

IN THE SUPREME COURT OF OHIO

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

RELATORS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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RELATORS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Now come Relators in this challenge proceeding, and respectfully move this Court for an Order: (1) granting summary judgment on their challenge to part-petitions containing false circulator addresses; (2) finding all such part-petitions and signatures thereon invalid; and (3) finding the Petition deficient because it lacks the requisite number of signatures in 44 counties. This Motion is made pursuant to Civ.R. 56 and S.Ct.Prac.R. 14. The facts and law supporting this Motion are set forth in the attached Memorandum in Support and supporting affidavits and exhibits.

Respectfully submitted,

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RELATORS' MOTION FOR PARTIAL SUMMARY JUDGMENT¹

I. INTRODUCTION

This case involves the integrity of the statewide initiative process. While it is true that the initiative power is reserved to the people of this state, it is equally true that the Ohio Constitution contemplates the existence of statutes that facilitate the people's exercise of that power by "ensuring the integrity of and confidence in the process." *In re Protest Filed with the Franklin Cty. Bd. of Elec. by Citizens for the Merit Selection of Judges, Inc.*, 49 Ohio St.3d 102; *see also* Article II, Section 1g of the Ohio Constitution (allowing laws to "facilitate" the statewide initiative process). Adherence to reasonable requirements enacted by the General Assembly is vital to maintaining the integrity of the initiative process in Ohio. *See Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 191, 119 S.Ct. 636, 142 L.Ed.2d 599 ("states allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally"); *In Re Protest of Keith Brooks*, 155 Ohio App.3d 370, 2003-Ohio-6348, 801 N.E.2d 503 (same) (citing *Buckley*).

As a way of safeguarding the integrity of the process, Ohio courts have required circulators of initiative part-petitions to strictly comply with applicable laws unless a statute expressly states otherwise. *See State v. Vickers v. Summit Cty. Council*, 97 Ohio St.3d 204, 2002-Ohio-5583, ¶ 32. This is not surprising since circulators (and those who employ them) are at the heart of the initiative process. Thus, the laws applicable to their actions must be strictly

¹ S.Ct.Prac.R. 14 governs this action. S.Ct.Prac.R. 14(C)(2) provides that the Ohio Rules of Civil Procedure apply unless clearly inapplicable. This motion is brought under Civ.R. 56 because it is not clearly inapplicable and moving for partial summary judgment is an expeditious way of demonstrating that the Petition is insufficient and must be cured.

applied to avoid unprecedented departure from duly enacted standards designed to safeguard the integrity of the initiative process.

Relators filed this challenge to a statewide initiative petition to enact proposed legislation known as the “Ohio Drug Price Relief Act” (the “Petition”). Article II, Section 1g of the Ohio Constitution grants this Court “original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions * * *.”

Under the Ohio Constitution, the Petition cannot qualify for transmission to the General Assembly unless two threshold requirements have been met: (1) the Committee must submit at least 91,677 valid signatures, which is 3 percent of the total votes cast for the office of governor in the last gubernatorial election²; and (2) the Committee must submit 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.³

Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman, known as the Committee for the Ohio Drug Price Relief Act (collectively, the “Committee”), circulated the Petition and filed it with Respondent Secretary of State Jon Husted (the “Secretary”) on December 22, 2015. The Secretary sent the part-petitions to Ohio’s 88 county boards of election for review and verification. Upon completion of this review process, the Secretary learned that thousands of part-petitions contained a number of irregularities and instructed the county boards to conduct a second, more thorough review.

Following the second review period, the Secretary certified the Petition as containing the sufficient number of signatures and counties as required by the Ohio Constitution, and transmitted the Petition to the Ohio General Assembly. At that time, presumably neither the

² See Article II, Section 1b of the Ohio Constitution.

³ See Article II, Section 1g of the Ohio Constitution.

county boards nor the Secretary were aware that several circulators had falsely identified their permanent residence addresses in their circulator statements, in direct violation of Ohio election law. Evidence of these particular irregularities was discovered by Relators, raised as a challenge to the Petition herein, and is the basis for the present Motion.⁴

More specifically, the evidence shows that several circulators listed non-residential addresses, such as hotels, a commercial warehouse, and a commercial mailing and shipping center as their “permanent residence address.” These violations are fatal to the affected part-petitions, rendering these part-petitions and the signatures thereon invalid. ***When the part-petitions containing false permanent residence addresses are stricken, the Petition is deficient because it fails to meet the threshold constitutional requirement of 1.5 percent valid signatures from at least 44 counties.*** Because the Petition is deficient, the deficiency must be cured before it can be considered by the General Assembly.

⁴ Relators are still pursuing their three other claims herein, but their efforts to obtain discovery have been met with several challenges, which have caused delay. In response to Relators’ discovery requests, the Committee claims little knowledge about the circulation of the part-petitions and states that it “did not engage persons or companies to circulate the petition or themselves utilize persons or companies to circulate the petition.” (Ex. A, Respondents’ Responses to Relators’ First Set of Discovery Requests, Ans. to Interrogatory No. 8.) So, Relators have attempted to obtain additional evidence to support their claims from the petition circulating companies and circulators themselves. To date, this has been extremely difficult because several persons and/or entities cannot be found at the addresses they provided and several persons who have been served with subpoenas have not produced documents or appeared at scheduled depositions. For example: (1) subpoenas could not be served on Cody Eldred and his circulation company, Educated Voters, at the Cincinnati address provided on their Form 15 filings with the Secretary because the property was vacant and no forwarding address was available; (2) subpoenas served on Dustin Wefel and his circulation company, DRW Campaigns LLC, in Michigan were torn into pieces in the presence of the process server and not complied with, so additional efforts to compel Wefel and his company to comply are underway (Ex. B, Affidavit of Jennifer Ryan; Ex. C, Affidavit of Joshua Southwell); and (3) several attempts have been made to serve subpoenas on Eric Tincher and his circulation company Elite Campaigns, Inc., and David Saddler in Michigan, but to date all have been futile; and (4) three circulators served with subpoenas (Kevin Hawkins, Michael Mayo, and Stephanie Cole) did not appear at scheduled depositions.

II. STATEMENT OF UNDISPUTED FACTS

A. Signature and County Requirements for Transmission to the General Assembly

As stated above, to qualify for submission to the General Assembly, the Committee was required to submit at least 91,677 valid signatures, including valid signatures equal to at least 1.5 percent of the total vote cast for governor at the most recent gubernatorial election in at least 44 of Ohio's 88 counties. The Secretary certified the Petition as containing 96,936 total valid signatures. The Secretary also certified that 47 counties met or exceeded the requisite 1.5 percent signature totals. (Ex. D, Secretary's February 4, 2016 Certification Letter.) Included in these 47 counties were Knox, Licking, Morrow and Scioto Counties. The Secretary transmitted the Petition to the General Assembly "with reservations" based on the "factual circumstances suggesting improper, potentially fraudulent circulator attestations." (*Id.*)

B. The False Address Circulators

Through their own independent review and investigation of the part-petitions, Relators discovered numerous irregularities on the part-petitions. Pertinent to this Motion, Relators discovered that several Petition circulators had identified permanent residence addresses that are, in fact, not permanent residence addresses, but addresses of commercial properties.

Every part-petition circulated as part of the Petition contained a circulator statement which specifically required that the circulator sign the part-petition and affix the "Address of circulator's permanent residence" as specifically required by R.C. 3519.05 and R.C. 3501.38(E). *See* R.C. 3501.38(E)(1) ("the circulator shall identify the circulator's name, the ***address of the circulator's permanent residence***, and the name and address of the person employing the circulator * * *." (Emphasis added.)

At least four circulators, Fifi Harper, Kelvin Moore, Roy Jackson, and Kacey Veliquette (collectively the “False Address Circulators”), listed non-residential addresses, including hotels and/or motels, a commercial warehouse, and a commercial mailing and shipping center as their permanent residence addresses on the part-petitions they circulated throughout Ohio. Combined, the False Address Circulators submitted more than 347 part-petitions in at least 61 counties containing thousands of signatures. (Ex. E, Second Affidavit of David Hasman.)⁵

1. Fifi Harper

Circulator Fifi Harper (“Harper”) submitted approximately 3,750 signatures statewide.⁶ On the 200 part-petitions that Harper circulated, she listed her permanent residence address as 4022 E. Greenway Rd. #11-312, Phoenix, Arizona, 85032. This address is a Pack, Ship, and Print Center (“Pack and Ship”) located in the middle of a commercial strip mall. (Ex. F, Affidavit of Joe Abate⁷; Ex. G, Affidavit of Jim Fenton.)

Pack and Ship is a commercial mailing and shipping center. (*Id.*) There are a number of mailboxes inside Pack and Ship, but there are no residences at this location. (*Id.*) Harper rented mailbox #312 at Pack and Ship, submitting an application for such mailbox on August 27, 2015. (*Id.*) Harper does not reside (and never resided) at Pack and Ship, nor does any other individual. (*Id.*) In fact, Harper had a residential address at an apartment in Phoenix at the time she rented the mailbox at Pack and Ship. The address reflected on Harper’s driver’s license, submitted to

⁵ David Hasman submitted his first affidavit as Ex. J to the Complaint. Ex. J to the Complaint (with its numerous attachments) is also used in support of this motion for partial summary judgment. However, due to its size, Relators refer to Ex. J to the Complaint herein without resubmitting it as a separate exhibit to this motion. Should the Court prefer Relators file it as a separate exhibit to this motion, Relators will do so.

⁶ Without Harper’s signatures, Knox, Licking, Morrow and Scioto Counties no longer qualify toward the 44-county minimum required by the Ohio Constitution, reducing the total number of qualifying counties to just 43 and rendering the Petition deficient. *See, infra*, at 14-15.

⁷ This is the same affidavit that was filed as Exhibit I to the Complaint.

Pack and Ship on August 27, 2015 was 4802 N. 12th Street, Apt. 2102, Phoenix AZ 85014-4094. (*Id.*, Ex. A thereto.)

2. Kelvin Moore

Circulator Kelvin Moore (“Moore”) submitted approximately 690 signatures statewide. On the 53 part-petitions that Moore circulated, he listed his permanent residence address as 3143 West 33rd Street, Cleveland, Ohio 44109 and 3143 West 33rd Street, Suite 6, Cleveland, Ohio 44109. These addresses pertain to a commercial warehouse building, according to the records of the Cuyahoga County Auditor.

Moore does not reside at 3143 West 33rd Street, Cleveland, Ohio 44109. Private investigator Christopher Ereg attempted to find Moore at 3143 West 33rd Street, Cleveland, Ohio 44109 on February 24, 2016. (Ex. H, Affidavit of Christopher Ereg⁸). Ultimately, Ereg spoke with the owner of the building who confirmed that the building is for non-residential use and that “there is no Kelvin Moore in that building.” (*Id.*) On April 21, 2016, process server, Dolph Miller, attempted to serve Moore with a subpoena in this case at 3143 West 33rd Street, Suite 6, Cleveland, Ohio 44109. (Ex. I, Affidavit of Non-Service by Dolph Miller.) The tenant for Suite 6 was Zeus Jones, not Moore. (*Id.*) Miller contacted other tenants in the building to inquire about Moore, but no one recognized his name. (*Id.*)

3. Roy Jackson

Circulator Roy Jackson (“Jackson”) submitted approximately 487 signatures statewide. On the 47 part-petitions that Jackson circulated, he listed his permanent residence address as 2100 Brice Road, Reynoldsburg, Ohio 40368. This address is a Days Inn hotel. (Ex. J, Affidavit of Xia Zang, Manager of Days Inn.)

⁸ This is the same affidavit that was filed as Exhibit L to the Complaint.

The Days Inn is not Jackson's permanent residence. Instead, the evidence shows that Jackson stayed at the Days Inn temporarily, for a total of approximately 15 days while circulating part-petitions. (*Id.*, Ex. A thereto.) According to the records of the Days Inn, Jackson stayed there from Friday, October 9, 2015 until Saturday, October 24, 2015. (*Id.*) Jackson began circulating part-petitions in Ohio on October 10, 2015, which coincides with the time he stayed at the Days Inn. (Ex. E, Second Affidavit of David Hasman, ¶ 11.) Jackson has not stayed at the Days Inn since October 24, 2015. (Ex. J.) In addition, the driver's license Jackson presented to Days Inn staff is from California. (*Id.*) The address listed on Jackson's driver's license, issued on August 5, 2015, just two months before he began circulating part-petitions in Ohio, is 2420 S. Western Avenue, Unit 207, Los Angeles, CA, 90018. (*Id.*) Jackson did not have a permanent residence address at the Days Inn. At most, he stayed there for a short period of time while he was circulating part-petitions in Ohio.

4. Kacey Veliquette

Circulator Kacey Veliquette ("Veliquette") submitted approximately 872 signatures statewide. On the 47 part-petitions that Veliquette circulated, she listed her permanent residence address as 1900 S. Ocean Boulevard, Myrtle Beach, South Carolina, 29577. The Shady Rest Motel ("Motel") is located at this address. (Ex. K, Affidavit of Debbie Denton, Manager of Shady Rest Motel.)

Debbie Denton, manager of the Motel, reviewed the Motel's records for 2015 and 2016 and found none referring to Veliquette. (*Id.*, ¶ 3.) Denton also confirmed that no one by the name of Kacey Veliquette has a permanent residence address at the Shady Rest Motel. (*Id.*, ¶ 4.)

III. LAW AND ANALYSIS

Relators are entitled to summary judgment because: (1) there is no genuine issue as to any material fact; (2) they are entitled to judgment as a matter of law; and (3) based on the evidence, reasonable minds can come to but one conclusion when viewing the evidence most strongly in favor of the party against whom the motion for summary judgment is made, and that conclusion is adverse to the non-moving party. *See Temple v. Wean United, Inc.*, 50 Ohio St.3d 317, 327 (1977).

A. Ohio Requires Strict Compliance With the Election Laws at Issue

In Ohio, election laws are mandatory and require strict compliance. Substantial compliance is acceptable only when an election statute says that it is. *See State ex rel. Vickers v. Summit County Council*, 97 Ohio St.3d 204, 2002-Ohio-5583, at ¶32; *Phillips v. Lorain Cty. Bd. of Elec.*, 93 Ohio St.3d 535, 2001-Ohio-1627, ¶ 49; *In re Protest of Brooks Regarding Initiative Petitions on the Ohio Prescription Drug Fair Pricing Act*, 122 Ohio Misc.2d 33, 2003-Ohio-1213, 786 N.E.2d 126, ¶ 12 (C.P. Darke Cty.) (holding that in the absence of statutory language permitting merely substantial compliance with R.C. 3519.06 and other applicable statutes, there must be strict compliance with Ohio law regarding circulation of initiative petitions). None of the laws applicable here expressly provide for substantial compliance.

Circulators of part-petitions (and those supervising them) are at the heart of the initiative petition process. To ensure the utmost integrity in the petition process, the General Assembly has enacted simple, but mandatory, requirements specifically applicable to circulators, including that they truthfully complete, under penalty of election falsification, the “circulator’s statement” on each part-petition they circulate. The circulator’s statement is critical to the integrity and reliability of the initiative process. *See, e.g., State ex rel. Spadafora v. Toledo City Council*, 71

Ohio St.3d 546, 549, 1994-Ohio-473. The filing of a false circulator statement is a serious matter, involving more than a technicality. *See Brousseau v. Fitzgerald*, 138 Ariz. 453 (1984); *see also Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 80 (Me. 2002) (“In addition to obtaining truthful information from the circulator, the [circulator’s] oath is intended to assure that the circulator is impressed with the seriousness of his or her obligation to honesty. . . and to assure that the person taking the oath is clearly identified should questions arise regarding particular signatures.”). The General Assembly has sought to protect Ohio’s initiative process by providing safeguards in the way statewide initiative petitions are circulated and verified, including the circulator’s statement.

This Court has consistently demanded strict compliance with the requirements for circulators’ statements. *See State ex rel. Committee for the Referendum of City of Lorain Ordinance No. 77-01*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶49; *State ex rel. Citizens for Responsible Taxation*, 65 Ohio St.3d 167, 174. Failure to accurately complete the circulator’s statement results in invalidation of the part-petition. *See Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, ¶¶ 8-14; *State ex rel. Committee for the Referendum of City of Lorain Ordinance No. 77-01*, 96 Ohio St. 3d at 317, ¶¶ 47-50; *State ex rel. Spadafora*, 71 Ohio St.3d at 549.

B. Ohio Law Requires Circulators to Include Their Permanent Residence Address on Part-Petitions and Failure to Comply Results in Invalidation of the Entire Part-Petition

The General Assembly enacted important provisions concerning the circulator’s statement that are integral to the matter before this Court. First, R.C. 3519.05 establishes the form to be used for initiative petitions, which includes certain disclosures to be made by circulators. The statutorily-required form includes a statement to be executed by the circulator

requiring the “address of the circulator’s permanent residence.” In the part-petitions circulated in this case, that statement reads:

I,, declare *under penalty of election falsification* that I am the circulator of the foregoing petition paper containing the signatures of electors, that the signatures appended hereto were made and appended in my presence * * * and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by (Name and address of employer).

* * *

(Signed)
(Address of circulator’s permanent residence
Number and Street, Road or Rural
Route.....)

* * *

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

(Emphasis added).

This statute explicitly requires that a circulator identify the “address of [his/her] permanent residence.”⁹ *Id.* And, in this case, the circulator’s statement that appears on each part-

⁹ In 2006, the General Assembly amended R.C. 3519.05 and R.C. 3501.38(E) to include the requirement that circulators list a “permanent residence” address. The prior version of the statutes simply required an address to be listed, not a “permanent residence” address. The 2006 amendment was enacted after several protest actions involving a statewide initiative petition demonstrated that out-of-state persons involved in petition circulating activities in Ohio could not be located to answer to county boards of elections, prosecutors and courts after the part-petitions were delivered to the Secretary. At that time, circulators were required to be residents of Ohio. In order to circumvent this requirement, out-of-state circulators provided Ohio addresses, sometimes of the places where they were temporarily staying while circulating part-petitions in Ohio. The 2006 amendment was in response to this nefarious activity. In 2015, a federal court in a candidate election issued a permanent injunction holding that the Ohio residency requirement for circulators was an unconstitutional violation of the plaintiffs’ free speech. *See Citizens in Charge, Inc. v. Husted*, Case No. 2:13-cv-935. Although this residency requirement has not been struck down in the context of a statewide initiative petition, neither Relators nor the Secretary have opined that it should be enforced herein. Regardless of whether a circulator has residency in Ohio, the circulator still must provide truthful information as to his or her permanent residence address.

petition specifically requires that the circulator sign each part-petition and affix the “Address of circulator’s permanent residence.”

Similarly, R.C. 3501.38(E)(1) provides that “the circulator shall identify the circulator’s name, *the address of the circulator’s permanent residence*, and the name and address of the person employing the circulator * * *.” (Emphasis added).

The General Assembly also enacted R.C. 3519.06, which governs the verification of part-petitions:

No initiative or referendum part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence:

(A) That the statement required by section 3519.05 of the Revised Code is *not properly filled out*;

* * *

(D) That the statement is *false in any respect*.[.]

R.C. 3519.06 (emphasis added.)

As set forth below, the False Address Circulators listed addresses that were not their permanent residence addresses. As such, the part-petitions they circulated:

- Violate R.C. 3501.38(E)(1) because they do not “identify * * * the address of the circulator’s permanent residence” as the statute mandates;
- Violate R.C. 3519.05 because they do not include the “[a]ddress of circulator’s permanent residence” as the statute requires; and
- Cannot be verified under R.C. 3519.06 (A) and (D) because the False Address Circulators’ statements were not properly filled out and were “false in any respect.”

Providing false permanent residence addresses on the circulator statements violates these statutes and renders the part-petitions and all signatures thereon invalid. Specifically, part-

petitions that fail to comply with any aspect of R.C. 3519.06 cannot be verified and, therefore, must be invalidated. R.C. 3519.06; *see In re Protest of Brooks*, 155 Ohio App. 3d 370, 2003-Ohio-6348, ¶56. Because R.C. 3519.06 applies to verification of *the entire part-petition*, a false circulator statement renders the entire part-petition invalid. Similarly, a circulator's failure to comply with the requirements of R.C. 3501.38(E)(1) also renders the entire part-petition invalid. *See State ex rel. Committee for the Referendum of City of Lorain Ordinance No. 77-01*, 96 Ohio St. 3d 308, 317 (holding that a circulator's violation of R.C. 3501.38(E) was grounds to invalidate the entire part-petition).

C. **The Commercial Addresses Provided are not the Circulators' Permanent Residence Addresses**

The False Address Circulators all listed addresses of commercial establishments, such as a pack and ship center, a commercial warehouse, and a hotel as the address of their permanent residence. "Permanent residence" is not defined in the applicable statutes. In common usage, the term "permanent" means "lasting or continuing for a very long time or forever; not temporary or changing." *See Merriam-Webster's Learner's Dictionary*. The term "residence" means "the state of living in a particular place; the place where someone lives." *Id.* Hence, "permanent residence" does not mean (and should not be construed as) an address where one does not live or stays only temporarily. The evidence shows that none of the False Address Circulators permanently resided at the commercial addresses listed on the part-petitions they circulated. (In fact, only one of the False Address Circulators ever stayed at the address listed in his circulator statement and that was only temporarily for a couple of weeks while he circulated

part-petitions.) As such, their part-petitions should be stricken for failure to comply with Ohio law.¹⁰

1. Harper falsely listed a commercial packing and shipping center as her permanent residence address

Harper listed the address for Pack and Ship, which is a commercial mailing and shipping center, as her permanent address. According to Jim Fenton, the manager of Pack and Ship, the Pack and Ship address, listed by Harper on the part-petitions she circulated, is used only for non-residential purposes. (Ex. G, ¶ 8, Affidavit of Jim Fenton.) Harper did not reside at 4022 E. Greenway, #11-312 (or #11312), Phoenix, Arizona, which is the address she listed on the part-petitions she circulated. Rather, this is the address for mailbox #312 that she rented at Pack and Ship. (*Id.*, ¶ 7.) When she applied to rent a mailbox on August 27, 2015, Harper provided her Arizona driver's license to Pack and Ship (*Id.* at ¶ 6), which reflects a residence address of 4802 N. 12th Street, Apt. 2102, Phoenix AZ 85014-4094.

Obviously, Harper did not reside at Pack and Ship, permanently or otherwise. Instead of providing her permanent residence address on the part-petitions she circulated, as she was required to do under applicable Ohio law, Harper chose to provide an address where she has never resided.¹¹ Thus, the address Harper provided on the 200 part-petitions she circulated was

¹⁰ Ohio law is not unique in this regard. Courts in other jurisdictions have similarly held that where a circulator provides false information, such as disclosing a false address, all of the signatures they attested to must be stricken. *See, e.g., Montanans for Justice v. State of Montana*, 2006 MT 277, 146 P.3d 759, 2006 Mont. LEXIS 580 (Mont. Sup. Ct. 2006) (invalidating signatures of 43 signature gatherers who provided false addresses); *Citizens Committee for the D.C. Lottery Terminal Initiative v. Dist. of Columbia Bd. of Elec. and Ethics*, No. 04-AA-957, 860 A.2d 813, 2004 D.C. App. LEXIS 457 (Dist. of Columbia Ct. of App.) (2004) (finding that where circulators attested that they resided at a particular address that was nonexistent, vacant or abandoned, the signatures they attested to must be stricken).

¹¹ In some states, a person cannot be served with process at a P.O. Box or private mailbox. Thus, circulators (and those supervising circulators) can easily avoid service by using such addresses as their "permanent residence" address. Apparently, the Scioto County Board of Elections sent

not her permanent residence address. *See Kyser v. Board of Elections*, 36 Ohio St. 2d 17, 23 (1973) (holding that a person’s designation of a post office box number as a permanent residence is not legally sufficient to fulfill the requirement of an elector’s “residence”).

Plainly, Harper did not strictly comply with applicable Ohio law by providing her permanent residence address as the Pack and Ship address, an address used only for non-residential purposes.

Because Harper failed to identify her permanent residence address on the part-petitions she circulated, as she was required to do, all of the part-petitions she circulated should be stricken as they cannot be properly verified under R.C. 3519.06. Harper circulated part-petitions in the following counties: Adams, Ashland, Brown, Butler, Clark, Clermont, Clinton, Crawford, Cuyahoga, Delaware, Fairfield, Fayette, Franklin, Geauga, Hamilton, Highland, Huron, Jackson, Knox, Lake, Lawrence, Licking, Logan, Madison, Mahoning, Medina, Meigs, Miami, Montgomery, Morrow, Pickaway, Pike, Richland, Ross, Scioto, Summit, Union, Vinton, Warren, and Wayne. (Ex. E, Second Affidavit of David Hasman; Ex. H-1 through H-7 to the Complaint; Ex. J to the Complaint.)¹² The signatures on all of these part-petitions should be invalidated.

2. Moore falsely listed the address of a commercial warehouse as his permanent residence address

Kelvin Moore listed his permanent residence address as 3143 W. 33rd St., Suite 6, Cleveland, Ohio 44109. According to the Cuyahoga County Auditor’s records, this address is a commercial warehouse building. An investigator sent to this commercial warehouse inquired of the commercial tenants in the building and was unable to find anyone who knew Moore. (Ex. H,

Harper a certified letter in January 2016, but to date, this letter remains in Harper’s rented mailbox. (Ex. G, Affidavit of Jim Fenton, Ex. A thereto.)

¹² The Second Affidavit of David Hasman authenticates the Fifi Harper part-petitions attached to the Complaint (in Appendix H-1 through Appendix H-7) that were not previously authenticated. These documents have not been resubmitted with this motion due to their size.

Affidavit of Christopher Ereg.) Later, Relators attempted to serve Moore with a subpoena in this case at this address, both by mail service and by process server. The mail service was returned as unclaimed and the process server was unable to locate Moore at this address. (Ex. I.) David Petkovich is the owner of this commercial warehouse. He is not familiar with anyone named Kelvin Moore and confirmed that Kelvin Moore does not and has never resided at the commercial warehouse, which is used for business purposes. (*Id.*) Moore has never had a residence, permanent or otherwise, at the address of the commercial warehouse he listed as his permanent residence address.

Plainly, Moore did not strictly comply with applicable Ohio law by providing a commercial warehouse address at which he does not live as his permanent residence address.

Because Moore failed to identify his permanent residence address on the part-petitions he circulated, as he was required to do, all of the part-petitions he circulated should be stricken as they cannot be properly verified under R.C. 3519.06. Moore circulated part-petitions in the following counties: Ashland, Ashtabula, Athens, Columbiana, Cuyahoga, Delaware, Geauga, Knox, Lake, Lorain, Medina, Montgomery, Portage, Seneca, Stark, Summit, and Trumbull. (Ex. E, attaching and authenticating all of the part-petitions circulated by Moore.) The signatures on all of these part-petitions should be invalidated.

3. Jackson falsely listed the address for a Days Inn hotel as his permanent residence address

Jackson listed a Days Inn hotel in Reynoldsburg, Ohio as his permanent residence address, despite the fact that he only spent a total of fifteen days there. Further, at the time he checked into the Days Inn, Jackson provided a California driver's license reflecting his address in Los Angeles. (Ex. J, Affidavit of Xia Zang.) This driver's license was issued on August 5, 2015, just two months before Jackson began circulating part-petitions in Ohio.

A hotel or motel is not a residence address if the circulator stays there only to do his job and has no intention of staying. *In Re Protest of Brooks*, 155 Ohio App.3d 370, 2003-Ohio-6348 (3rd Dist.), ¶45-48 (finding that a hotel address was a false address for the payor of petition circulators because he only stayed there temporarily and could not be found or reached there to respond to inquiries about the petition after its circulation). The improper petition circulating activity at issue in *In Re Protest of Brooks* occurred before R.C. 3519.05 and R.C. 3501.38(E)(1) were amended in 2006 to require a ***permanent residence*** address. Even under the lesser requirement that only an address be listed (without specifying a “permanent residence” address), the Third Appellate District held that listing the hotel address where one was staying temporarily violated Ohio law. *Id.*; see also *In Re Protest of Keith Brooks*, 3rd Dist. Shelby No. 17-03-17, 2003-Ohio-6990 (reaffirming that disclosure of a temporary address does not serve the purpose of protecting the reliability and integrity of the initiative process). The address for the Days Inn in Reynoldsburg, Ohio, where Jackson stayed for approximately two weeks was not his permanent residence. In disclosing it as such, he failed to strictly comply with Ohio election laws.

When Relators attempted to serve Jackson with a subpoena at the Days Inn hotel, he was not there to be served. This is not surprising, since the Days Inn was not his permanent residence address, even though he indicated it was.

Because Jackson failed to identify his permanent residence address on the part-petitions he circulated, as he was required to do, all of the part-petitions he circulated should be stricken because they cannot be properly verified under R.C. 3519.06. Jackson circulated part-petitions in the following counties: Belmont, Clark, Coshocton, Cuyahoga, Delaware, Fairfield, Fayette, Franklin, Greene, Hamilton, Hardin, Knox, Licking, Logan, Lorain, Lucas, Mahoning, Marion,

Montgomery, Morrow, Muskingum, Pickaway, Putnam, Summit, and Union. (Ex. E, attaching and authenticating all of the part-petitions circulated by Jackson.) The signatures on all of these part-petitions should be invalidated.

4. Veliquette falsely listed the address for the Shady Rest Motel as her permanent residence address

Veliquette listed the address of her permanent residence as 1900 S. Ocean Blvd., Myrtle Beach, South Carolina. This is the address for the Shady Rest Motel (“Motel”) (Ex. K, Affidavit of Debbie Denton.) According to the Motel’s manager, Debbie Denton, the Motel has no record of any Kacey Veliquette staying there in 2015 or 2016. (*Id.*, ¶ 3.) Further, the manager confirmed that no one by the name of Kacey Veliquette has a permanent address at the Motel. (*Id.*, ¶ 4.) Accordingly, Veliquette’s permanent residence address is not the Motel’s address that she listed on the part-petitions she circulated. Veliquette did not strictly comply with Ohio law when she provided the Motel’s address as her permanent residence address.

Because Veliquette failed to identify her permanent residence address on the part-petitions she circulated, as she was required to do, all of the part-petitions she circulated should be stricken as they cannot be properly verified under R.C. 3519.06. Veliquette circulated part-petitions in the following counties: Cuyahoga, Defiance, Erie, Huron, Lucas, Ottawa, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, and Wood. (Ex. E, attaching and authenticating all of the part-petitions circulated by Veliquette.) The signatures on all of these part-petitions should be invalidated.

Because the part-petitions submitted by the False Address Circulators violate R.C. 3501.38(E)(1), R.C. 3519.05 and R.C. 3519.06, they must, as a matter of law, be invalidated in their entirety.

D. Without the Part-Petitions Submitted by Harper Alone, the Number of Qualifying Counties Falls Short of the 44 County Requirement

Once the False Address Circulators' part-petitions are invalidated, the Committee will no longer have a sufficient number of valid signatures in 44 counties, which renders the Petition insufficient. The Secretary certified that 47 counties met the 1.5 percent threshold number of signatures required, including Knox, Morrow, Licking, and Scioto Counties. Invalidating Harper's improper part-petitions alone brings the Petition under the 1.5% percent threshold in Knox, Morrow, Licking, and Scioto Counties. More specifically:

- **Knox County:** Under Ohio law, 257 valid signatures from Knox County are required to meet the 1.5% threshold. (Ex. J to Complaint, ¶ 7, Affidavit of David Hasman.) Without the signatures on the part-petitions circulated by Harper, Knox County has only 231 valid signatures, which does not meet the requisite threshold. (*Id.*, ¶ 8.)
- **Licking County:** Under Ohio law, 707 valid signatures from Licking County are required to meet the 1.5 percent threshold. (*Id.*, at ¶¶ 11-12.) Without the signatures on the part-petitions circulated by Harper, Licking County has only 695 valid signatures, which does not meet the requisite threshold. (*Id.*, at ¶13.)
- **Morrow County:** Under Ohio law, 146 valid signatures from Morrow County are required to meet the 1.5 percent threshold. (*Id.*, at ¶17.) Without the signatures on the part-petitions circulated by Harper, only 55 valid signatures remain in Morrow County. This drops the Petition below the requisite threshold in Morrow County. (*Id.*, at ¶ 18.)
- **Scioto County:** Under Ohio law, 271 valid signatures from Scioto County are required to meet the 1.5 percent threshold. (*Id.*, at ¶¶ 21-22.) When Harper's signatures are properly stricken, 21 valid signatures remain in Scioto County. (*Id.*, at ¶ 23.) This drops the Petition below the requisite threshold in Scioto County. *Id.*

Thus, when the signatures submitted by Harper in Knox, Morrow, Licking, and Scioto Counties are properly invalidated, these counties no longer qualify toward the 44 county requirement, reducing the number of qualifying counties to 43. This means that the Petition is deficient, did not qualify for submission to the General Assembly, and should not have been transmitted to it. This deficiency must be cured before the Petition can properly be submitted to the General Assembly.

IV. CONCLUSION

As the Montana Supreme Court succinctly stated:

[I]f the initiative process is to remain viable and retain its integrity, those invoking it must comply with the laws passed by our Legislature. We can neither excuse nor overlook violations of these laws, for to do so here would confer free reign for others to do so in other matters. We must enforce the law as written and as the Legislature intended.

See, e.g., Montanans for Justice v. State of Montana, 2006 MT 277, 146 P.3d 759, 778, 2006 Mont. LEXIS 580 (Mont. Sup. Ct. 2006). Relators ask this Court to do the same.

For the foregoing reasons, Relators respectfully request that this Court (1) grant partial summary judgment in its favor on its challenge to the part-petitions containing false permanent residence addresses; (2) strike all such part-petitions and signatures contained thereon; and (3) find the Petition deficient because only 43 counties qualify as meeting the 1.5 percent threshold. As such, the Committee is required to cure the Petition before the Petition can lawfully be transmitted to the General Assembly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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