

**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 CONTRA RELATORS' MOTION FOR RECONSIDERATION**

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## I. INTRODUCTION

Petition-Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman oppose Relators' Motion for Reconsideration. The Motion is barred by laches due to Relators' unreasonable and prejudicial delay in filing. Even if their Motion is not barred, it is nevertheless without merit as it relies almost exclusively on evidence which has been mischaracterized by Relators and on the misapplication of this Court's precedent.

## II. LAW AND ARGUMENT

### A. **Relators' have failed to bring this Motion with the requisite diligence, resulting in prejudice to Petition-Respondents.**

In bringing their Motion, Relators have failed to act with the requisite diligence that this Court has consistently demanded of litigants in cases such as this one. Delaying their Motion until the last possible moment is the latest effort to delay resolution of this challenge, to keep the Drug Price Relief Act from going before Ohio voters, and to force supporters of the Drug Price Relief Act and to expend further resources in their effort to exercise their rights under the Ohio Constitution. See Petition-Respondents Memorandum in Opposition to Motion to Stay at 1-4.

Cases such as this one must be litigated "with the utmost diligence." *Blankenship v. Blackwell*, 103 Ohio St. 3d 567, 2004 Ohio 5596, 817 N.E. 2d 382. An action (or, as in this case, a motion for reconsideration) will be barred by laches when the following elements have been satisfied: (1) unreasonable delay, (2) absence of an excuse for the delay, (3) knowledge of the claim or right, and (4) prejudice to the other party. *State ex. rel. City of Chillicothe v. Ross County Bd. of Elections*, 123 Ohio St. 3d 439, 2009 Ohio 5523, 917 N.E. 2d 263. A delay of as little as nine days may be sufficient to invoke laches. *State ex. rel. Landis v. Morrow County Bd. of Elections*, 88 Ohio St. 3d 187, 189, 724 N.E. 2d 775 (2000). Critically, even if an action is brought within an appropriate filing deadline, laches may still bar that action if other circumstances dictate

that greater diligence is required. *See State ex. rel. Duclos v. Hamilton Cty. Bd. of Elections*, Slip Opinion No. 2016-Ohio-367 (per curiam) at ¶¶ 8-11.

In the present case, Relators delayed for ten full days before filing their Motion for Reconsideration. This is an unreasonable delay, especially considering the brevity of the Motion and the fact that it is largely based on authorities and arguments developed previously in this litigation. Despite the fact that their Motion required little in the way of original research or preparation, Relators waited until the last possible day to file. See Sup. Ct. Prac. R. 18.02(A). This delay is prejudicial to Petition-Respondents as they have, in those ten days, undertaken, at significant expense, to make up the deficit of signatures in compliance with this Court's August 15th decision and order. *See Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion 2016-Ohio-5377 at ¶¶ 46-47. On August 25, Petition-Respondents submitted over 19,000 additional signatures to the Secretary of State. If Relators are successful in seeking reconsideration, they will no doubt next argue that the supplemental signatures are negated and Petitioners must start all over again to collect signatures making up the deficiency. This additional delay is highly prejudicial to Petition-Respondents, both in terms of expense and effort to ultimately place the issue on the ballot.

Relators have consistently and at every opportunity sought to delay resolution of this challenge as part of their broader agenda to prevent the Drug Price Relief Act from being presenting to the Ohio electorate. Their latest effort to delay is unjustified and highly prejudicial to Petition-Respondents – it should be barred by laches.

**B. Relators' argument relies on authority that is inapplicable to the issue they raise in the Motion.**

Relators' legal argument is based exclusively on authority that does not apply to the question of whether Ms. Harper complied with Ohio election law. Throughout their Motion, Relators cite to this Court's decisions in *Kyser v. Board of Elections*, 36 Ohio St. 2d 17, 303 N.E. 2d 77 and *State ex. rel. Citizens for Responsible Taxation v. Scioto County Bd. of Elections*, 65 Ohio St. 3d 167, 602 N.E. 2d 615 (1992). Neither of these cases pertain to R.C. 3501.38(E).

In *Kyser*, this Court considered what residential address requirements were necessary in order to *register to vote in a specific precinct*, under R.C. 3503.03. 36 Ohio St. 2d at 21. The question before this Court is not whether Ms. Harper is eligible to vote in the state of Ohio, much less a specific precinct therein. In *Citizens for Responsible Taxation*, this Court ruled that *petition signers* must give the address at which they are registered for their signature to be valid, under R.C. 3501.38(C). That is not the question in this case.

Relators' argument has no basis in the precedent of this Court, and so they have instead relied on decisions rendered under different statutes and different contexts. Relators' have failed to demonstrate that there was any error of law in this Court's previous decision in this case.

**C. Relators have mischaracterized the evidence pertaining to Fifi Harper and used this evidence to draw conclusions that miss the point entirely.**

Relators have painted a distorted picture of the evidence that was submitted to this Court. The Court should ignore these mischaracterizations and uphold its well-considered conclusion that Ms. Harper has satisfied the statutory requirements of R.C. 3501.38(E).

Relators urge this Court to upend its ruling on the basis of a single piece of evidence, which actually demonstrates nothing. Relators' claim that the fact that Ms. Harper apparently did not immediately pick up a letter sent to her mail box indicates that she is *incapable* of being reached

through mail at this permanent address, i.e. because Ms. Harper did not physically pick up this single piece of mail, she must not receive any mail at this address. Relators have produced no evidence indicating that Ms. Harper has never received mail at this address or that she does not receive *notice* of mail sent to this address.

What Relators fail to recognize is that whether or not Ms. Harper physically retrieved mail from her mailbox is not the standard. The standard is whether she “received” it at this address, which, as Relators’ evidence shows, clearly she did. The fact that she has not physically retrieved a particular piece of mail from her mailbox within a certain time frame does not mean that she did not receive it and, therefore, can not be contacted at this address. This situation is no different than someone who receives mail at a mail box attached to a house, but who has not physically retrieved their mail from the box.

Moreover, Ms. Harper has attested to the fact that she receives notification of mail that is received at her mail box via text message on her cell phone, which is her primary means of direct communication when she is traveling throughout the United States while working as a professional circulator. Exhibit 8, Petition-Respondents’ Merits Brief at ¶¶ 6-12 (affidavit of Ms. Harper). The evidence in Relators’ Motion does nothing to contradict this statement from Ms. Harper herself. Her affidavit was the primary piece of evidence upon which the Court concluded that Ms. Harper “met [the statutory] requirement [of R.C. 3501.38(E)].” *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief*, Slip Opinion 2016-5377 at ¶ 35. The evidence that Relators have submitted in support of their Motion is insufficient for this Court to overturn its well-considered decision.

Relators have additionally mischaracterized Ms. Harper’s interactions with counsel for Petition-Respondents. Relators suggest that legal counsel had been unable to *contact* Ms. Harper, but Petition-Respondents did not make such an assertion. Through outside contacts, counsel for

Petition-Respondents were able to reach Ms. Harper on her cell phone. Respondents did not attempt to reach Ms. Harper via her P.O. box because the information required to respond to Relators' challenge could only be obtained, as a practical matter, via a live conversation. See Petition-Respondents' Memorandum in Opposition to Partial Summary Judgment at 10; Exhibit 8, Petition-Respondents' Merits Brief at ¶¶ 3-5 (affidavit of Fifi Harper).

### III. CONCLUSION

Relators did not file their motion with the requisite and Relators have not presented convincing facts or applicable authority that is sufficient to demonstrate that this Court made an error in its disposition of this challenge. For these and the other reasons stated herein, Relators Motion for Reconsideration should be denied.

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 29, 2016, upon the following:

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