

**IN THE SUPREME COURT OF OHIO**

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

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**PETITION RESPONDENTS' MEMORANDUM IS OPPOSITION TO MOTION TO AMEND  
BRIEFING SCHEDULE**

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## MEMORANDUM IN OPPOSITION

### **I. Relators Have Had Ample Time in Which to Conduct Discovery in This Special Constitutional Proceeding Where They Seek to Challenge a Citizen Initiated Petition Proposing the Ohio Drug Price Relief Act in an Effort to Derail Petitioners from Placing the Proposed Law on the November 2016 General Election Ballot.**

Relators filed this Motion to Amend Briefing Schedule eighty-four days after they instituted this special constitutional proceeding on February 29, 2016 and 109 days after the Secretary of State belatedly certified the sufficiency of the petition and transmitted the Proposed Law to the Ohio General Assembly on February 4, 2016. Despite their protestations to the contrary, Relators have had extensive time to conduct their discovery. The present Motion is the latest in a series of efforts to delay resolution of this challenge and tie up Petition-Respondents and their petitions for as long as possible.

Relators' strategy all along has been to delay the constitutional processes for Ohio electors to propose the Ohio Drug Price Relief Act to the General Assembly for its consideration and to then submit the Proposed Law to the voters at the November 2016 general election. It began with an e-mail from Relators' counsel to Secretary Husted's office on December 30, 2015. (Attached as Exhibit A.) This e-mail, which arrived five hours after the deadline set by Secretary Husted for the boards of elections to complete their review of the Petition, contained a letter requesting Secretary Husted to refrain from certifying the Petition—even though, by this point, the boards of elections had collectively certified that it contained a sufficient number of valid signatures—and to refrain from the Secretary of State's constitutional duty to transmit the Proposed Law to the General Assembly. The letter further requested the Secretary to investigate two purported issues and refrain

from certifying the Petition and transmitting the Proposed Law “until such time” that the Secretary had completed his investigation.<sup>1</sup> (*Id.*)

On January 4, 2016, one day before the General Assembly’s first day of session when he was obliged to transmit the law to the General Assembly, Secretary Husted instead announced that he would do precisely what Relator PhRMA requested him to do: (1) refuse to certify the Petition, even though the boards of elections had collectively certified in accordance with his written instructions that it contained a sufficient number of valid signatures; (2) refuse to transmit the Proposed Law to the General Assembly; and (3) return the Petition to the boards of elections for a second more rigorous review under new written instructions, despite any legal authority or precedent to do so. Further, the Secretary gave the boards 25 more days to “re-review” the Petition—more than *three times* the number of days the boards had for their initial review.

Relator PhRMA’s strategy to delay paid off. Secretary Husted did not certify the sufficiency of the Petition or transmit the Proposed Law to the General Assembly until February 4, 2016, nearly a week after the boards of elections completed their unprecedented second review of the Petition. The Secretary’s transmittal came 30 days after the constitutionally-required date, effectively eliminating 30 days from the period during which Petition Respondents will be able to circulate their Supplementary Petition and attempt to place the Proposed Law on the November 8, 2016 general election ballot.

In addition to delaying the certification and transmittal, Secretary Husted’s transmittal letter attacked the petitioners and paved the way for the subsequent legal challenge to the Petition

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<sup>1</sup> This is despite the fact that the 88 county boards of election had certified a total of 119,031 valid signatures, 27,354 more than required by the Ohio Constitution. In addition, 48 counties met the minimum threshold, 4 more than required.

brought by PhRMA and other opponents. (See transmittal letter, attached as Exhibit B.) Unhappy with the results from the boards of elections' second review of the Petition that found that the petition still had far more valid signatures than mandated,<sup>2</sup> but realizing the boards had tied his hands, Secretary Husted grudgingly certified the Petition while sua sponte invalidating more than 20,000 otherwise-valid signatures that had been twice verified by the Cuyahoga County Board of Elections. Further, Secretary Husted has refused to break a tie vote submitted to him by the Delaware County Board of Elections, pursuant to R.C. 3501.11(X), regarding whether to certify a subset of part-petitions. As a result, the Delaware County Board of Elections has been unable to certify the results of their second review, and Secretary Husted subsequently certified zero valid signatures from Delaware County, even though the Delaware Board certified 85 valid part-petitions containing 324 valid signatures during the first review. The Secretary's actions reduced the number of valid signatures from 119,031, from the first review, to 96,936 valid signatures—a little more than 5,000 signatures over the constitutional threshold.<sup>3</sup> This left the Petition vulnerable to a legal challenge.

The next phase of Relators' plan then began. On February 29, 2016—55 days after Secretary Husted should have transmitted the Proposed Law to the General Assembly, and 25 days after Secretary Husted transmitted the Proposed Law to the General Assembly—Relators filed the instant action. Since December 2005, Relators have sought to delay the constitutional timeline

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<sup>2</sup> After the second review of the Petition, the boards of elections had certified a total of 117,038 valid signatures, 25,361 more than required by the Ohio Constitution. In addition, 47 counties met the minimum threshold, 3 more than required.

<sup>3</sup> The Secretary's sua sponte invalidation of the more than 20,000 valid signatures from Cuyahoga County and his refusal to break the tie vote submitted to him by the Delaware County Board of Elections, as well as the actions of a few county boards of elections during the second review, are the subject of a mandamus action filed by Petitioners (Case No. 2016-0455), in which there is currently a pending motion to consolidate the action with the instant action (Case No. 2014-0313).

underwhich Petition Respondents have a right to attempt to ultimately qualify for the November 8, 2016 general election ballot. Relators’ strategy of delay became undeniable when on May 17—133 days after Secretary Husted should have transmitted the Proposed Law to the General Assembly, 78 days after Relators filed their legal challenge, and 11 days after the supplementary period should have started—they filed their Motion to Stay the Supplementary Petition Period and the instant Motion to Modify the Briefing Schedule with the Court.

As far back as March 10, 2016, one day after filing their Answer to the Challenge, Petition-Respondents requested an expedited briefing to be set in this action. Relators opposed this motion, and stated in their March 17 memorandum that they require a “reasonable time” to conduct their discovery. See Relators Memo in Response to Motion to Expedite Case Schedule. The Court granted Petition-Respondents request to expedite on May 18, sixty-nine days after it was filed and established the briefing and evidence submission schedule that Relators are now challenging. Relators now contend that the ninety days from day after Petition-Respondents filed their answer and discovery could begin through the day before their merit brief is due is not long enough in which to conduct discovery in this special proceeding. Petition-Respondents and the over 100,000 qualified electors who signed the petition have right to a speedy resolution of this challenge.<sup>4</sup>

**II. The Court Should Not Allow a Ruling on This Motion to Affect the Outcome of Relators’ Motion to Stay the Supplementary Petition Period.**

This Court should not allow Relators to use this motion to modify the briefing and evidence submission schedule to further delay the petition processes established by the Ohio Constitution. Therefore, even if the Court grants Relators’ Motion to Amend Briefing Schedule, no such

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<sup>4</sup> Relators attempt to shift some responsibility to Petition-Respondents for not agreeing to factual stipulations that are outside of their personal knowledge and for not agreeing to make people over whom they have no control available for depositions in Ohio. These points should be seen for what they are—red herrings.

amendment should impact the Court's ruling on Relators' pending Motion to Stay the Supplementary Petition Period for all the reasons set forth in Petition-Respondents Memorandum in Opposition to that motion. Allowing the current motion to become an excuse for delaying the Supplementary Petition process would only serve the all too obvious agenda of the Proposed Law's opponents.

### **CONCLUSION**

Petition-Respondents respectfully urge the Court to Deny Relators' motion.

Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue (0022849)\*

*\*Counsel of Record*

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*Counsel for Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served by e-mail on May 25, 2016, upon the following:

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/s/ Donald J. McTigue  
Donald J. McTigue (0022849)

**Christopher, Jack**

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**From:** Slagle, Christopher <CSlagle@bricker.com>  
**Sent:** Wednesday, December 30, 2015 5:02 PM  
**To:** Christopher, Jack  
**Cc:** Slagle, Christopher; Armstrong, Maria; Tunnell, Kurtis  
**Subject:** Drug Price Relief Act - Issues of Concern w/in Petitions (December 2015)  
**Attachments:** Drug Price Relief Act 2015 - Altered Petition Issues.XLSX; Drug Price Relief Act 2015 - False Circulator Statement Issue.XLSX; LTRSOS12302015.pdf

**Importance:** High

Jack – please find attached our letter and associated data of issues and concerns on the recently filed Drug Price Relief Act. For your review and consideration. We look forward to working with you on the attached. Certainly, let us know if you have any questions in advance. Thanks. - CS



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December 30, 2015

The Honorable Jon A. Husted  
Secretary of State  
Ohio Secretary of State  
180 East Broad Street, 16th Floor  
Columbus, OH 43215

Re: Ohio Drug Price Relief Act Petition

Dear Secretary Husted:

On behalf of our client, PhRMA, we respectfully request your consideration of several issues that suggest violations of Ohio law and potentially fraudulent practices in connection with the Ohio Drug Price Relief Act petition (the "Petition") filed on December 22, 2015. We would appreciate your review and instruction to the Boards of Elections regarding two statistically and legally significant issues:

1. False Circulator Affidavits: A sizable percentage of the part-petitions contain false circulator affidavits because they attest, under penalty of election falsification, to having witnessed significantly more signatures than actually appear on the actual part petition. There appears to have been a systemic, widespread practice of falsifying the circulators' attestation across the state and by numerous circulators who declared under penalty of election falsification that they were the circulator of "the foregoing petition paper containing 28 signatures. . ." although the part-petitions contain only one or two signatures. See attached Exhibit A listing the 6,435 part-petitions (containing 40,612 signatures) that include this type of false certification.

Failure to provide an accurate number of signatures gathered renders a part-petition invalid. Ohio law requires, in mandatory terms, that the circulator of a petition "**shall indicate the number of signatures contained on it**, and shall sign a statement made under penalty of election falsification. . ." R.C. 3501.38(E) (emphasis added). "No initiative or referendum part-petition is properly verified if it appears on the face thereof. . . [that the circulator's] statement is false in any respect." R.C. 3519.06(D).

Ohio law requires **strict** compliance with these provisions and courts have recognized on numerous occasions that the requirement for circulators to accurately list the number of signatures witnessed is a reasonable requirement that protects against a fraudulent practice of signatures being added later.

The Ohio Election Official Manual ("OEM"), and the Ohio case law on which it is based, allow room for minor discrepancies and a plausible

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explanation for a miscount. However, the BOEs should only accept a circulator's statement at face value **unless there "are inconsistencies with the number of signatures witnessed."** There are significant, blatant, discrepancies clearly apparent on the face of 6,435 part-petitions filed by Petitioners. Petitioners have taken the limited reasonable latitude permitted in a fair election scheme to an intentionally abusive extreme.

Both the OEM and numerous Ohio court decisions consistently support a reasonable approach that allows circulators to demonstrate that their part-petition should not be rejected where: 1) the signature discrepancies in the circulator's statement were minor and isolated; and 2) a reasonable explanation was provided by the circulator to the BOE. However, there should be distinction between a minor, explainable counting error on a single part-petition and a systemic, wide-spread falsification on thousands of part-petitions. Circulators are required to attest to the number of signatures on a part-petition under penalty of election law. They should not be permitted to attest to a fabricated number and then leave the petition open for other signatures to be added after the fact. Allowing such a practice to occur renders the statutory requirement for a circulator to witness signatures effectively meaningless. Consistent with Ohio law, every part-petition which contains more or fewer signatures than were attested to, and for which no plausible and lawful explanation is provided, should be rejected. We respectfully urge you to instruct the BOEs accordingly.

2. Altered Petitions. A review of the part-petitions also reveals that a significant number of petitions appear to have been altered by someone other than the circulator or the signer. Attached at Exhibit B is a comprehensive list of the 5598 part-petitions (118,574 signatures) which contain signatures that were clearly stricken by someone other than the circulators or signer. R.C. 3501.38 (G) and (H) authorize only three people to strike signatures from a petition before it is filed: 1) the circulator; 2) the signer; or 3) an attorney in fact acting pursuant to R.C. 3501.382. Here, it is apparent that some other person struck these signatures, and, thus, unlawfully altered the petition such that the petition cannot not be properly verified.

R.C. 3519.06 (C) provides that: "No initiative or referendum part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence. . . That the statement is altered by erasure, interlineation, or otherwise . . ." Except in the rare situations noted above and specifically authorized by law, it is of the utmost importance that petitions cannot be altered before they are submitted to any election official. Otherwise, the requirement for a circulator attestation (or for circulators at all) is significantly undermined.

There is no doubt that petition circulation has become a big business in Ohio, significantly for out of state individuals and petition companies. However, that lucrative money-maker for out of state entities with little regard for Ohio law cannot be allowed to undermine the integrity of our elections process or usurp the authority of Ohio BOEs or your Office. Statutes are clear that the BOEs - and not out of state, money-making, petition circulation companies - are entrusted and authorized to verify petition signatures and strike those that do not qualify. R.C. 3501.11(K) imposes the duty to review, examine, and certify the sufficiency and validity of

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petition signatures upon the BOEs and not on any other entity, public or private. Numerous courts have determined that it is incumbent on the BOEs to determine the validity of any signature on a part-petition.

Thus, only the signer, circulator, or attorney in fact may strike a signature from a part-petition before it is filed. And only the BOEs have the statutory authority to determine the validity of a signature on a part-petition. Those fundamental requirements have been repeatedly violated on this Petition and call the validity of these part-petitions into question. We respectfully urge you to instruct the BOEs to disqualify any part-petition that has been improperly altered in this fashion. At the very least, BOEs should conduct a review of these stricken signatures to determine if the electors involved authorized their attorney-in-fact to strike their signatures as permitted by R.C. 3501.382.

As the chief elections officer for Ohio, the Secretary has the duty to “compel the observance by election officers in the several counties of the requirements of the elections laws.” R.C. 3501.05(M). In furtherance of this duty, you have the statutory power and duty to issue directives and advisories to the county boards as to the proper methods of carrying out their duties. R.C. 3501.05(B). Both the county boards and the Secretary have the power and authority to reject any initiative petition that violates *any* requirement established by law. R.C. 3501.39(A)(3). We respectfully ask you to direct the BOEs, consistent with Ohio law and with protecting the sanctity of the ballot and electors’ signatures, to strike those part-petitions that demonstrate the issues outlined above.

Additionally, we respectfully ask that you refrain from certifying the petition and/or transmitting the Petition to the General Assembly until such time as a thorough investigation of these issues can be conducted. This investigation would allow time for determining whether the Petition actually contains the requisite number of lawful signatures, or alternatively whether any supposedly requisite number of signatures was achieved solely through fraud and violations of Ohio election laws. R.C. 3501.05(N)(1) clearly empowers the Secretary to investigate “the administration of election laws, fraud, and irregularities in elections in any county.”

Moreover, until such time as the Secretary can investigate and determine the sufficiency of the Petition, the Secretary cannot and should not transmit the Petition to the General Assembly. The plain language of Article II, Section 1b of the Ohio Constitution states that the Secretary “shall transmit” the Petition to the General Assembly only “[w]hen . . . there shall have been filed with the [Secretary] a petition signed by three per centum of the electors **and verified as herein provided**” (emphasis added). See *Mahaffey v. Blackwell*, 10th Dist. No. 06-AP-963, 2006-Ohio-5319, ¶ 33 (the Constitution requires the Secretary to act to transmit the initiated law to the General Assembly only upon the filing of a petition with the requisite number of signatures that is “verified as provided herein”). The Petition must first be “verified” before it can be transmitted to the General Assembly, which involves confirming the “correctness, truth, or authenticity by oath or affidavit” of the signatures and part-petitions. See *Black’s Law Dictionary* at 1561 (6th ed. 1990).

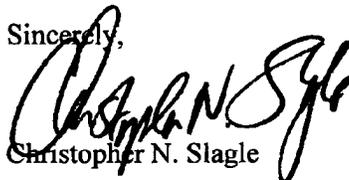
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In *Cappelletti v. Celebreeze*, 58 Ohio St.2d 395, 396 (1979), the Ohio Supreme Court recognized that the phrase “verified as herein provided” as used throughout Article II of the Constitution requires the Secretary “as chief elections officer to first determine that the petition contains the purported signatures of [3 percent] of the electors of the state, for that requirement is fundamental to the constitutional reservation of the right of initiative to the people.” The Supreme Court then expressly “reject[ed] relators’ argument that the presumption of sufficiency of the petition and its signatures, contained in Section 1g of Article II eliminates the further steps of determining whether the petition has been properly verified and establishing the eligibility of the signers as electors.” *Id.* at 396-97. The Secretary and the boards of elections are plainly permitted to look behind the face of the Petition, especially where, as here, there is *prima facie* evidence of a significant amount of fraud and irregularities.

Moreover, Judge French in *Mahaffey*, 2006-Ohio-5319, citing *Cappelletti*, stated that proof of an invalid part-petition or signatures may be established “in various ways,” and that board review of the signatures is but one method of proving or disproving the sufficiency of the signatures. *Id.* at ¶¶ 37-40. Furthermore, the Supreme Court in *State ex rel. Scioto Downs, Inc. v. Brunner*, 123 Ohio St.3d 24, 27 (2009), implicitly found that the Secretary may use the results of his investigatory power under R.C. 3501.05(N)(1) to invalidate part-petitions so long as that power is exercised before the constitutional deadline for his sufficiency determination, which is mid-July (105 days before the election).

While the Secretary may be acting in a ministerial duty in transmitting the Petition to the General Assembly **once sufficiency has been determined**, the Secretary has a corresponding duty to **not** transmit the Petition if sufficiency is in question. A duty to transmit to the General Assembly arises only where first the Secretary has verified that the Petition contains the requisite number of **valid** signatures. *See Cappelletti*, 58 Ohio St.2d at 398 (Supreme Court refused to issue writ and held that there was no clear legal duty for Secretary to transmit the petition to the General Assembly or certify a deficiency because protests involving investigation of signatures and petitions were ongoing). If fraud and violations of law indicate that the Petition fails to contain the requisite number of valid signatures, then it is incumbent upon the Secretary not to transmit the Petition to the General Assembly. Any other result leads to a perversion of the democratic process and an incentive to engage in election fraud.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,  
  
Christopher N. Slagle

CNS



**Jon Husted**  
Ohio Secretary of State

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February 4, 2016

The Honorable Cliff Rosenberger  
Speaker, Ohio House of Representatives  
77 South High St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

The Honorable Keith Faber  
President, Ohio Senate  
Statehouse, 2<sup>nd</sup> Floor  
Columbus, Ohio 43215

The Honorable Fred Strahorn  
Minority Leader, Ohio House of Representatives  
77 South High St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

The Honorable Joe Schiavoni  
Minority Leader, Ohio Senate  
Statehouse, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

Re: Ohio Drug Price Relief Act Proposed Initiated Statute

Dear Speaker Rosenberger, President Faber, and Minority Leaders Strahorn and Schiavoni:

Pursuant to Article II, Section 1b, I am transmitting, effective today, the full text of the Ohio Drug Price Relief Act (DPRA) proposed law to the Ohio General Assembly for its consideration.

However, I do so with reservations.

Despite having gathered the vast majority of their signatures by mid-November 2015, petitioners waited until December 22, 2015 to file with my office, pursuant to Article 2, Section 1b of the Ohio Constitution, an initiative petition purporting to contain 171,205 signatures proposing an addition to the Ohio Revised Code. The next day, I forwarded the part-petitions to the county boards of elections for review. Because petitioners waited so long to file their petitions, I instructed the county boards of election to complete their review no later than December 30, 2015—an uncommonly quick turn-around time.

Subsequently, my office became aware of an unprecedented quantity of suspicious “strikethroughs” of signatures on the part-petitions and other factual circumstances suggesting improper, potentially fraudulent circulator attestations—evidence that I simply cannot ignore. To clarify, this does not appear to be a case of just a few “irregularities,” or “math errors,” or random “strikethroughs” in a few, isolated counties across the state.

Rather, an initial review uncovered that a strikingly similar method of crossing out a petition signer’s name (a bold, black marker) existed on an alarmingly large number of part-petitions in virtually every county in the state. Add to that what appeared to be a widespread, intentional effort to permit circulators to over-report the number of signatures they actually witnessed by claiming to witness as many signatures as there are lines on the petition form when the part-petition actually contained only a few signatures, thereby skirting the requirement that a circulator actually witness each signature and *then* write down the exact number of signatures witnessed.

Consequently, based on my authority as Chief Elections Officer of the state, and my statutory responsibility to “determine and certify to the sufficiency” of statewide petitions<sup>1</sup>, I issued Directive 2016-01 and instructed all 88 county boards of elections to conduct a more thorough review of all part-petitions, suggesting evidentiary hearings in consultation with their county prosecutors, and report their findings by January 29, 2016.

A number of counties did conduct a thoughtful review of the petitions circulated in their counties according to the Directive and some conducted quasi-judicial hearings to elicit testimony from petition circulation management companies and petition circulators. The sworn testimony they have shared paints a picture of how the laws protecting the integrity of the sacred right to petition one’s government were abused in this instance.

In my opinion, the Cuyahoga County Board of Elections produced the most sufficient and probative evidence in their review of the part-petitions. Cuyahoga County’s evidence included sworn testimony from Ms. Pamela Lauter of Ohio Petitioning Partners, LLC, who referred to a purging process called “purging the deck” to improperly strike the signatures of others, undertaken primarily at the behest of the petition company PCI Consultants, Inc.

According to Ms. Lauter:

- *“PCI was the head contractor for the State of Ohio,” explaining that PCI Consultants, Inc. has instructed them to strike signatures on petitions prior to filing, usually with a black washable marker.*
- *“...it’s called purging the deck.”*
- *“So someone other than the circulator was striking the petitions?” “That would be me...Yes.”*

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<sup>1</sup> R.C. 3501.05(K).

The political action committee (PAC) supporting this petition effort (Ohioans for Fair Drug Prices) underscores Ms. Lauer's contention that PCI Consultants, Inc., a California company, is, indeed, the head contractor in the State of Ohio, under whose direction all the other petitioning companies involved in this petition effort operated. According to campaign finance details filed last week, Ohioans for Fair Drug Prices paid \$743,473.20 to PCI Consultants, Inc. (out of a total \$799,941.95) for signature gathering. There were no other petition companies on their report.

PCI Consultants, Inc. website bills them as the "largest and most successful full service petition and field management firm in the country." Indeed they earned nearly \$750,000 in Ohio alone for this effort. In a message to prospective customers, PCI boldly admits that they "...actively cross off all invalid signatures by hand" with their own "proprietary database system."<sup>2</sup>

I believe the evidence confirms my suspicion that, at some high level of this campaign, the order was given to strike thousands of petition signatures—ignoring Ohio laws that exist to protect the integrity of the elections process and to safeguard the right of the Ohio voter whose choice it is to sign in support of an initiative, and who may not want his or her name illegally removed from a petition.

Ohio law is clear that (1) ONLY the signer of a petition (or the signer's designated attorney-in-fact<sup>3</sup>) or the circulator of a petition may remove a petition signer's name from a part-petition<sup>4</sup>, and (2) it is the duty of election officials, not a petition company, to determine whether a signature is valid.<sup>5</sup> Ohio law further provides that no part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence, that the statement is altered by erasure, interlineation, or otherwise, or that the statement is false in any respect.<sup>6</sup>

Based on the reliable, substantive evidence my office has received from Cuyahoga County, I am invalidating all the signatures on every part-petition that was circulated by the petition companies DRW Campaigns, LLC and Ohio Petitioning Partners, LLC in Cuyahoga County. It is unlikely that these improper petition practices by DRW and OPP under the direction of PCI were limited only to those petitions circulated in Cuyahoga County. Indeed, Ms. Lauer testified that she performed the same interlineation activity in other counties. Absent similar sworn testimony before those county boards of elections, I lack sufficient evidence to invalidate part-petitions beyond those in Cuyahoga County where the testimony was actually presented.

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<sup>2</sup> Interestingly, petitioners could have jeopardized their own efforts by illegally striking signatures. One county prosecutor reported in a letter submitted to me along with their number of certified signatures that only 79% of the stricken signatures were truly invalid.

<sup>3</sup> R.C. 3501.382.

<sup>4</sup> R.C. 3501.38(G) and (H).

<sup>5</sup> R.C. 3501.05(K), R.C. 3501.11(K).

<sup>6</sup> R.C. 3519.06.

Nevertheless, as mentioned above, pursuant to Ohio Constitution Article II, Section 1b, the petition proposing the Ohio Drug Price Relief Act Initiated Statute is hereby transmitted as of this day to the General Assembly with 96,936 valid signatures.

Sincerely,

  
Jon Husted

Enclosure

cc: Brad Young, House Clerk  
Vince Keeran, Senate Clerk

## FULL TEXT OF LAW

Be it Enacted by the People of the State of Ohio that the following chapter and section are added to Title I of the Revised Code.

### **Chapter 194: Drug Price Relief**

#### **Section 194.01**

**(A) Title.**

This Act shall be known as "The Ohio Drug Price Relief Act" (the "Act").

**(B) Findings and Declarations.**

The People of the State of Ohio hereby find and declare all of the following:

- (1) Prescription drug costs have been, and continue to be, one of the greatest drivers of rising health care costs in Ohio.
- (2) Nationally, prescription drug spending increased more than 800 percent between 1990 and 2013, making it one of the fastest growing segments of health care.
- (3) Spending on specialty medications, such as those used to treat HIV/AIDS, Hepatitis C, and cancers, are rising faster than other types of medications. In 2014 alone, total spending on specialty medications increased by more than 23 percent.
- (4) The pharmaceutical industry's practice of charging inflated drug prices has resulted in pharmaceutical company profits exceeding those of even the oil and investment banking industries.
- (5) Inflated drug pricing has led to drug companies lavishing excessive pay on their executives.
- (6) Excessively priced drugs continue to be an unnecessary burden on Ohio taxpayers that ultimately results in cuts to health care services and providers for people in need.
- (7) Although Ohio has engaged in efforts to reduce prescription drug costs through rebates, drug manufacturers are still able to charge the State more than other government payers for the same medications, resulting in a dramatic imbalance that must be rectified.
- (8) If Ohio is able to pay the same prices for prescription drugs as the amounts paid by the United States Department of Veterans Affairs, it would result in significant savings to Ohio and its taxpayers. This Act is necessary and appropriate to address these public concerns.

**(C) Purposes and Intent.**

The People of the State of Ohio hereby declare the following purposes and intent in enacting this Act:

- (1) To enable the State of Ohio to pay the same prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs, thus rectifying the imbalance among government payers.
- (2) To enable significant cost savings to Ohio and its taxpayers for prescription drugs, thus helping to stem the tide of rising health care costs in Ohio.
- (3) To provide for the Act's proper legal defense should it be adopted and thereafter challenged in court.

**(D) Drug Pricing.**

- (1) Notwithstanding any other provision of law and insofar as may be permissible under federal law, neither the State of Ohio, nor any state department, agency or other state entity, including, but not limited to, the Ohio Department of Aging, the Ohio Department of Health, the Ohio Department of Insurance, the Ohio Department of Jobs and Family Services, and the Ohio Department of Medicaid, shall enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug or agree to pay, directly or indirectly, for a prescribed drug, unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, or any other discounts or credits, as determined by the purchasing department, agency or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.
- (2) The price ceiling described in subsection (1) above also shall apply to all programs where the State of Ohio or any state department, agency or other state entity is the ultimate payer for the drug, even if it did not purchase the drug directly. This includes, but is not limited to, the Ohio Best Rx Program and the Ohio HIV Drug Assistance Program. In addition to agreements for any cash discounts, free goods, volume discounts, rebates, or any other discounts or credits already in place for these programs, the responsible department, agency or entity shall enter into additional agreements with drug manufacturers for further price reductions so that the net cost of the drug, as determined by the purchasing department, agency or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.
- (3) All state departments, agencies and other state entities that enter into one or more agreements with the manufacturer of any drug for the purchase of prescribed drugs or agreement to pay directly or indirectly for prescribed drugs shall implement this section no later than July 1, 2017.
- (4) Each such department, agency or other state entity, may adopt administrative rules to implement the provisions of this section and may seek any waivers of federal law, rule, or regulation necessary to implement the provisions of this section.
- (5) The General Assembly shall enact any additional laws and the Governor shall take any additional actions required to promptly carry out the provisions of this section.

**(E) Liberal Construction.**

This Act shall be liberally construed to effectuate its purpose.

**(F) Severability.**

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. If this Act and another law are approved by the voters at the same election with one or more conflicting provisions and this Act receives fewer votes, the non-conflicting provisions of this Act shall go into effect.

**(G) Legal Defense.**

If any provision of this Act is challenged in court, it shall be defended by the Attorney General of Ohio. The People of Ohio, by enacting this Act, hereby declare that the committee of individuals

responsible for the circulation of the petition proposing this Act ("the Proponents") have a direct and personal stake in defending this Act from constitutional or other challenges. In the event of a challenge, any one or more of the Act's Proponents shall be entitled to assert their direct and personal stake by defending the Act's validity in any court of law, including on appeal. The Proponents shall be indemnified by the State of Ohio for their reasonable attorney's fees and expenses incurred in defending the validity of the challenged Act. In the event that the Act or any of its provisions or parts are held by a court of law, after exhaustion of any appeals, to be unenforceable as being in conflict with other statutory or constitutional provisions, the Proponents shall be jointly and severally liable to pay a civil fine of \$10,000 to the State of Ohio, but shall have no other personal liability to any person or entity.