

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.	:	

JOINT REPORT ON THE PROGRESS OF DISCOVERY

Kurtis A. Tunnell (0038569)
Anne Marie Sferra (0030855)
Nelson M. Reid (0068434)
James P. Schuck (0072356)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
(614) 227-2300 (Telephone)
(614) 227-2390 (Facsimile)
ktunnell@bricker.com
asferra@bricker.com
nreid@bricker.com
jschuck@bricker.com

Counsel for Relators

MICHAEL DeWINE (0009181)
Ohio Attorney General

Steven T. Voigt (0092879)
Senior Assistant Attorney General
Brodi J. Conover (0092082)
Assistant Attorneys General
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872 (Telephone)
(614) 728-7592 (Facsimile)
steven.voigt@ohioattorneygeneral.gov
brodi.conover@ohioattorneygeneral.gov

Counsel for Respondent Secretary Jon Husted

Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Derek S. Clinger (0092075)
McTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
(614) 263-7000 (Telephone)
(614) 263-7078 (Facsimile)
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

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

JOINT REPORT ON THE PROGRESS OF DISCOVERY

On May 18, 2016, this Court issued an order stating: “The parties shall submit a joint report as to the progress of discovery within 14 days of the date of this entry.”

This report responds to that order.

I. Relators’ Status Report on the Progress of Discovery Initiated by Relators

On May 23, 2016, Relators filed a motion to amend the briefing schedule entered on May 18, 2016, primarily because they encountered unexpected delays and challenges in obtaining discovery, including from some of the primary petition circulation companies. As set forth in their motion to amend the briefing schedule (which is hereby incorporated by reference), Relators began seeking discovery within 12 days of filing this action, but have been met with resistance at every turn. The Committee, which is statutorily responsible for all matters related to the Petition, claims to know nothing about circulation of the Petition except that Professional Consultants, Inc. (“PCI”) was hired by someone else to lead the Petition initiative. After several failed attempts to serve some of the leading circulation companies and/or their principals, only recently have Relators been successful in serving subpoenas on the lead petition circulation companies and circulators. Below is the status of those efforts.

PCI and Angelo Paparella

Angelo Paparella is the owner/principal of PCI, the lead petition circulating company for the Petition (according to the Committee’s answers to interrogatories). Relators first attempted to serve him in April at the address he provided on his Form 15 to the Secretary, but he could not be served at that address because it was a UPS store where Paparella had a mailbox. After further investigation, a residential address was later found for Paparella, but efforts to serve him

at this large gated property failed. The process server could not enter the property and no one ever answered the intercom.

PCI listed the same UPS mailbox address in its Form 15, but its statutory agent was identified and served with a subpoena for the production of documents on May 2, 2016. Relators' subpoena requested documents by May 13, 2016. On May 6, 2016, Relators received a written response to the subpoena, objecting to all requests for documents, from Ohio counsel to PCI (Jeffrey Ruppert). On May 12, 2016, PCI's counsel indicated that PCI would produce documents, but needed an extension until June 12 to do so. In an effort to cooperate and to avoid having to file a motion to compel in California, Relators were inclined to agree to provide additional time, as long as a deposition could be scheduled shortly after the documents were received.

After receiving the Court's May 18, 2016 scheduling order, Relators contacted PCI's counsel and indicated that Relators could not accommodate the request for additional time due to the Court's scheduling order and sought to obtain the documents by June 3 and to schedule a deposition on June 6, 2016. When Relators did not hear back from PCI's counsel, they served a subpoena for a Civ.R. 30(B)(5) deposition on PCI for June 6, 2016.

On May 31, 2016, PCI's counsel left a message for Relators' counsel indicating that he has only recently been able to talk with Paparella. He indicated that Paparella is unavailable for a deposition on June 6, but "is amenable to it and wouldn't fight it if we can work out an agreeable date." He also indicated that Paparella will be back in California soon and will have an opportunity over the weekend to look for documents responsive to the subpoena.

Relators believe working out a date with Paparella for a deposition is the best course of action. This would allow Relators to have PCI's documents to review prior to taking the deposition.

DRW Campaigns, Inc. and Dustin Wefel

DRW Campaigns, Inc. ("DRW") and its owner/principal, Dustin Wefel, were responsible for collecting over 79,000 signatures – far more than any other petition circulating company. Efforts to serve Wefel and DRW began in April. After attempting to evade service, Wefel was finally served on May 2, 2016. Upon being served with the subpoena, he tore it up in the presence of the process server. This resulted in an action to comply with the subpoena in the Michigan courts. Wefel did not appear at the "show cause" hearing on May 23, 2016, at which the judge granted the motion and indicated he would issue a bench warrant for Wefel's arrest. Since that time, Wefel has provided some documents in response to the subpoena served upon him. He has been served with a subpoena for his deposition scheduled for June 10, 2016 in Flint, Michigan.

Elite Campaigns, Inc./Eric Tincher

Elite Campaigns, Inc. ("Elite"), of which Eric Tincher is the owner/principal, submitted part-petitions containing more than 20,000 signatures. Service on Elite was initially attempted in April 2016, but Elite provided an address at which service could not be made (i.e., a UPS mailbox). Tincher, Elite's registered agent, attempted to evade service. After further investigation to find a correct address and re-issuance of subpoenas (because deadlines had passed), Tincher and Elite were finally served on May 11, 2016.

Under the subpoena served on Elite, documents were due on May 25, 2016. Some documents have been provided. But, counsel for Elite, Jeff Ruppert (who also serves as PCI's

counsel) indicated that additional documents would be forthcoming. Tincher's deposition is scheduled in Flint Michigan on June 8, 2016.

Educated Voters/Cody Eldred

Cody Eldred is believed to be the owner/principal of Educated Voters, which was responsible for part-petitions containing more than 40,000 signatures. He provided addresses in three different states in connection with his work on the Petition. Relators first attempted to serve him (and Educated Voters) with a subpoena at the Ohio address he listed. But, the Ohio address was a vacant store front. Relators next tried to serve him in Kentucky, but during that process it became apparent that Eldred likely has a residence in Florida (rather than Kentucky).

Because Florida requires a commission to issue a subpoena in connection with a case that originated outside of Florida, on May 20, 2016, Relators filed a motion to appoint a commission to issue a subpoena for Cody Eldred's deposition on June 6, 2016 in Florida. To date, this motion is still pending. If this motion is granted and a commission issued, it is likely that this deposition will need to be scheduled after June 6 as a Florida court will need to issue the subpoena and Eldred will need to be served (and there are only two business days between today and June 6).

Ballot Access, Inc.

Relators served subpoenas for the production of documents and a deposition on Ballot Access, Inc. in Provo, Utah on May 12, 2016. Documents were due on May 24 and the deposition is scheduled for June 14, 2016. Initially, an agent of Ballot Access, Inc. indicated that they would provide documents and appear at the deposition, but asked that the venue be changed to the state of Washington. No documents have yet been provided. Yesterday, Relators' Utah counsel received a letter from Ballot Access, Inc., objecting to all discovery from it. (Exhibit A

attached hereto.) Relators intend to proceed with discovery, but may need to seek to enforce the subpoenas in Utah.

David Saddler

David Saddler filed a Form 15 with a Michigan address. He was responsible for more than 1,800 part-petitions containing more than 21,000 signatures. Relators first tried to serve him in April and have repeatedly tried since then (including with reissued subpoenas). A process server has been attempting to serve a subpoena issued on May 10 since that date for Saddler's deposition on June 10, 2016. Although Saddler has not yet been served, he apparently obtained Relators' Michigan counsel's contact information and sent him documents related to an automobile accident (which have nothing to do with this case).

Direct Democracy Unlimited

Direct Democracy Unlimited ("Direct Democracy") filed a Form 15 listing an address in Fullerton, California. When a process server tried to serve Direct Democracy at the address provided, there was no company with such name at the address and the persons contacted at the building were not aware of a company by this name. Direct Democracy is not registered with the California Secretary of State. After further investigation, an address in a different city was found that may be Direct Democracy's. Efforts are still underway to serve Direct Democracy with a subpoena.

Hunter Hice

Hunter Hice is a circulator who circulated more than 300 part-petitions, containing more than 1400 signatures. After a few failed attempts to serve Hice at the address he provided in Michigan, he was eventually served there on May 22, 2016. His deposition has been scheduled for June 8, 2016.

Circulators with False Addresses

Relators had been unable to locate Fifi Harper, Kelvin Moore and Kacey Veliquette at the addresses they provided on the petitions they circulated. They served discovery requests pertaining to their addresses, including asking the Committee to admit that the specific addresses provided were not their residence addresses. The Committee denied that the addresses provided by each of them were not their residence addresses.

None of these individuals were listed as witnesses by the Committee. Nonetheless, the Committee has presented their testimony in the form of affidavits in response to Relators' motion for partial summary judgment. Because the Committee knows where these individuals are and has the ability to get in touch with them quickly, Relators requested that the Committee make them available for depositions. This will only be necessary if Relators' motion for partial summary judgment is denied.

Other Subpoenas and Depositions

Relators have served or attempted to serve more than 20 subpoenas in this case. Most of the persons could not be served because they were not at the addresses provided or did not appear after being served.¹ Only two persons showed up for their depositions – Xavier Malagon and Pam Lauter/Ohio Petitioning Partners.

¹ For instance, two persons who filed a Form 15 (Kelvin Moore and Elizabeth Page) could not be located at the addresses provided and were not known to the persons at those locations. Some circulators, such as Kevin Hawkins, Michael Mayo and Stephanie Cole were served, but failed to appear at their depositions.

II. Petition Respondents' Progress Report on the Status of Discovery Initiated by Petition Respondents

As an initial matter, Petition Respondents do not agree with Relators' contention that they need additional time to conduct discovery. As set forth more fully in Petition Respondents' Memorandum in Opposition to Relators' Motion to Amend the Briefing Schedule filed with the Court on May 25, 2016, Relators have had ample time to conduct discovery and are actually seeking to further delay and prevent Petition Respondents from seeking to place the Proposed Law on the November 6, 2016 general election ballot.

Further, Petition Respondents disagree with the characterization in the introduction of Relators' section in that it mischaracterizes the statutory responsibilities of the petition committee. The statutory responsibilities are set forth in R.C 3519.02

Response to Relators' Requests Regarding Fifi Harper, Kelvin Moore and Kacey Veliquette

Relators state that they have requested that Petition Respondents make Fifi Harper, Kelvin Moore, and Kacey Veliquette available for depositions. These individuals are not under the control of Petition Respondents, and Petition Respondents do not know where these individuals are currently physically located as they regularly move for their employment. Petition Respondents will provide Relators with e-mail addresses and cell phone numbers for these individuals.

Petition Respondents will amend their responses to Relators' interrogatories on June 2, 2016 to include these individuals as trial witnesses. However, Relators cannot claim any surprise that Petition Respondents sought information from these individuals regarding the status of their "permanent residences" because Relators' Complaint includes allegations specifically about the status of these three individuals' "permanent residences."

Interrogatories and Requests for Production of Documents Propounded to Relators

Petition Respondents served their First Set of Interrogatories and Requests for Production of Documents to Relators on March 31, 2016. Relators provided virtually no information or documents in response.

Interrogatories and Requests for Production of Documents Propounded to Respondent Secretary

Petition Respondents served their First Set of Interrogatories and Requests for Production of Documents to Respondent Secretary on April 25, 2016. The Secretary responded to the Interrogatories and Requests for Production of Documents on May 23, 2016, but did not produce any documents until the end of the day on Friday, May 27, 2016. Most of these documents were repetitive sets of documents in response to public records requests placed with the Secretary of State's office.

The Secretary's responses to the Petition Respondents' Requests for Production of Documents indicated that there were additional responsive documents, and Petition Respondents agreed to identify these specific responses. However, the Secretary also conceded that there were additional documents responsive to the Requests for Production of Documents which had not yet been produced, mooting the need for the Petition Respondents to identify the specific responses. The Secretary stated that these documents would be produced by June 10.

Depositions

Petition Respondents originally noticed depositions for five employees of Respondent Secretary—Matthew Damschroder, Jack Christopher, Patricia Wolfe, David Bowling, and Carolyn Kuruc—on April 22, 2016. Petition Respondents also noticed deposition of Respondent Secretary Jon Husted on April 27, 2016.

After discussions with Respondent Secretary, Petition Respondents agreed to withdraw the depositions, subject to being reissued, and instead agreed to start with an employee designated by Respondent Secretary as being able to address the matters set forth in the deposition notices. Petition Respondents stated that this deposition would take place on May 25, 2016, two days after Respondent Secretary's responses to the interrogatories and requests for production of documents were due, subject to the designated employee's availability. Petition Respondents reserved the right to depose additional employees of Respondent Secretary and/or Respondent Secretary, himself, depending on the information provided by the designated employee during this initial deposition.

Respondent Secretary designated Mr. Matthew Damschroder as being able to address the matters set forth in the prior deposition notices. To accommodate his schedule, this deposition was noticed for May 31, 2016, over a week after Respondent Secretary's responses to Petition Respondents' discovery requests were due. However, as set forth above, Respondent Secretary provided only some of the responsive documents in his possession before this deposition, and these were not provided until the end of the day on Friday, May 27, 2016. Given that Respondent Secretary had not yet produced all of the responsive documents in his possession, and that Petition Respondents did not have as much as time to review the documents that were produced, Petition Respondents requested that the deposition of Mr. Damschroder be kept open until the remaining documents were produced. Respondent Secretary objected to the request to keep the deposition open, and as set forth above, stated that the remaining responsive documents would be produced by June 10.

In light of the responses provided by Mr. Damschroder during his deposition on May 31, 2016, Petition Respondents informed the Secretary, on June 1, 2016, of their intent to take the

deposition of another employee of Respondent Secretary, Mr. Jack Christopher. Petition Respondents, seeking to accommodate Mr. Christopher's schedule, have requested from the Secretary whether Mr. Christopher would be available on June 6, 2016. However, the Secretary has not yet provided a response to the request for Mr. Christopher's availability.

III. Respondent Secretary's Status Report on the Status of Discovery

The Secretary has not initiated any discovery in this action, but has responded to written discovery requests served by Respondent Committee, including producing thousands of pages of documents. Additionally, the Secretary made Matt Damschroder available for a deposition on May 31, 2016.

The Secretary received a request from the Committee today for Jack Christopher's deposition on June 6.

Respectfully submitted,

/s/ Anne Marie Sferra (as to
Section I)
Kurtis A. Tunnell (0038569)
Counsel of Record
Anne Marie Sferra (0030855)
Nelson M. Reid (0068434)
James P. Schuck (0072356)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
(614) 227-2300 (Telephone)
(614) 227-2390 (Facsimile)
ktunnell@bricker.com
asferra@bricker.com
nreid@bricker.com
jschuck@bricker.com
Counsel for Relators

/s/ Donald J. McTigue (per email authority as to
Section II)
Donald J. McTigue
J. Corey Colombo
Derek S. Clinger
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com
*Counsel for Respondents William S. Booth, Daniel L.
Darland, Tracy L. Jones, and Latonya D. Thurman*

/s/Steven T. Voigt (per email authority as to Section
III)
MICHAEL DeWINE
Ohio Attorney General

Steven T. Voigt
Senior Assistant Attorney General
Brodi J. Conover
Assistant Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872 (Telephone)
(614) 728-7592 (Facsimile)
steven.voigt@ohioattorneygeneral.gov
brodi.conover@ohioattorneygeneral.gov
Counsel for Respondent Secretary Jon Husted

CERTIFICATE OF SERVICE

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

June 1, 2016 upon:

MICHAEL DeWINE
Ohio Attorney General

Steven T. Voigt
Senior Assistant Attorney General
Brodi J. Conover
Assistant Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872 (Telephone)
(614) 728-7592 (Facsimile)
steven.voigt@ohioattorneygeneral.gov
brodi.conover@ohioattorneygeneral.gov

Donald J. McTigue
J. Corey Colombo
Derek S. Clinger
McTigue & Colombo LLC
545 East Town Street
Columbus, Ohio 43215
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

/s/ Anne Marie Sferra

Anne Marie Sferra (0030855)

RECEIVED

Ballot Access LLC

1121 W 860 N, Provo, UT 84604 • Tel: 801-738-8000

MAY 24 2016

SNELL & WILMER
L.L.P.

May 24, 2016

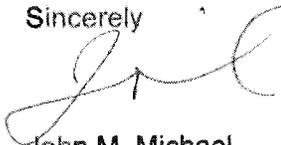
Snell and Wilmer L.L.P.
15 West South Temple
Suite 1200
SLC, UT 84101

Ballot Access LLC objects to the requests directed to it contained in the SUBPOENA DUCES TECUM, Case No. 160400713 and sent to Ballot Access LLC on 5/12/2016.

The Subpoena fails to allow a reasonable time to comply with the vast amount of information it requests

Ballot Access LLC objects to the overall frivolous nature of the Subpoena and it's apparent intention to chill 1st Amendment expression.

Sincerely



John M. Michael
Manager

cc: Ronald J. Uharriet

