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**RELATORS' MOTION FOR SCHEDULING CONFERENCE AND
RESPONSE TO MOTION TO CONSOLIDATE FILED IN CASE NO. 2016-0455**

Respondents Booth, Darland, Jones and Thurman (the “Committee”) seek to consolidate the instant case with another newly filed case (Case No. 2016-045 in which Relators are not parties) but have failed to provide any notice of the new case or motion to consolidate it to Relators. For the reasons set forth below, Relators oppose the motion to consolidate and seek a scheduling conference.

A. Background

On February 29, 2016, Relators filed the instant challenge pursuant to Section 1g, Article II of the Ohio Constitution. Relators challenge the petition called the “Ohio Drug Price Relief Act” (the “Petition”) and asked this Court to invalidate thousands of specific part-petitions that violate Ohio law because they: (1) list a false permanent residence address of the circulator in violation of R.C. 3501.38(E) and R.C. 3519.06; (2) contain unauthorized alterations and strikethroughs of signatures in violation of R.C. 3501.39(A)(3), R.C. 3519.06(C)(3) and R.C. 3501.38(G) and (H); (3) include false circulator attestations in violation of R.C. 3501.38(E) and R.C. 3519.06; and/or (4) were circulated by felons who were ineligible to collect petition signatures pursuant to R.C. 2961.01 and R.C. 2961.16.

The Committee moved to expedite this case on March 10, 2016, requesting that the case be briefed under the schedule applicable to expedited election matters under S.Ct.Prac.R. 12.08 “or an otherwise expedited schedule.” (Respondents’ Motion to Expedite Case Schedule, at 4.) Relators opposed that request on several grounds, most significantly to this motion because an expedited schedule by this Court was not needed in as much as Relators had already sought discovery and proposed stipulations. In other words, Relators are moving quickly and without

this Court's prompting.¹ (*See* Relators' Response to Motion to Expedite Case Schedule.) But instead of moving forward to expedite this case, an outcome the Respondents *claim* to desire, Respondents have instead: (1) failed to provide any substantive response to Relators' now twenty-day-old request for stipulations; and (2) failed to respond in any way to Relators' request to coordinate depositions sent six days ago²; and (3) filed a second mandamus action raising the same issues related to the same Petition at issue in the instant case,³ but dragging ten additional parties into the fray; and (4) filed a motion for judgment on the pleadings in the instant matter.

Despite their claims that the issues in this case are straightforward and should be decided quickly, the Committee has done nothing but delay, distract and needlessly muddy the waters. Their most recent motion to consolidate this case with their newly filed mandamus action (Case No. 2016-0455) is just more of the same. Rather than take this Court's time with yet another nonsensical and internally contradictory pleading, the Committee should do exactly what they claim they desire: just get on with it.

B. Response to Motion to Consolidate this Case with the Committee's Mandamus Action

The Committee's motion to consolidate this action with its new mandamus action appears to be nothing more than a thinly veiled attempt to avoid discovery in this case.

Petition challenges, such as this one, are governed by S.Ct.Prac.R. 14. Under S.Ct.Prac.R. 14.01(C)(2), "[t]he Ohio Rules of Civil Procedure * * * including those related to depositions,

¹ Relators served their first set of discovery requests two weeks before the Respondents' answers were due and served their second set of discovery requests the same day as the Secretary filed his Answer.

² On March 25, 2016, Relators made another attempt to expedite this case. (See March 25, 2016 letter from Ms. Sferra to Mr. McTigue, attached as Exhibit A.)

³ The new mandamus action against the Secretary, designated as Case No. 2016-0455, is the Committee's second mandamus action against the Secretary in this Court and the third action it has filed against the Secretary related to the Petition. *See Jones v. Husted*, Case No. 2016-0020 and *Jones v. Husted*, S.D. Ohio No. 2:16-cv-038 (Watson, J.).

interrogatories, requests for production of documents * * * shall supplement these rules unless clearly inapplicable. * * *.” Consistent with this rule, Relators served discovery requests on the Committee on March 11 and March 25, 2016. The Committee’s responses are due on April 8 and April 22, 2016, respectively. If the Committee wants to expedite this case, as it claims it does, it can respond to these discovery requests prior to the response deadlines. Further, Relators have proposed that the Committee stipulate to relevant facts which would further expedite this case. To date, the Committee has shown no interest in trying to complete discovery in an expedited fashion. Rather, it is attempting to avoid discovery (and avoid shining a light on their petition circulating practices) altogether. The Committee should not be permitted to avoid its discovery obligations by consolidating this case with its new mandamus action (where it characterized its claims so as to avoid discovery).

Rather than cooperate to put this case in a posture for this Court to get to the real issues and determine whether the challenged part-petitions and signatures are invalid, the Committee filed a second mandamus action against the Secretary. The Committee did so despite the fact that it recently made the unqualified assertion that “Respondent Secretary has already certified and transmitted the proposed law to the General Assembly and has no further legal obligations at this stage of the process.” (Respondents’ Motion to Expedite Case Schedule, at 3, filed March 10, 2016.) If the Secretary had no further legal obligations vis-a-vis the Petition as of March 10, 2016, how is it that such obligations materialized just fifteen days later to give rise to the Committee’s March 25, 2016 mandamus action?⁴ The answer is simple – there is no basis for the new mandamus action. This new mandamus action is simply another attempt by the Committee to muddy the waters, create needless confusion, and avoid its obligation to provide

⁴ Between March 10 and March 25, 2016, the Secretary took no action regarding the Petition other than to file its answer in this case.

discovery, thereby precluding the Court from having the evidentiary record it needs to properly decide the issues before it.⁵

Further, consolidation is needless because the new mandamus action is barred by res judicata. In the new mandamus action, the Committee is simply trying to re-litigate the same claims that it has already dismissed. More specifically, the Committee filed its first mandamus action against the Secretary on January 6, 2016 arguing that the Secretary did not have the authority to seek re-review of the part-petitions. On January 14, 2016, the Committee filed its federal court action also arguing that the Secretary did not have the authority to seek re-review of the part-petitions. The Committee amended its complaint in the federal court action on February 3, 2016, setting forth in detail the Secretary of State's and each county board of elections' action upon re-review of the part-petitions. This amended complaint specifically referenced each and every one of the county boards of elections named as respondents in the Committee's most recent mandamus action before this Court. Thus, the Committee was well aware, before February 3, 2016, that the Secretary and several county boards of elections had invalidated thousands of signatures upon re-review of the part-petitions.

⁵ As just one example for the need to engage in discovery, Relators and the Committee seemingly agree that established case law allows a circulator to attest to more signatures than are actually witnessed to accommodate for explainable or arithmetic errors that do not promote fraud. However, the record is already replete with sworn testimony from circulators in Cuyahoga, Delaware, Franklin and other counties who testified that they did not fill in the number of signatures on their attestations or were instructed to fill in the maximum number signatures that could be affixed to each part-petition, regardless of how many signatures were included. In fact, one circulator testified that she was so distraught over being required to falsely attest to having witnessed more signatures than she collected that she quit. (*See* Appx. 28, Ex. T, Interview of Adrienne Raishawn Collins by Franklin County Bd. of Elections, at 16.) That such fraudulent practices occurred is undisputable. But discovery is needed to establish that these were not minor and isolated incidents and to determine the breadth and impact of the practice. The Committee should not be permitted to avoid this relevant and probative discovery.

With full knowledge that the Secretary and several county boards of elections had invalidated thousands of signatures upon re-review of the part-petitions, on February 5, 2016, the Committee made a calculated decision and asked this Court to dismiss its mandamus action. On February 9, 2016, this Court did so. More than six weeks later, on March 25, 2016, the Committee filed (or, more accurately, refiled) its latest mandamus action raising the same claims that were asserted in its original mandamus action and once again arguing that the Secretary did not have the authority to seek re-review of the part-petitions.⁶ The Committee's new mandamus action is barred by res judicata and waiver because the Committee raised or could have raised the same issues in its first mandamus case, but chose instead to move this Court to dismiss. The Committee cannot now take a third bite at the same apple alleging that re-review of the part-petitions was improper.

In short, Relators oppose consolidation and urge this Court to recognize the Committee's actions for what they are. Any other result would reward the Committee for its seemingly unending litigation shenanigans.

C. Request for Scheduling Conference

Unfortunately, to date, the Committee has completely disregarded the Relators' efforts to try to streamline discovery and make resolution of this matter easier for the Court. While disappointing, that is the Committee's prerogative. But having chosen that path, it should not be able to rush this case through the Court on an expedited basis. Relators are entitled to discovery

⁶ In its Motion to Expedite Case Schedule filed in this case on March 10, 2016, the Committee claimed that the Relators were tardy in filing this challenge because it was filed 16 business days after the Secretary transmitted the Petition to the General Assembly. As stated in Relators' opposition to that motion, this action was filed in a timely manner. But it begs the question of how the Committee could contend its newly filed mandamus action was timely filed where it was filed almost two months after the official action by the Secretary and boards of elections that it asks this Court to reverse.

so that they can show this Court the broad and systemic disregard for Ohio law that the Committee engaged in when circulating the Petition. Time and again, Ohioans have been subjected to petition initiatives only to find out after the fact (after the initiatives have been presented to the voters) of evidence of fraud and wrongdoing in the circulation process.⁷ At that time, it is too late to keep the initiative that never should have qualified off the ballot. Relators seek to present facts to this Court *now*, before this ballot initiative proceeds to the next step in the process because the Petition never had sufficient signatures in the first place. And, without sufficient signatures, the Committee is required to cure the deficiency before it can proceed to the next step. *See* Ohio Constitution, Article II, Section 1g. In this regard, Relators request a scheduling conference so that discovery and briefing on the merits in this case can proceed in an orderly fashion.

CONCLUSION

For the reasons set forth above, Relators object to the Motion to Consolidate in Case No. 2016-0455. Relators also request a scheduling conference so that this case can proceed in an orderly fashion with discovery regardless of the Committee's efforts to create confusion and revive (in Case No. 2016-0455) claims that were already raised and dismissed.

⁷ The most recent example is the "Marijuana Legalization Amendment" supported by ResponsibleOhio, on the ballot in November 2015. Among other things, there were reports by election officials of fraudulent registrations, non-existent addresses, duplicate applications from the same address and underage registrants. Nonetheless, the amendment was submitted to voters.

Respectfully submitted,

/s/ Anne Marie Sferra

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via electronic mail on

March 31, 2016 upon:

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March 25, 2016

VIA EMAIL
ORIGINAL TO FOLLOW BY
ORDINARY U.S. MAIL

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Re: *The Ohio Manufacturers' Association, et al. v. Ohioans for
Drug Price Relief Act, et al.*
Ohio Supreme Court, Case No. 2016-0313

Dear Mr. McTigue:

Enclosed you will find Relators' Second Set of Interrogatories, Request for Production of Documents, and Request for Admissions Propounded to Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and LaTonya D. Thurman, Individually and as the Committee Supporting the Ohio Drug Price Relief Act. As you know, on March 11, 2016, we proposed that the parties stipulate to the relevant facts which would significantly minimize discovery and expedite this matter. Since you have not agreed, nor definitively responded, to our request to stipulate to the relevant facts as a means of expediting this matter, it is necessary to serve the enclosed discovery requests.

Also enclosed is a preliminary list of persons (including company representatives) we wish to depose in this matter. Another way to expedite this matter would be for your clients to make these persons available for depositions in Ohio. This would save significant time and administrative resources of the Court in issuing subpoenas. Please let us know by 5:00 p.m. on Tuesday, March 29, 2016, whether you agree to make these persons available as a means to expedite this case.

Sincerely,


Anne Marie Sferra

AMS/th
Enclosure
cc: Steve T. Voight (w/enc.)

EXHIBIT A

RELATORS' PRELIMINARY LIST OF REQUESTED DEPONENTS

A. Companies/Form 15 Filers as Compensating Others

1. PCI Consultants, Inc.
26500 W. Agoura Road, Suite 102-146
Calabasas, California 91302
30(B)(5) Witness
2. Angelo Paparella
26500 W. Agoura Road, Suite 102-146
Calabasas, California 91302
3. DRW Campaigns LLC
3549 S. Dort Highway, Suite 206
Flint, Michigan 48507
30(B)(5) Witness
4. Dustin Wefel
5020 Ford Street
Swartz Creek, Michigan 48473
5. Elite Campaigns, Inc.
5047 W. Main Street, Suite 279
Kalamazoo, Michigan 49009
30(B)(5) Witness
6. Eric Tincher
816 Denner St.
Kalamazoo, Michigan 49006
7. Ohio Petitioning Partners LLC
3909 Pensacola Ave.
Cleveland, Ohio 44109
30(B)(5) Witness
8. Pamela J. Lauter
3909 Pensacola Ave.
Cleveland, Ohio 44109
9. Ballot Access LLC
1121 W. 860 N.
Provo, Utah 84604
30(B)(5) Witness

10. John Michael
1037 NE 65th St., Suite 252
Seattle, Washington 98115

11. Educated Voters
5216 Beechmont Ave.
Cincinnati, Ohio 45230
30(B)(5) Witness

12. Cody Eldred
219 Foote Avenue
Bellevue, Kentucky 41073

Additional Address:
3011 39th Ave, N
St. Petersburg, Fla 33714

13. Elizabeth Page
3143 W. 33rd St., Suite 6
Cleveland, Ohio 44109

Additional Address:
3324 W. 33rd St.
Cleveland, Ohio 44109

14. Kelvin Moore
3143 W. 33rd St., Suite 6
Cleveland, Ohio 44109

15. David Saddler
1028 Clinton Avenue
Kalamazoo, Michigan 49001

16. Xavier A. Malagon
8428 N. St. Rt. 635
Kansas, Ohio 44841

Additional Address:
3208 N. St. Rt. 635
Kansas, Ohio 44841

B. Individual Circulators

17. Fifi Harper
4022 East Greenway Road, #11-312
Phoenix, Arizona 85032

18. Roy Jackson
2100 Brice Road
Reynoldsburg, Ohio 43068
19. Kelvin Moore
3143 West 33rd Street
Cleveland, Ohio 44109
20. Kacey Veliquette
1900 S. Ocean Blvd.
Myrtle Beach, South Carolina 29577
21. Michael Mayo
871 East 141st Street, Apartment 4
Cleveland, Ohio 44110
22. Walter Searcy
58 South Napoleon Ave., #C
Columbus, Ohio 43213
23. Stephanie Cole
524 Baltimore Avenue
Akron, Ohio 44306
24. Sean Thomas
3072 Clifton Terrace
Largo, Florida 33762
25. Antoine Woods
9514 Gorman Avenue
Cleveland, Ohio 44105
26. Adrienne Raishawn Collins
65 E. 7th Avenue
Columbus, Ohio 43201
27. Kevin Hawkins
5767 Arborwood Ct., Apt. B
Columbus, Ohio 43229
28. Nickeye L. Embry
223 North Kendall Str.
Battle Creek, Michigan 49037

29. Hunter Hice
611 Hoek Ct.
Kalamazoo, Michigan 49001

C. Committee

30. 30(B)(5) Witness From Committee