; and (4) part-petitions circulated by felons. Relators submitted evidence with the Challenge sufficient to establish that the Petition does not include the requisite number of qualifying counties or signatures statewide based on part-petitions with false circulator addresses and part-petitions that have been unlawfully altered.

More specifically, in several counties where the Committee submitted signatures that only barely exceeded the 1.5 percent threshold, the Committee submitted dozens of part-petitions on which the circulator listed a false permanent residence address. *See* R.C. 3501.38(E)(1) (providing that in the circulator's statement, the circulator shall identify, inter alia, "address of the circulator's permanent residence"); R.C. 3519.06 (providing the part-petition and signatures thereon cannot be counted if it is "false in any respect").¹ When the false address part-petitions alone are stricken, the Petition fails to have 44 qualifying counties.

In addition, the Committee submitted over 5,000 part-petitions that should be invalidated because they were unlawfully altered. These part-petitions contain signatures that have been blacked out using a thick, black marker. The evidence adduced by boards of elections shows these alterations were unlawfully made by someone other than signers or circulators of the part-petitions.

This is a blatant violation of Ohio law because (1) only a circulator, signor, or attorney-in-fact acting for a disabled voter can strike a signature (*see* R.C. 3501.38(G), (H)), and (2) a

¹ For instance, circulator Fifi Harper listed her permanent residence address as located at a "Pack, Ship, and Print Center" in a strip mall in Phoenix, Arizona. No one resides at that address. Ms. Harper was such a prevalent circulator that striking the false and fraudulent part-petitions circulated by Ms. Harper in Knox, Morrow, Licking, and Scioto counties alone causes the Petition to fall below the required number of counties and thus be deficient.

part-petition is not properly verified if it has been “altered by erasure, interlineation, or otherwise” (R.C. 3519.06(C)). When the unlawfully altered part-petitions alone are stricken, the Petition fails to have sufficient signatures to meet the 3 percent requirement.

The evidence presented with Relators’ Challenge shows that the Petition is legally deficient on these two grounds alone. What remains unknown is the magnitude of that deficiency. Resolving this issue is important because the Committee must obtain additional signatures to overcome the deficiency in order to proceed. As such, all parties must know whether the Petition is deficient by, for example, 5,000 signatures or 50,000 signatures.

Relators therefore seek to have a master commissioner appointed to preside over this matter for the purpose of setting a discovery schedule, supervising discovery, and presiding over any evidentiary hearing. Such appointment will assist in causing this matter to be administered in a quick and efficient manner. There is plenty of time for discovery and to address the issues in this case, and appointing a master commissioner will assist in these efforts.

II. LAW AND ARGUMENT

This Court has original and exclusive jurisdiction over challenges to initiative petitions and signatures upon such petitions. S.Ct. Prac.R. 14.01 governs such proceedings. Pursuant to S.Ct. Prac.R. 14.01(D)(1), this Court “may refer challenge actions to a master commissioner for any purpose including resolution of discovery disputes, and to conduct a hearing for the presentation of evidence.” Furthermore, S.Ct. Prac.R. 14.01(E) provides that in a protest action, this Court “may do all things necessary for an efficient and timely ruling on the challenge,” including issuing a “procedural order to govern the receipt of evidence, filing of briefs, conduct of hearings, and manner for ruling on any challenges.”

Relators respectfully request that this Court appoint a master commissioner to preside over this proceeding, including for the purpose of setting a discovery schedule, resolving discovery disputes, and conducting any evidentiary hearing that may become necessary. Relators seek to take discovery concerning several issues raised in the Challenge. For instance, while evidence exists definitively proving that certain petition-circulation companies unlawfully struck signatures on part-petitions in Cuyahoga, Lucas, and Mahoning counties, Relators need discovery to determine which part-petitions circulated in other parts of the state were similarly struck.

Moreover, as alleged in their Challenge, Relators believe that at least five individuals who circulated part-petitions were ineligible to do so because they were convicted felons who either remained on probation or otherwise were not released from community control. Revised Code 2961.01(B) provides that any person who pleads 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.” 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).

Upon information and belief, at least five individuals collected signatures for the Petition notwithstanding the fact that they remained on restriction for such convictions as felonious assault, burglary, theft, and unlawful sexual contact with a minor. Discovery is necessary to examine these issues, including potentially deposing these circulators or governmental authorities, to show they were prohibited from circulating part-petitions.

While the Challenge on its face demonstrates that the Petition is deficient, the magnitude of that deficiency remains unknown. Relators require discovery to probe these issues and determine the extent to which Ohio law was not followed. And with no deadline by which this Court must rule, there remains plenty of time for discovery to be conducted and this matter to be resolved. Appointing a master commissioner to preside over this case will allow the parties to more quickly arrive at a discovery schedule, address and resolve any discovery disputes, present the evidence in the manner desired by the Court, and bring this issue before the Court for a decision.

III. CONCLUSION

Wherefore, for the foregoing reasons, Relators respectfully request this Court appoint a master commissioner to preside over discovery and any evidentiary hearing as part of this matter.

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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