

**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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**RESPONDENTS WILLIAM S. BOOTH, DANIEL L. DARLAND, TRACY L. JONES,  
AND LATONYA D. THURMAN'S MEMORANDUM IN OPPOSITION TO RELATORS'  
MOTION FOR APPOINTMENT OF A MASTER COMMISSIONER**

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**I. INTRODUCTION**

Relators’ challenge is all about delay. Relators oppose the substance of the proposed law, and have sought to delay and prevent both the General Assembly and the people of Ohio from considering it. Relator PhRMA first convinced Respondent Secretary to delay certifying and transmitting the petition to the General Assembly by *a month* through an unprecedented “re-review” of the petition. Relator PhRMA then sought to further delay the boards of elections’ “re-review” through unnecessary, time-intensive investigations. Then, nearly *another month* after Respondent Secretary’s delayed certification and transmittal of the petition to the General Assembly, Relators filed this challenge. Relators’ Motion to Appoint a Master Commissioner is nothing but a continuation of their strategy of delay.

With a key Constitutional deadline rapidly approaching, the Court should deny Relators’ Motion to Appoint a Master Commissioner because it is unnecessary to resolve the few, straightforward questions presented in the challenge and would serve only to harm and prejudice

Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman (“Petition Respondents”).

## **II. STATEMENT OF FACTS**

Relators’ efforts to delay began in December 2015 when counsel for Relator PhRMA convinced Respondent Secretary to order the 88 county boards of elections to conduct an extraordinary and unprecedented “re-review” of the petition. Indeed, rather than certifying and transmitting the petition on the first day of the General Assembly’s session on January 5, 2016, after the boards had conducted their thorough review, Respondent Secretary instructed the boards to conduct a “re-review” and investigate whether the part-petitions had been “unlawfully altered” and whether they contained “false circulators statements”—the two primary legal questions that comprise Relators’ present challenge. The boards conducted this unprecedented, *second* review of the petition, resulting in a delay of a month, and returned largely the same results as the initial review. Through this tactic, Relators were able to effectuate delay until February 4, when Secretary of State Husted finally transmitted the petitions to the General Assembly.

The General Assembly now has until June 3 to consider Respondents’ petition—though, the General Assembly could act sooner. Ohio Constitution, Article II, Section 1(b). Should the General Assembly reject the petition or fail to act on the petition within four months, Respondents will have until July 6 to circulate their supplementary petition to place their initiative before Ohio voters on the November 8, 2016 general election ballot.

## **III. LAW AND ANALYSIS**

### **A. The delay occasioned by the appointment of a master commissioner would be injurious and prejudicial to the Petition Respondents.**

The appointment of a Master Commissioner would result in further, unnecessary delay that would prejudice Petition Respondents. Relators contend that “there is plenty of time” to conduct a fact-intensive investigation, but this is simply not true. Time is of the essence.

The focus of this action is not the date of the upcoming November 8 general election, or the date of any other election. Rather, the temporal focus must be on the four months the General Assembly has to consider the law proposed by the initiative petition, which began on February 4, 2016, and the Supplementary Petition circulation period, which will begin no later than June 4—and possibly sooner.

The Secretary of State transmitted the initiative petition containing the proposed law to the General Assembly on February 4, 2016. After challenging the initiative petition with the Secretary of State and the boards of elections in December 2015 and January 2016, Relators filed this challenge with the Court on February 29, 2016, twenty-five days after the petition had been transmitted to the General Assembly.<sup>1</sup> Under the Constitutional scheme, the General Assembly has four months from February 4 to take action on the proposed law. That deadline is June 3, 2016. If the General Assembly takes no action on the proposed law, the window to begin circulating the Supplementary Petition will open on June 4 and Petition Respondents will have at-most 90 days to collect signatures. It is a fixed period of time.

Making the matter even more pressing is that the General Assembly may act before June 3, 2016. If the General Assembly affirmatively declines to enact the proposed law before June 3, the clock to begin circulating the Supplementary Petition will begin the next day.

Circulating the Supplementary Petition, either starting on June 4 or earlier, will require Petition Respondents to expend great efforts and incur huge costs, which could all be for naught

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<sup>1</sup> In waiting so long to file their challenge, Relators have already caused substantial delay and prejudice.

depending on how and when the Court decides Relators' action. Preparations to conduct a statewide initiative petition drive within the 90 day period obviously will require the petition committee to begin extensive and costly planning and preparations weeks before the beginning of the 90 day period in order to be able to begin collecting signatures on the first day permitted by the Constitution. Thus, it is necessary that there be a quick and timely resolution of Relators' challenge to avoid harm to Petition Respondents.

**B. Relators have not demonstrated a need for a Master Commissioner as this Court as a matter of law can resolve most elements of their action.**

Relators seek to appoint a Master Commissioner in order to conduct unnecessary discovery. Relators have already filed with their challenge thousands of pages of documents, including from evidentiary hearings conducted by the county boards of elections. Additional discovery is not necessary or warranted. Relators' challenge consists of four straightforward questions which do not require additional discovery.

Relators seek to invalidate certain part-petitions because they contain fewer signatures than are attested to in the circulator's statement. This is purely a legal question, and the Court has already answered it, holding that such a discrepancy is not a basis for invalidating entire part-petitions. *See, State ex. rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St. 3d 167, 602 N.E. 2d 615 (1992). Indeed, in February 2015, Respondent Secretary was presented with this very question, involving petitions with discrepancy by as much as seventeen signatures, and stated "it is well-settled law that a board of elections cannot reject a part-petition solely because the circulator statement indicates that it contains more signatures than it does." *See, Ohio Secretary of State, Tie Vote on February 11, 2015 on Motion to Invalidate Josh Ford's Nominating Petition for City Council*, available at <http://www.sos.state.oh.us/sos/upload/elections/tievotes/2015/2015-02-23-pickaway.pdf>.

Respondent Secretary further described this as “long-standing case law” and stated that he has “consistently instructed boards” as such. *Id.* This is beside the point, though, because the Relators’ question is one purely of law and requires no further discovery.

Relators’ second claim is that only the signer or circulator may strike a signature from a part-petition prior to filing. The issue, however, is what is the legal effect if someone else strikes a signature prior to filing? Relators are seeking to invalidate part-petitions based on a fundamental misreading of Revised Code § 3519.06. This, too, is purely a legal question and requires no further discovery. Relators quote the statute selectively, and deceptively, in their brief. The statute does not require the rejection of a part-petition if any portion of it has been “altered by erasure, interlineation, or otherwise” – it only require rejection if the statement of the purpose of the initiative itself has been altered. Revised Code § 3519.06; see also Revised Code § 3519.05. Again, this claim will succeed or fail as a matter of statutory interpretation—no discovery is required.

Relators’ other two claims involve simple, straightforward questions of fact that do not require a Master Commissioner; Relators’ vague references to an “unknown magnitude of deficiency” should not move this Court. *See*, Relators Mot. pg. 3. Relators seek discovery on whether or not five petition circulators were ineligible as a matter of law to circulate petitions due to post-release sanctions. Though the question of whether or not these individuals were under any post-release sanctions at the time they circulated petitions is a factual question, it is a straightforward factual question that is far from the type of complex fact-finding that would necessitate the appointment of a Master Commissioner. Relators also seek discovery to determine whether three circulators did not list the correct address in the circulator statement. This is primarily a question of law with a minor factual component that does not require any sort of complex fact-finding.

This action will not be so difficult to resolve as Relators argue. Some claims will be decided as a matter of law, without the need for *any* discovery, while the other claims do not on their face require any significant amount of discovery to resolve, and certainly not enough to require the appointment of a Master Commissioner.

#### IV. CONCLUSION

For the foregoing reasons, Relators' attempt to impose further delay and harm upon Petition Respondents through its Motion to Appoint a Master Commissioner should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served by e-mail and by first class mail via the U.S. Postal Service on March 10, 2016, upon the following:

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