

IN THE SUPREME COURT OF OHIO

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

MOTION FOR RECONSIDERATION OR RELIEF FROM JUDGMENT

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MOTION FOR RECONSIDERATION OR RELIEF FROM JUDGMENT

Pursuant to S.Ct.Prac.R. 18.02, Petition Respondents respectfully request that the Court reconsider one aspect of its August 15, 2016 Per Curiam decision and order in this case, to wit “If the secretary of state certifies enough valid signatures, then he shall resubmit the initiative to the General Assembly, in accordance with the terms of Ohio Constitution, Article II, Section 1b.” *Ohio Manufacturers’ Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, ¶ 47. Alternatively, if the Court determines that S.Ct.Prac.R. 18.02 is inapplicable to Petition Challenges filed pursuant to Article II, Section 1g of the Ohio Constitution, Petition Respondents respectfully request that the Court reconsider this same aspect of its decision and order pursuant to Civ.R. 60(B), which is incorporated by S.Ct.Prac.R. 14.01(C) to the extent that it does not conflict with S.Ct.Prac.R. 14.

Attached is a Memorandum in Support of this Motion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Petition Respondents request reconsideration with respect to one sentence in the Court's Per Curiam decision: "If the secretary of state certifies enough valid signatures, then he shall resubmit the initiative to the General Assembly, in accordance with the terms of Ohio Constitution, Article II, Section 1b." *Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, ¶ 47. This step would be inconsistent with the Ohio Constitution and the Ohio Revised Code, and would result in extreme prejudice to Petition Respondents. Respectfully, the Court should not require that the Proposed Law be resubmitted a second time to the General Assembly.

The Court announced its decision on the merits in this case, a challenge to the citizen-initiated petition proposing the Ohio Drug Price Relief Act to the Ohio General Assembly ("the Petition") on August 15, 2016. *See, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377. The Court sustained some aspects of the Relators' challenge and rejected others. The Court invalidated 9,303 signatures from the Petition. As a result, the Petition is 5,044 signatures below the constitutional threshold, and, pursuant to the Ohio Constitution, the Petitioners have ten days to cure the deficiency. *Id.* at ¶¶ 46-47. The Court then ordered:

If the secretary of state certifies enough valid signatures, then he shall resubmit the initiative to the General Assembly, in accordance with the terms of Ohio Constitution, Article II, Section 1b.

Id. at ¶ 47 (emphasis added). This would allow the General Assembly to consider the Proposed Law, which was first transmitted to them in February 2016, for an additional four months.

Petition Respondents respectfully submit that under the facts of this case, this is not the proper step after a challenge to the sufficiency of a petition when the Petition was certified as

having more than sufficient valid signatures of electors by the Secretary of State (and boards of elections), the proposed law was transmitted to the General Assembly pursuant to Article II, Section 1b for its consideration, the General Assembly had the full four months constitutionally allowed for consideration, the General Assembly took no action, and the period for circulating a Supplementary Petition to place the issue before the voters immediately commenced thereafter and is nearly over.

Article II, Section 1g of the Ohio Constitution, which is the sole constitutional provision that permits challenges to initiative petitions and the sole constitutional provision that allows for deficiencies in petitions to be corrected, provides that “[i]f the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition.” This gives petitioners ten days to cure their deficiency. If, after the additional signatures are filed and any legal challenges are settled, the Court determines that the petition contains a sufficient number of signatures, then Article II, Section 1g requires, for the sake of constitutional deadlines, that the petition be treated as though it contained a sufficient number of signatures when it was originally filed, not on the date of the Court’s final judgment. *See, Ohio Manufacturers Assn.*, Slip Opinion No. 2016-Ohio-5377 at ¶¶ 85-88 (Pfeifer, J. dissenting) Ohio Rev. Code ¶ 3519.16(F) mirrors this process, concluding that if the additional signatures are deemed sufficient, “the amendment, proposed law, or law shall be placed on the ballot,” not returned to the General Assembly. *See, id.* at ¶ 55 (O’Connor, C.J. dissenting in part), ¶ 61 (O’Neill, J. dissenting in part).

This is not the same situation as when the Secretary of State and Boards of Elections first review part-petitions and find that there is a deficiency and the committee is then afforded a ten day cure period. In such case, the proposed law has not yet been transmitted to the General

Assembly.¹ Here, the Petition was certified and the Proposed Law was before the General Assembly for the full four months and the supplementary period is nearly over. Article II, Section 1g's logic mandates that the additional signatures, if deemed sufficient, relate back to the Secretary of State's February 4, 2016 certification and transmission to the General Assembly. Holding otherwise would only exacerbate the "unworkable timeline that Article II, Sections 1b and 1g impose," (*Id* at ¶ 50 (French, J. concurring) and ensure that no petitioners could ever get an initiative on the first general election ballot following its submission due to the all-but-guaranteed litigation that such a ruling would encourage. (*See, id.*) Moreover, requiring the Proposed Law to be resubmitted to the General Assembly, which took no action on the Proposed Law during the prior four months, would result in a "vain or useless act," which this Court must avoid when construing legal provisions. *See, e.g., State ex rel. McCuller v. Cuyahoga County Court of Common Pleas*, 143 Ohio St. 3d 130, 2015-Ohio-1563, 34 N.E.3d 905, ¶ 132 ("a writ will not issue to compel a vain act"); *Celebrezze v. Hughes*, 18 Ohio St.3d 71, 74 (1985).

Interpreting the Constitutional framework to require that the Proposed Law is to be submitted a second time to the General Assembly for an additional four months is inconsistent with the constitutional framework and causes prejudice to Ohio citizens seeking to exercise their right to submit proposed laws to the voters. Such interpretation is not mandated by the Constitution, and the Court should avoid an interpretation that prejudices the right. Instead, the Court must "liberally construe the citizens' right of initiative in favor of the exercise of this important right." *State ex rel. Ohio Liberty Council, et al. v. Brunner*, 125 Ohio St.3d 315, 2010-

¹ As Petition Respondents have maintained elsewhere, their view of Article II, Section 1b is that the Proposed Law must be submitted to the General Assembly on its first day of session, even if the Secretary of State and Boards of Elections have not completed their review of the Petition. Petition Respondents disagree with the interpretation of Article II, Section 1b that permits the Secretary of State to withhold transmitting the Proposed Law to the General Assembly until he certifies the sufficiency of the petition. However, in either case, if the deficiency is cured within the ten day period, it relates back in time.

Ohio-1845, 928 N.E.2d 410, ¶ 66. If the deficiency is made up, then the supplementary petition should be able to go forward in order that the issue may be submitted to the voters.

The Court's order also results in extreme prejudice to the Petitioners. First, this remedy gives the General Assembly eight (8) months to consider the Proposed Law. This is twice as much time as allowed by Article II, Section 1b of the Ohio Constitution.

Secondly, the second four months that the General Assembly would be given overlaps with the final eight days of the supplementary petition period that began on June 5th and indeed will extend well beyond the end of the supplementary period. The 90-day supplementary petition period began on June 4, 2016 after the General Assembly failed not only to pass the Proposed Law over the course of four months, but failed to take any action whatsoever on the Proposed Law. Petitioners had no choice but to begin circulating the supplementary petition on June 5 when the supplementary period commenced.

Anticipating the possibility of such prejudice and legal quagmire, Petition Respondents attempted to alert the Court of such possibility and expedite the case schedule accordingly. Relators delayed nearly a month after Respondent Secretary's certification in filing their challenge on February 29, 2016. Seeking a timely decision, Petition Respondents filed their Answer nine days later on March 9, 2016, and filed a Motion to Expedite the next day on March 10, 2016. An expedited schedule seemed equitable considering that Article II, Section 1g of the Ohio Constitution contemplates a legal challenge to a petition being filed and decided in as short as ten (10) days. Despite this, Relators opposed the Motion to Expedite on March 17, 2016. The Court did not rule on the Motion until over two months later on May 18, 2016, when it set a briefing schedule that would end in late-June, i.e., a few weeks after the supplementary petition period would be over. *5/18/2016 Case Announcements #3*, 2016-Ohio-3042. Moreover, once the briefs

were submitted, Petitioners alerted the Court in their July 13th Notice of Continued Circulation of Supplementary Signature Period that they were circulating their supplementary petition. On August 15—72 days into the supplementary petition period and 47 days after the final brief was submitted—the Court decided the challenge but also included language that could nullify Petitioners’ supplementary petition. At this point, Petitioners have nearly completed circulating their supplementary petition. This was done at an extraordinary cost to petitioners. Ohioans for Fair Drug Prices with funding from the AIDS Healthcare Foundation has expended nearly \$1 million to circulate the supplementary petition—\$904,178.20 to hire and manage petition circulators and \$25,265.00 to print part-petitions.

Because this portion of the Court’s order is inconsistent with Ohio law and subjects Petition Respondents to extreme prejudice, Petition Respondents request the Court to reconsider this portion of its August 15, 2016 decision giving the General Assembly an additional four months to consider the Proposed Law, and instead order that the Proposed Law is not required to be resubmitted to the General Assembly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by e-mail on August 16, 2016, upon the following:

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