

**IN THE SUPREME COURT OF OHIO**

**The Ohio Manufacturers' Association, et al.,** :  
: *Relators,* : Case No. 2016-0313  
: **v.** :  
: **Ohioans for Drug Price Relief Act, et al.,** : **Original Action under Article II,**  
: **Respondents.** : **Section 1g of the Ohio Constitution**  
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**ANSWER OF RESPONDENTS WILLIAM S. BOOTH, DANIEL L. DARLAND,  
TRACY L. JONES, AND LATONYA D. THURMAN**

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**IN THE SUPREME COURT OF OHIO**

<b>The Ohio Manufacturers' Association, et al.,</b>	:	<b>Case No: 2016-0313</b>
	:	
<b>Relators,</b>	:	<b>Original Action under Section 1g,</b>
	:	<b>Article II of the Ohio Constitution</b>
<b>v.</b>	:	
	:	
<b>Ohioans for Drug Price Relief Act, et al.</b>	:	
	:	
<b>Respondents.</b>	:	

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**ANSWER OF RESPONDENTS WILLIAM S. BOOTH, DANIEL L. DARLAND,  
TRACY L. JONES, AND LATONYA D. THURMAN**

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For their Answer to Relators' Complaint, Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman ("Petition Respondents") state:

**ANSWER**

1. Paragraph 1 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 1.
2. Paragraph 2 contains legal conclusions to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 2 and expressly deny Relators are entitled to relief.
3. Paragraph 3 contains legal conclusions to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 3, and expressly deny that the submission of the Petition to the General Assembly under Article II, Section 1b was premature.

4. Paragraph 4 contains legal conclusions to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 4, and expressly deny that the Petition is “demonstrably deficient.”
5. Petition Respondents admit that Article II, Section 1b of the Ohio Constitution sets forth requirements for an initiated statute. Petition Respondents further admit that the initiated statute was certified and transmitted to the Ohio General Assembly by Respondent Secretary on February 4, 2016. Petition Respondents further admit that the General Assembly has not yet taken action on the initiated statute, and that the four-month period in which the General Assembly has to consider the initiated statute has not yet ended, and, subsequently, admit that Petition Respondents have not yet been permitted to circulate a Supplementary Petition to place the issue on a general election ballot. To the extent further response is required, Petition Respondents deny any remaining allegations in Paragraph 5.
6. Petition Respondents deny for lack of knowledge the allegations within Paragraph 6.
7. Petition Respondents deny for lack of knowledge the allegations within Paragraph 7.
8. Petition Respondents deny for lack of knowledge the allegations within Paragraph 8
9. Petition Respondents deny for lack of knowledge the allegations within Paragraph 9.
10. Petition Respondents deny for lack of knowledge the allegations within Paragraph 10.
11. Paragraph 11 contains legal conclusions to which no response is required. Petition Respondents admit that Jon Husted is the Ohio Secretary of State and serves as the Chief Elections Official of the State of Ohio.
12. Petition Respondents admit the allegations in Paragraph 12.
13. Paragraph 13 contains legal conclusions to which no response is required. Further responding, Petition Respondents admit that Article II, Sections 1b and 1g of the Ohio

Constitution set forth requirements for an initiated statute. To the extent further response is required, Petition Respondents deny any remaining allegations in Paragraph 13.

14. Paragraph 14 contains legal conclusions to which no response is required.

15. Petition Respondents admit that they timely filed the Petition with Respondent Secretary on December 22, 2015, before the deadline by which proponents of an initiated statute were required to file a petition in order to have it certified and transmitted to the General Assembly when the General Assembly began session on January 5, 2016. Petition Respondents further admit that they filed a mandamus action in state court, alleging that Respondent Secretary had a legal duty to certify the petition and transmit the proposed law to the General Assembly and filed an action in federal court alleging violations of their federal constitutional rights. Petition Respondents deny the remaining allegations in Paragraph 15.

16. Petition Respondents admit that Respondent Secretary directed boards of elections to certify their counties' part-petitions by December 30, 2015. Petition Respondents deny the remaining allegations in Paragraph 16 for lack of knowledge. The directive speaks for itself.

17. Petition Respondents admit that Respondent Secretary received certification forms from all of the 88 county boards of elections on or before December 30, 2015. Petition Respondents further admit that based on these certification forms, the 88 county boards of elections reported that the initiative petition contained 119,031 valid signatures, 27,354 more than required by Article II, Section 1b of the Ohio Constitution, and 48 of the 88 counties met the county threshold requirement, four more than required by Article II, Section 1b of the Ohio Constitution. Petition Respondents further admit that at 5:02 pm on

December 30, 2015, an attorney from the law firm Bricker & Eckler LLP transmitted an electronic mail communications to attorney Jack Christopher, General Counsel in Respondent Secretary's office, on behalf of its client, and Relator in the present action, PhRMA. That correspondence included a letter addressed to Respondent Secretary setting forth purported issues and concerns with the initiative petition and requesting that he take several actions, including:

“On behalf of our client, PhRMA, we respectfully request your consideration of several issues that suggest violations of Ohio law and potentially fraudulent practices in connection with the Ohio Drug Price Relief Act petition (“the Petition”) filed on December 22, 2015. We would appreciate your review and instruction to the Boards of Elections regarding two statistically and legally significant issues:”

\* \* \*

“We respectfully ask that you direct the BOEs, consistent with Ohio law and with protecting the sanctity of the ballot and electors' signatures, to strike those part-petitions that demonstrate the issues outlined above;”

“Additionally, we respectfully ask that you refrain from certifying the petition and/or transmitting the Petition to the General Assembly until such time as a thorough investigation of these issues can be conducted. This investigation would allow time for determining whether the Petition actually contains the requisite number of lawful signatures, or alternatively whether any supposedly requisite number of signatures was achieved solely through fraud and violations of Ohio election laws;”

\* \* \*

“Moreover, until such time as the Secretary can investigate and determine the sufficiency of the Petition, the Secretary cannot and should not transmit the Petition to the General Assembly.”

Petition Respondents deny the remaining allegations in Paragraph 17.

18. Petition Respondents admit that as a direct result of Relator PhRMA's December 30 e-mail to Respondent Secretary's office, Respondent Secretary issued Directive 2016-01 and

ordered an unprecedented “re-review” of the petition. Petition Respondents deny the remaining allegations in Paragraph 18. The directive speaks for itself.

19. Petition Respondents deny the allegations in Paragraph 19 for lack of knowledge.
20. Petition Respondents admit the allegations in Paragraph 20. The certification letter speaks for itself.
21. Petition Respondents admit that Respondent Secretary transmitted the proposed law to the General Assembly on February 4, 2016. Respondent Secretary’s transmittal letter speaks for itself, and Petition Respondents deny any remaining allegations in Paragraph 21. The transmittal letter speaks for itself.
22. Respondent Secretary’s transmittal letter speaks for itself, and Petition Respondents deny any remaining allegations in Paragraph 22.
23. Paragraph 23 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 23.
24. Paragraph 24 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 24.
25. Paragraph 25 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 25.
26. Paragraph 26 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 26.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 27.
28. Petition Respondents deny the allegations in Paragraph 28.
29. Petition Respondents admit that there was a petition circulator named “Fifi Harper.” Petition Respondents deny the remaining allegations in Paragraph 29 for lack of knowledge.
30. Paragraph 30 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 30 for lack of knowledge.
31. Paragraph 31 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 31.
32. Paragraph 32 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 32.
33. Petition Respondents admit that there was a petition circulator named “Roy Jackson.” Petition Respondents deny the remaining allegations in Paragraph 33 for lack of knowledge.
34. Paragraph 34 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 34 for lack of knowledge.

35. Petition Respondents admit that there was a petition circulator named “Kelvin Moore.”  
Petition Respondents deny the remaining allegations in Paragraph 35 for lack of knowledge.
36. Paragraph 36 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 36.
37. Paragraph 37 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 37.
38. Paragraph 38 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 38.
39. Paragraph 39 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 39.
40. Petition Respondents deny the allegations in Paragraph 40.
41. Paragraph 41 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 41.
42. Petition Respondents deny the allegations in Paragraph 42 for lack of knowledge.
43. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 43.

44. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 44.
45. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 45.
46. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 46.
47. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 47.
48. Respondent Secretary's transmittal letter speaks for itself. Petition Respondents admits that Respondent Secretary, without legal basis, invalidated every part-petition circulated by DRW and OPP in Cuyahoga County. Petition Respondents deny any remaining allegations in Paragraph 48.
49. Respondent Secretary's transmittal letter speaks for itself. Petition Respondents deny any remaining allegations in Paragraph 49.
50. Respondent Secretary's transmittal letter speaks for itself. Petition Respondents deny any remaining allegations in Paragraph 50.
51. The purported website speaks for itself. Petition Respondents deny any remaining allegations in Paragraph 51.
52. Respondent Secretary's transmittal letter speaks for itself. Petition Respondents deny any remaining allegations in Paragraph 52.
53. The purported part-petitions speak for themselves. Petition Respondents deny any remaining allegations in Paragraph 53.

54. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 54.
55. The purported part-petitions speak for themselves. Petition Respondents deny any remaining allegations in Paragraph 55.
56. The purported part-petitions speak for themselves. Petition Respondents deny any remaining allegations in Paragraph 56.
57. The purported letter from the Chairman of the Mahoning County Board of Elections speaks for itself. Petition Respondents deny any remaining allegations in Paragraph 57.
58. Paragraph 58 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 58.
59. Paragraph 59 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 59.
60. Paragraph 60 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 60.
61. Paragraph 61 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 61.
62. Paragraph 62 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 62.

63. Petition Respondents admit the allegations in Paragraph 63.
64. Paragraph 64 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 64.
65. Paragraph 65 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 65.
66. Paragraph 66 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 66.
67. Paragraph 67 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 67.
68. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 68.
69. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 69.
70. The purported transcript speaks for itself. Petition Respondents deny any remaining allegations within Paragraph 70.
71. Petition Respondents deny the allegations in Paragraph 71.
72. Petition Respondents deny the allegations in Paragraph 72.

73. Paragraph 73 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 73.
74. Paragraph 74 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 74.
75. Paragraph 75 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 75.
76. Paragraph 76 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 76.
77. Paragraph 77 states a legal conclusion to which no response is required. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 77.
78. Paragraph 78 states a legal conclusion to which no response is required. Petition Respondents further answer that because Relators did not identify the “five individuals,” Petition Respondents deny any remaining allegations within Paragraph 78. To the extent further response is required, Petition Respondents deny any remaining allegations within Paragraph 78.
79. Petition Respondents deny any allegations within the Prayer for Relief and expressly deny that Relators are entitled to relief.

80. Petition Respondents deny each and every allegation in the Complaint not expressly admitted in this Answer.

### **AFFIRMATIVE DEFENSES**

Having answered Relators' Complaint, Petition Respondents raise the following defenses:

81. Relators' claims are barred for lack of jurisdiction.

82. Relators' claims are barred for lack of standing.

83. Relators' claims are barred by the doctrines of laches, waiver, and estoppel.

84. Relators do not have stated a claim upon which relief can be granted and do not have a clear legal right to their requested relief.

85. There is no committee by the name "Ohioans for Drug Price Relief Act."

86. The Petition contained a sufficient number of valid signatures to qualify for certification and submission to the General Assembly.

87. Petition Respondents reserve the right to add additional defenses, including affirmative defenses that become apparent during the course of the proceeding.

### **CONCLUSION**

WHEREFORE, having answered Relators' Complaint, Petition Respondents respectfully request that this Court dismiss the Complaint and deny Relators relief.

Respectfully submitted,

/s Donald J. McTigue  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served by first class mail via the U.S. Postal Service on March 9, 2016, upon the following:

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