

Case No. _____

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.*
ETHICS FIRST – YOU DECIDE OHIO POLITICAL ACTION COMMITTEE,

and

STATE OF OHIO *ex rel.* RON ALBAN,

and

STATE OF OHIO *ex rel.* TIM BOGGS,

and

STATE OF OHIO *ex rel.* JOHN BOYLE, JR.,

Relators,

v.

R. MICHAEL DeWINE, Ohio Attorney General,

Respondent.

**RELATORS' MOTION TO EXPEDITE CONSIDERATION
OF COMPLAINT AND THE ISSUANCE OF WRIT OF MANDAMUS**

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The State of Ohio, by and on relation to Relators herein, hereby moves the Court to expedite consideration of the merits of the request herein for issuance of a writ of mandamus against the Ohio Attorney General as its relates to his legal duties concerning proposed constitutional amendments being proposed by the people of the State of Ohio through an initiative effort. In support of this Motion, the following Memorandum in Support is tendered.

MEMORANDUM IN SUPPORT

Relators are currently engaged in an effort to propose an amendment to the Ohio Constitution through the initiative process. For as provided for in Article II, Section 1, of the Ohio Constitution, “the people reserve[d] to themselves the power to propose...amendments to the constitution” and this reserved powers exists “independent of the general assembly”.

Relators have collected the requisite number of signatures for preliminary consideration of their proposal and have submitted the text of the proposed amendment and a summary thereof to the Attorney General. In turn, the Attorney General has certified that the summary constitutes a fair and truthful statement of the proposed constitutional amendment. Under prior law, at this stage, the Attorney General would then file with the Secretary of State the text and the summary of the proposed constitutional amendment, together with his certification; and those in support of the proposed constitutional amendment could then commence circulating petitions in their effort to obtain the requisite number of signatures thereon.

However, in 2006, the 126th General Assembly imposed additional requirements and standards upon efforts by the people to proposed laws or constitutional amendments through the initiative process, all of which must occur before the Attorney General could submit the requisite filing with the Secretary of State. This original action challenges the constitutionality the changes made in 2006. For the substantive changes to the initiative petition process effectuated

in 2006 included: (i) interjecting the Ohio Ballot Board into the substantive aspects of the initiative petition process and (ii) the imposition of the extra-constitutional requirement for initiative petitions that only one proposed law or constitutional amendment could be contained in a petition.

But Article II, Section 1g, of the Ohio Constitution, expressly provides that the constitutional provisions relating to initiative and referendum provisions which the people reserved unto themselves “shall be self-executing” and that “[l]aws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.” Additionally, the First Amendment to the United States Constitution “guarantees an individual the right to free speech, ‘a term necessarily comprising the decision of both what to say and what not to say.’” *Langdon v. Google, Inc.*, 474 F.Supp.2d 622, 629 (D. Del. 2007)(quoting *Riley v. National Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, 796-97 (1988)). Relators contend that the substantive changes to the initiative process brought about in 2006 violate these requirements of both the state and federal constitutions; and, as a result thereof, the Attorney General has the present legal duty to file the requisite papers with the Ohio Secretary of State.

Because of the unconstitutional requirements presently imposed upon their effort, Relators are precluded from advancing their proposed constitutional amendment in the words and language which they have chosen to speak to their fellow citizens about reforming their government. *See New York County Bd. of Ancient Order of Hibernians v. Dinkins*, 814 F.Supp. 358 (S.D.N.Y. 1993)(“[i]n exercising [the right of free speech], the message intended to be conveyed... is to be determined by the [speaker] and not by the state.... To hold otherwise would give [] government the right of censorship over the thoughts and speech of the people”).

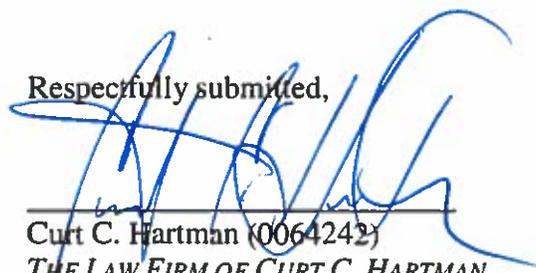
But for the changes effectuated in 2006 to the initiative process, the Attorney General would have already tendered the requisite filings with the Secretary of State and Relators would be fully engaged in their petition effort.

However, because of the unconstitutional involvement of the Ballot Board and the imposition of an extra-constitutional standard, the viability of Relators' effort is seriously threatened in light of the delay that continues to occur. Pursuant to Ohio law, an initiative to propose a constitutional amendment must be supported by over 300,000 petition signatures in compliance with Article II, Section 1a, of the Ohio Constitution. In order to enable Relators to exercise their constitutional rights on their initiative effort so as to obtain access to the ballot in November 2016 (which is critical as the proposal contains time-sensitive matters), the collection of signatures must be accomplished by July 6, 2016. This is an enormous task in its own right, involving volunteer petition-circulators and participating citizens themselves. The delay to such efforts due to the unconstitutional statutes at issue only serves to further restrict and delay Relators' full and robust exercise of their constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976)("[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury).

This Court has previously granted similar requests to expedite matters relating to initiative petitions. *See, e.g., State ex rel. Ohio Liberty Council v. Brunner*, 04/15/2010 #2 Case Announcements, 2010-Ohio-1662. The extremely pressing deadline on Relators' present initiative effort requires immediate consideration and action by this Court. As the issues involved herein are purely legal, there is no need for additional evidence beyond that submitted with the Verified Complaint.

Accordingly, in light of the short time frame confronting Relators and the fact that Relators' effort directly involve the exercise of constitutional rights, Relators respectfully request that this Court expedite the consideration of the merits herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing, together with a copy of the Verified Complaint herein, was or will be served via e-mail upon the following on the 30th day of March 2016.

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