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**RELATORS' MOTION TO STAY SUPPLEMENTARY PETITION
PERIOD FOR THE OHIO DRUG PRICE RELIEF ACT**

Introduction and Background

Relators The Ohio Manufacturers' Association, The Ohio Chamber of Commerce, Pharmaceutical Research and Manufacturers of America, Keith Lake, and Ryan R. Augsburger (collectively "Relators") respectfully move this Court to issue an Order staying the 90-day supplemental petition period for the Ohio Drug Price Relief Act until this challenge is resolved. This Motion is raised because there is a valid challenge pending in this Court pursuant to Section 1g, Article II of the Ohio Constitution. Relators submit that the instant proceedings will render the "Ohio Drug Price Relief Act" Petition (the "Petition") deficient and thus not eligible to proceed through the constitutional steps toward the ballot at this time. Nonetheless, and despite the existence of these proceedings, the Committee continues to push forward with their deficient petition in an attempt to force it onto the 2016 ballot. As recently as this morning, the Committee filed a second complaint in the U.S. District Court, Southern District of Ohio (strikingly similar to the complaint that was dismissed, without prejudice, by that same Court in April of this year) again asking the federal court to revise Ohio's initiative petition process to deviate from the process set forth in the Ohio Constitution. Relators urge this Court to grant the stay requested herein in order to allow this Court and all of the parties to this matter to proceed under the Ohio Constitution's challenge process. Relators urge this Court to ensure that these processes are followed so that Ohio electors are presented with valid ballot issues that comply with the Ohio Constitution and the laws of this state.

To qualify for transmission to the General Assembly, the Petition must meet two requirements: (1) it must contain at least 91,677 valid signatures (which is 3% of the total votes cast for the office of governor in the last gubernatorial election) (the "Gross-Signature

Requirement”), and (2) it must contain 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 (the “44-County Requirement”). *See* Article II, Section 1g of the Ohio Constitution.

On February 4, 2016, the Secretary certified that the Petition contained 96,936 signatures, with the requisite minimum signatures from 47 counties. (*See* Ex. A, February 4, 2016 Certification Letter.) Hence, the Secretary determined that the Petition contains only 5,259 signatures more than required from only three more counties than required.

After certification, the General Assembly has four months to either: (1) pass the proposed law; (2) pass the proposed law in an amended form; (3) not pass the proposed law; or (4) take no action on the proposed law. *See* Article II, Section 1b of the Ohio Constitution. If the General Assembly does not pass the proposed law in the exact form as presented to it, then the committee supporting the proposed law is permitted 90 days—beginning upon the expiration of the four-month period for consideration by the General Assembly—to circulate and submit a supplementary petition, which must also satisfy the same Gross-Signature Requirement and 44-County Requirement. *Id.*

The Secretary transmitted the Petition to the General Assembly on February 4, 2016. Therefore, the General Assembly’s four-month period to consider the proposed legislation expires on June 4, 2016. But as discussed herein, the Petition is legally insufficient and must first be cured before it is properly transmitted to the General Assembly and the four-month period for the General Assembly to consider the proposed legislation begins.

The Petition is legally insufficient because numerous part-petitions fail to comply with Ohio law because: (1) circulators listed false “permanent residence addresses” on their circulator statements; (2) unauthorized individuals unlawfully altered part-petitions; (3) circulators

provided false circulator attestations by falsely certifying the number of signatures contained on part-petitions; and/or (4) part-petitions were circulated by felons who were ineligible to circulate them. As a result, the Petition does not meet either the Gross-Signature Requirement or the 44-County Requirement.

Relators Have Shown the Petition is Legally Insufficient, thus the Committee Should not be Permitted to Circulate and Submit a Supplemental Petition

When they filed this challenge to the Petition on February 29, 2016, among other things, Relators submitted evidence establishing that based on the false circulator address issue alone, the Petition does not meet the 44-County Requirement. On May 13, 2016, Relators filed a dispositive motion on this issue. *See* Relators’ Motion for Partial Summary Judgment, filed May 13, 2016. Under Ohio law, a circulator is required to attest to the address of his or her “permanent residence” on the face of the part-petition’s circulator’s statement. *See* R.C. 3501.38(E)(1) (providing that in the circulator’s statement, the circulator shall identify, inter alia, the “address of the circulator’s permanent residence”); R.C. 3519.05. A false “permanent address” requires the part-petition to be stricken. *See* R.C. 3519.06 (providing the part-petition and signatures thereon cannot be counted if it is “false in any respect”).

At least four circulators—Fifi Harper, Kelvin Moore, Roy Jackson, and Kacey Veliquette—listed addresses on part-petitions they circulated that were not their permanent residence addresses. *See* Relators’ Motion for Partial Summary Judgment, filed May 13, 2016. Rather than providing their permanent residence addresses, they listed addresses for a commercial warehouse, hotels, and a commercial packing and shipping store. Combined, these individuals submitted almost 350 part-petitions throughout the state containing nearly 5,800 signatures. Standing alone, this issue causes the Petition to fail the 44-County Requirement.

More specifically, at the point this Court strikes the invalid part-petitions submitted by Harper alone (who claims to have a permanent residence at a commercial packing and shipping center), the Petition will no longer qualify in Knox, Morrow, Licking, and Scioto counties, falling below the 44-County Requirement and rendering the Petition insufficient for transmission to the General Assembly.

But absent a decision by this Court on this Motion (or on the Motion for Partial Summary Judgment) prior to June 5, 2016—the date upon which the four-month legislative review period expires—there will be nothing to prevent the Committee from circulating supplementary part-petitions in support of the Petition. It may do so even though this Court has not yet reviewed the original Petition and there is prima facie evidence before the Court showing the Petition is legally insufficient. *See* Relators Motion for Partial Summary Judgment, filed May 13, 2016.

This Court has the inherent authority to stay or otherwise modify constitutional timeframes and deadlines when the interests of justice warrant. *See, e.g., State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 54 (extending the 90-day constitutional period in which to submit a referendum petition).

As a matter of law, the supplementary petition cannot be circulated, submitted, and verified unless and until there are a sufficient number of lawful signatures on the original Petition and unless and until the Ohio General Assembly has been given four months to consider a *valid* initiative petition. As set forth in Relators' Motion for Partial Summary Judgment, the Petition is fatally deficient for failure to meet the 44-County Requirement.

While the Committee erroneously claims in various forums that they have a right to advance their deficient initiative petition through the remaining steps to the 2016 ballot, that is simply not the law. The Committee has the right, under the Ohio Constitution and once the

magnitude of the deficiency is established, to ten days to gather signatures in an attempt to cure the deficiency and then, and only then, proceed to the General Assembly, the supplementary petition, and finally, to the ballot.

Beyond the fact that the Committee has no right to circulate a supplementary petition where their original Petition is defective, there are legal and logistical reasons that make it premature to permit the supplementary petition to be circulated. As a matter of law, the consideration of the supplementary petition is always based on the original petition. Thus, until it is known whether an original petition is sufficient, the supplementary petition cannot be considered. For instance, R.C. 3519.16(F) provides that “[n]o signature on a supplementary part-petition that is the same as a signature on an original part-petition shall be counted.” *See also* Article II, Section 1b of the Ohio Constitution. None of the electors who signed the original Petition are eligible to sign the supplemental petition. Hence, if an elector signed the original petition and his or her signature is counted, the elector cannot validly sign the supplementary petition. And conversely, if the Court deems signatures on certain part-petitions are invalid, then the electors associated with those signatures would be permitted to sign the supplemental part-petitions. But none of this is known until Relators’ challenge is resolved.

Moreover, R.C. 3519.16(F) also provides that “[t]he number of signatures in ***both the original and supplementary petitions***, properly verified, shall be used by the secretary of state in determining the total number of signatures to the petition that the secretary of state shall record and announce. If they are sufficient, the amendment, proposed law, or law shall be placed on the ballot as required by law. If the petition is found insufficient, the secretary of state shall notify the committee in charge of the circulation of the petition.” (Emphasis added.) Again, this indicates that the original and supplementary petition must be considered ***together*** to determine

whether the petition qualifies for the ballot. This cannot be done until this challenge is resolved and it is determined whether the original Petition is legally sufficient.

Discovery is Ongoing, thus the Magnitude of the Deficiency is Not Yet Known

While Relators' Motion for Partial Summary Judgment shows that there is a deficiency that must be cured for failure to meet the 44-County Requirement, it does not show the magnitude of the deficiency. The magnitude of the deficiency, including a failure to meet the Gross-Signature Requirement, can only be determined after Relators' other claims are considered. For instance, if Relators are successful on their claim that the part-petitions were unlawfully altered, the Petition will also fail to meet the Gross-Signature Requirement. Only after the magnitude of the deficiency is known can the Committee cure.

Since filing this case, Relators have vigorously pursued discovery in an attempt to obtain additional evidence supporting *all* of their claims. Discovery has been difficult, but has only further confirmed the legal deficiency of the Petition. Despite the Committee's previous contentions that this case could proceed quickly, it refused to entertain stipulations or cooperate in making persons available for depositions in order to expedite discovery.

Despite being statutorily designated, pursuant to R.C. 3519.02, to represent the petitioners pertaining to *all* matters involving the Petition, the Committee has responded to discovery by claiming that it has virtually no knowledge of the part-petitions or the companies and individuals who circulated them—setting up a situation of implausible deniability. In response to written discovery requests, the Committee claimed ignorance regarding who circulated the part-petitions and what, if any, instructions they were given. (*See* Ex. B, Respondents' Responses to Relators' First Set of Discovery Requests.) In fact, each Committee member stated that he or she "did not engage persons or companies to circulate the petition or

themselves utilize persons or companies to circulate the petition.” (*Id.*, Ans. to Interrogatory No. 8.) Further, each Committee member stated that he or she “became aware” that a company known as Professional Consulting, Inc. (“PCI”) was engaged to circulate the Petition. (*Id.*)

This “head in the sand” approach is completely contrary to the clear requirement of R.C. 3519.02 and has complicated Relators’ efforts to obtain much of the discovery it seeks. So Relators have turned their efforts to attempting to obtain discovery directly from the persons and companies that employed and compensated the circulators. Almost all of these individuals and entities are located outside of Ohio—beyond the direct subpoena power of this Court. As a result, Relators have had to retain counsel in states across the country to domesticate and serve subpoenas.¹

But those efforts have also proved difficult. Some witnesses have attempted to evade service. For instance, Dustin Wefel and his circulation company DRW Campaigns LLC (one of the largest employers of circulators of the Petition in Ohio and particularly in Cuyahoga County²) were served in Michigan on Mr. Wefel, who promptly tore the subpoena into and threatened the process server. (Ex. B, Affidavit of Jennifer Ryan.)

Despite these obstacles, Relators continue to try to obtain discovery from some of the leading companies who were responsible for organizing and managing circulation of the part-

¹ Even persons served at their addresses in Ohio have failed to appear at depositions. For instance, Relators have attempted to take the depositions of individuals who are suspected to have been felons under post-release control and thus ineligible to circulate the Petition. But two of those individuals failed to appear for their depositions, despite being served with subpoenas to appear. Additionally, Kevin Hawkins—a circulator in Franklin County who attested to witnessing 28 signatures on a part-petition that only ever contained one signature—failed to appear for his deposition after having been properly served with a subpoena. Other circulators and supervisors of circulators cannot be located at the permanent residence addresses they listed on their part-petitions.

² DRW was responsible for obtaining more than 90% of the signatures submitted in Cuyahoga County.

petitions.³ And, once discovery is completed, Relators will brief their other claims so that the Court is in a position to determine the magnitude of the deficiency (i.e., the number of signatures needed to meet the Gross-Signature Requirement and the number of counties needed to meet the 44-County Requirement).

No Undue Prejudice to Committee

The Committee will not suffer any undue prejudice by staying the supplementary petition period. As noted above, this Court must first resolve the challenge to the Petition, and only permit the supplementary petition period to proceed if and when it is determined that the original Petition is sufficient. Staying the 90-day period serves this purpose, without harming the Committee or the ends of justice.

Should the original Petition ultimately be determined to be sufficient, then the Committee will still have the benefit of the full 90-day period to collect signatures on a supplementary petition—exactly as contemplated by the Ohio Constitution. And if it is ultimately determined that the Petition is insufficient, then the Petition should never have been transmitted to the General Assembly in the first instance, and the Committee will have ten days to cure the Petition. Regardless of the outcome of this case, the Committee suffers no prejudice by a stay.

The Committee will no doubt claim—as it previously has made similar arguments in has in multiple venues and filings—that a stay of the supplemental petition period will prejudice its ability to obtain a place on the 2016 general election ballot. But the Committee has no constitutional right to be on the November 2016 ballot or any particular ballot. *See Bullock v. Carter*, 405 U.S. 134, 142-43 (1972).

³ For instance, subpoenas were recently served on Elite Campaigns, Inc. and Ballot Access LLC, two of the leading circulating companies for the Petition for depositions in June in Michigan and Utah.

Quite to the contrary, it is Relators and Ohio electors who will be prejudiced if a stay is not granted. They have a right under Ohio law to challenge the Petition to determine if it, in fact, satisfies Ohio law. That process must be permitted to play out—lest the challenge procedure delineated in the Ohio Constitution be emptied of all of its intended purpose.

Accordingly, for the foregoing reasons, Relators respectfully request the Court to issue an Order staying the start of 90-day period supplementary petition period for the Ohio Drug Price Relief Act and Respondent's collection of supplemental signatures until this Court rules on this challenge.

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 May 17, 2016 upon:

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