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.	:	

MERIT BRIEF OF RELATORS

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I. INTRODUCTION AND BACKGROUND

> *"[A]n 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."*
>
> - Jon Husted, Ohio Secretary of State

In recent years, out-of-state interests have pushed a variety of constitutional amendments and initiatives to serve their own purposes. Following on California's heels, Ohio is quickly becoming the wild west of ballot issues. With its relatively low signature threshold for obtaining ballot access and tight timelines that favor petitioners, Ohio has become a magnet for petition efforts. (*See* National Conference of State Legislatures Signature Requirements for Initiative Proposals http://goo.gl/YKBvTo.) The onslaught of attempts to bring issues straight to the voters is only predicted to grow: minimum-wage and other labor laws, ethics laws, environmental laws, affirmative action, gun control regulations, energy standards, and campaign finance laws will likely be coming to Ohio in the near future.

But questionable practices and irregularities have permeated Ohio's petition process—making it less about Ohio citizens petitioning their government and more about well-funded out-of-state interests hijacking Ohio's Constitution and laws. This case is perhaps one of the most egregious examples yet of such a situation.

At issue here is a proposed initiated statute titled the "Ohio Drug Price Relief Act," which would place a cap on prices that the State of Ohio is permitted to pay for certain drugs. The petition drive is funded by the AIDS Healthcare Foundation, a Los Angeles-based organization, and its President Michael Weinstein, a California resident, who have already successfully placed a similar issue on the ballot in California ("Weinstein").

Respondents William S. Booth, Daniel L. Darland, Tracy L. Jones, and Latonya D. Thurman comprise the committee responsible for the initiative petition to propose the Drug Price Relief Act (the "Petition") and are responsible for all matters relating to its circulation (collectively the "Committee").

The Ohio Manufacturers' Association, the Ohio Chamber of Commerce, Pharmaceutical Research and Manufacturers of America, Keith Lake, and Ryan R. Augsburger (collectively "Relators") challenge thousands of part-petitions filed with the instant effort that do not comply with Ohio law. Relators, along with their employees and many members, believe strongly that this illegitimate use of the petition process in Ohio must be stopped and urge this Court to enforce Ohio's election laws.

Out-of-state interests have clearly developed an Ohio playbook for petition circulation: orchestrate a last-second filing over the holidays so that Respondent Ohio Secretary of State ("Secretary") and boards of elections have little time to conduct due diligence.[1] Proponents seek to get the issue on the ballot at any cost, regardless of any legal ramifications or compliance with Ohio law. Circulators and petition-circulation companies hide behind each other, leaving a trail of false addresses behind so that deficiencies cannot be proven until it is too late. And in this case, when the boards of elections and Secretary tried to take a closer look, the Committee sued multiple times in state and federal court arguing that neither the Secretary nor this Court had the authority to review apparent election law violations.

[1] For example, acting upon reports by election officials of fraudulent registrations, non-existent addresses, illegible signatures, duplicate applications from the same address, and underage registrants, the Secretary appointed a special prosecutor to examine problems with the petition circulated to enact the "Marijuana Legalization Amendment." Despite that, the initiative made it onto the ballot for the November 2015 election. The issue failed, but only after Ohio interests were forced to expend a considerable amount of time and resources to fight against an issue that, if scrutinized earlier, may well have failed to make it to the ballot.

Relators believe this perversion of the letter and intent of Ohio law must stop and respectfully urge this Court to do just that right here and now. The evidence and tools needed to restore the intended order and integrity to Ohio's ballot issue process are now before this Court.

The instant challenge sets forth a single, straightforward question: was the Petition properly transmitted to the General Assembly on February 4, 2016? Relators respectfully urge this Court to find that the Petition was not properly transmitted for two reasons.

First, the Petition was not timely submitted. Ohio Constitution, Article II, Section 1b, plainly requires that the Secretary must transmit an initiative petition to the General Assembly as soon as it convenes when "not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the Secretary of State a petition signed by three per centum of the electors ***and*** verified as herein provided . . . ." The Respondent Committee ***filed*** its Petition on December 22, 2015, 14 days prior to the start of the next session of the General Assembly.[2] But the Constitution requires verification as well. The Petition did not meet that requirement. In fact, as of December 26, 2015, ten days prior to the commencement of the 2016 session of the General Assembly, only 16 county boards of elections had completed their review and fewer than 5,000 signatures were certified. The Petition was filed but ***not*** verified within ten days of the commencement of the 2016 session of the General Assembly, and it should not have been transmitted to the General Assembly.

Second, the Petition should not have been transmitted because it is deficient. The nature and sheer volume of irregularities in this Petition were, as the Secretary noted, "unprecedented."

[2] Respondents apparently disagree on the date of the 2016 session of the General Assembly. The Committee alleged the date was January 4, 2016; Respondent Secretary maintains the date is January 5, 2016. *See* Committee's Complaint in Mandamus and Secretary's Answer thereto. Case No. 2016-020. Respondents will use the January 5, 2016 date for purposes of this Brief as that is most favorable to the Committee.

(*See* Complaint, App. 1, Ex. E, Secretary's February 4, 2016 Letter to the General Assembly ("Transmittal Ltr."), at 2.) The Secretary and several boards of elections noted their surprise and dismay at the apparent gamesmanship. The Secretary commented that "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***") (*Id.* emphasis added.) Several boards of elections expressed similar concerns. For example, in a January 28, 2016 letter from the Mahoning County Board of Elections the Chairman wrote: "After my review of the petitions I was quite disturbed to see the many redactions (line-outs) and inaccurate circulator statements regarding the number of signatures witnessed." (*See* Complaint, Ex. R.)

Efforts to investigate the matter were largely futile as many boards of elections felt they did not have sufficient time or authority to investigate, or had their subpoenas largely ignored. But some evidence was gathered by the boards. Additional evidence was gathered thereafter and a clear picture has emerged. It is not a pretty picture.

The evidence shows that the petitioners engaged in a widespread and systemic practice of allowing individuals to strike signatures from the part-petitions who were not authorized to do so, attesting to significantly more signatures than were ever placed on the part-petitions, allowing someone other than the circulator to complete the circulator attestation, and falsely completing the attestations. "[T]he sworn testimony [the county boards of elections] 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.***" (*See* Transmittal Ltr. at 2, emphasis added.)

Thousands of part-petitions are impacted. Simply put, this Petition did not qualify for transmission to the General Assembly and must be returned to the Committee to cure the deficiency before this Petition can advance toward the ballot.

Finding that the transmission to the General Assembly was premature will not deprive the Petition of a place on the ballot. Nor will it deprive the Committee of any constitutional right or statutory privilege. On the contrary, ruling that the Petition is deficient would be consistent with the Ohio Constitution, the Ohio Revised Code, and the previous rulings of this Court.

Relators respectfully urge this Court to find that the Petition was not properly submitted to the General Assembly on February 4, 2016. The Petition was not timely submitted ***and verified*** for transmittal to the General Assembly. Of equal import, the Petition is also demonstrably deficient in three separate ways: (1) circulators provided false residence addresses; (2) part-petitions were improperly altered; and (3) circulators provided false attestations in their circulator statements. Any of these three issues is sufficient, on its own, to render the Petition deficient.

II. STATEMENT OF FACTS

On December 22, 2015, the Committee filed the Petition comprised of 10,029 part-petitions and containing 171,205 signatures with the Secretary. (*See* Complaint, Aff 1, Ex. A, Affidavit of Matthew Walsh.) The next day, Relators received copies of the part-petitions in response to a public records request to the Secretary. Immediately that day and throughout the holiday week, Relators reviewed more than 10,000 part-petitions and identified numerous irregularities.

The results of this preliminary review revealed two significant and widespread violations of Ohio law apparent on the face of the part-petitions and appearing statewide: (1) a substantial number of the part-petitions had been altered by someone other than the circulator or signer, in

violation of R.C. 3501.38(G) and (H), and R.C. 3519.06(C); and (2) a substantial number of the part-petitions contained false circulator affidavits because the circulators attested, under penalty of election falsification, to having witnessed significantly more signatures than actually appear on the part-petition, in violation of R.C. 3501.38(E) and R.C. 3519.06(D). Because the results of this review raised serious concerns about the integrity of the initiative circulation process, Relators brought them to the Secretary's attention.

While Relators were reviewing the part-petitions, so were the county boards of elections. County boards of elections were instructed to send their reports on the validity of the signatures to the Secretary by noon on December 30, 2015. (*See* Complaint, App. 1, Ex. C, Directive 2015-40.) As of December 26, 2015 (ten days before the General Assembly was to convene for the first time in 2016), only 16 counties had submitted their reports to certify a total of 4,716 signatures.[3]

On January 4, 2016, the Secretary issued Directive 2016-01 instructing the boards of elections to re-review the part-petitions in light of two issues that Relators raised to the Secretary's attention: (1) "part-petitions on which it appears that a person other than the signer of the petition or the circulator may have, contrary to Ohio law, removed one or more signer's name[s] from the part-petition prior to it being filed with the appropriate election official (i.e., striking a signature)," and (2) "some circulators may have pre-affixed the number of signatures they purportedly witnessed * * * calling into question how many signatures the circulator properly witnesses and attested to in his or her circulator statement." (*See* Complaint, App. 1, Ex. D, Directive 2016-01.) The three-page directive not only identified the issues the boards

[3] As of December 26, 2015, Allen, Carroll, Erie, Hardin, Logan, Madison, Marion, Mercer, Monroe, Ottawa, Pike, Preble, Putnam, Tuscarawas, Washington, and Wyandot counties submitted certifications to the Secretary indicating a total of 4,716 signatures. (Ex. A, Hasman Third Aff. at ¶ 8, and Ex. 3, attached thereto.)

were to address, but also set forth an explanation of Ohio law on those issues and provided guidance as to what the boards could do to investigate them. (*Id.*)

Two days later, on January 6, 2016, the Committee filed a mandamus action in this Court (Case No. 2016-0020) against the Secretary, alleging that the Secretary has no authority to order the boards to re-review the part-petitions before verifying the results and claiming that it has a right to have the Petition on the November 8, 2016 ballot. Less than a week later, the Committee filed a new lawsuit in federal district court (S.D. Ohio Case No. 2:16-cv-38) seeking an injunction and temporary restraining order that the Secretary had violated the Committee's constitutional rights.

The re-review by the boards was completed on January 29, 2016. (*See* Complaint, App. 1, Ex. D.) On February 4, 2016, the Secretary verified the Petition and transmitted it to the General Assembly "with reservations." (*See* Transmittal Ltr. at 1.) The Secretary explained:

> 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 the case of 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 where 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.

(*Id.*, at 2, emphasis added.)

"[B]ased on the reliable, substantive evidence my office has received" the Secretary found that someone other than the signer, circulator or attorney-in-fact struck numerous part-

petitions in Cuyahoga County that were circulated by two companies (DRW Campaigns, LLC and Ohio Petitioning Partners LLC). (*Id.* at 3.) The Secretary also found "[i]t is unlikely that these improper practices by DRW and OPP under the direction of PCI were limited only to those petitions circulated in Cuyahoga County" but believed that he lacked "sufficient evidence to invalidate part-petitions beyond those in Cuyahoga County where the testimony was actually presented." (*Id.*)

Months later, PCI President Angelo Paparella openly and unabashedly admitted this practice, thus providing the evidence that someone other than the circulator systematically struck thousands of signatures statewide. After further detailed review of the irregularities previously identified, as well as others, Relators filed their Complaint in the instant case on February 29, 2016, challenging the sufficiency of the Petition. With its Complaint, Relators filed an abundance of evidence, including part-petitions, testimony from boards of elections, affidavits and other documents which are now pending before this Court. (Complaint at App. 1-28.)

Relators promptly began discovery, and served their first set of written discovery requests to the Committee on March 11, 2016. In the cover letter, Relators proposed stipulations to streamline discovery and apprised the Committee that they would withdraw or amend the discovery requests if the parties stipulated to relevant facts. *See* Relators' Motion to Amend Briefing Schedule, Ex. A, thereto, March 11, 2016 Letter to Don McTigue, at 1-2. Relators never received a definitive response to this request, a practice which proved to be typical of the Committee's response (or lack thereof) to all of Relators' attempts to shorten the time to complete discovery.

As outlined in the joint report on the progress of discovery (filed on June 1, 2016), Relators served multiple discovery requests on the Committee and requested the Committee's

cooperation in arranging the depositions of its circulators and petition companies, many of which were out-of-state. Despite the fact that the Committee is statutorily responsible for all matters related to the Petition, the Committee claimed to have no responsibility and no knowledge regarding anything related to the Petition or its circulators. (*See* Ex. C, Respondents' Responses to Relators' First Set of Interrogatories, Request for Production of Documents, and Request for Admissions; Ex. D, Respondents' Responses to Relators' Second Set of Interrogatories, Request for Production of Documents, and Request for Admissions). Relators continued with discovery, seeking other avenues to obtain the information the Committee claimed it did not have. Service of subpoenas proved difficult, with circulators avoiding service or listing addresses where subpoenas could not be served, or because the person/entity was no longer at the address provided, or because many were out-of-state. *See* Motion to Amend Briefing Schedule, filed May 23, 2016 and Joint Report on Progress of Discovery filed June 1, 2016.

On June 6, Relators conducted the deposition of Angelo Paparella, President of PCI Consultants, Inc. ("PCI"), a nationwide petition management firm based in California. PCI was contacted by Weinstein and engaged by the Committee to lead the petition-gathering effort for the Petition. (Ex. B, Paparella Dep. at 13, 18, 53.) Paparella testified that he managed the signature-gathering effort from California, through various coordinators who were both inside and outside of Ohio. (*Id.* at 25.)

Paparella testified that all of the part-petitions were sent to PCI's processing center in California, where PCI had a team of "validators," who were not circulators, review the part-petitions and systematically cross out signatures. (*Id.* at 23.) Paparella freely admitted that he had no issue with allowing non-circulators to cross out signatures and alter the part-petitions. (*Id.* at 29-30, 38-39, 43-44.)

But, Paparella acknowledged that a circulator statement that attests to collecting 28 signatures on a part-petition where there were never 28 signatures thereon is "false."

Q: Ashland 28. And so that's false? There's not 28 signatures?

A. That's correct.

Id. at 41.

Paparella expanded on that analysis:

> To answer your question directly, if I have a book with one signature, should the petitioner have written 28 on the back of the petition? No, they should not. The same standard of being somewhat close should have been adhered to * **."

Id. at 43.

In sum, the evidence established that:

1. Approximately 347 part-petitions containing approximately 5,799 signatures should be stricken because circulators failed to provide a permanent residence address on part-petitions as required by Ohio law. Striking these part-petitions results in the Petition being deficient, qualifying in only 43 counties. (Hasman Third Aff. at ¶¶ 9-11, and Exs. 1 and 4 thereto.)

2. Approximately 4,579 part-petitions containing approximately 63,759 signatures should be stricken because someone other than the circulator or the signor struck signatures and altered the part-petition. Striking these part-petitions results in the Petition being deficient, and containing approximately than 27,640 valid signatures. (*Id.* at ¶ 13, and Exs. 1 and 4 thereto.)

3. Approximately 1,464 part-petitions containing approximately 9,589 signatures should be stricken because circulators falsely attested to witnessing significantly more signatures than were included on the part-petition. Striking these part-petitions results in the Petition being deficient, and containing approximately 81,820 valid signatures. (*Id.* at ¶ 14, and Exs. 1 and 4 thereto.)[4]

[4] Exhibit 1 of Hasman's Third Affidavit is a thumb drive containing copies of all part-petitions submitted to the Secretary after re-review by all of the county board of elections. Exhibit 4 is a

Any one of these defects, standing alone, renders the Petition deficient and thus not eligible for transmission to the General Assembly. (*Id.* at ¶ 15.)

III. LAW AND ARGUMENT

A. *Cappelletti* And *Hodges*: The Petition Was Not Properly Before The 2016 General Assembly Because It Was Not Verified As Required By The Ohio Constitution.

At the outset, it is important to note that the Ohio Constitution and Ohio laws set forth a straightforward and methodical process that must be followed in order for an initiated statute to reach Ohio voters. Each step is mandated by the Ohio Constitution or the Ohio Revised Code, and each step is dependent on the completion and validity of the step before it:

1. Once approved for circulation in accordance with Ohio law, a committee for petitioners may begin to gather signatures from Ohio electors. R.C. 3519.01 – 3519.10.
2. The petition must be filed with the Secretary, who must transmit part-petitions to the various county boards of elections, who "shall proceed at once to ascertain whether each part-petition is properly verified" and whether the signatures on the part-petitions are valid. R.C. 3519.15.
3. Reviewed part-petitions are then returned to the Secretary along with a report by the boards of elections. *Id.*
4. If the initial petition is proven to be deficient at this stage, petitioners are given an opportunity to cure the deficiency and resubmit additional signatures. R.C. 3519.16(F).

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spreadsheet which includes data from 86 of the 88 counties, excluding Cuyahoga and Delaware counties. Delaware County data is excluded because a final determination was not certified. Cuyahoga County is not included because Relators did not have detailed information regarding the exact part-petitions stricken by the Secretary. As such, Relators' data is not complete, but represents the most conservative outcomes and positions taken in this Brief.

5. Once the initial petition is found to be sufficient and is verified according to law, then it is properly transmitted to the General Assembly at the start of the next session occurring not less than ten days later (subject to a challenge). Article II, Section 1b, Ohio Constitution.
6. The General Assembly has four months to consider the petition. *Id.*
7. If the proposed act is not passed by the General Assembly as presented in the initial petition, petitioners may then proceed to collect supplemental signatures. *Id.*
8. Supplementary petition signatures must also be verified and are subject to cure if there is a deficiency. R.C. 3519.16.
9. Once the entire petition, both initial and supplemental signatures, is found to be sufficient and verified, then the petition is presented to the voters on the next general election ballot that occurs subsequent to 125 days after the supplementary petition is filed. Article II, Section 1b, Ohio Constitution.

Nothing in Ohio law or the Ohio Constitution entitles the Committee to rush the Petition through these stages without first qualifying through the stage before it. And, given the undisputed timing of the verification of this Petition, nothing in Ohio law or the Ohio Constitution allows this Petition to qualify for the 2016 ballot.

As set forth in more detail below, the Petition does not currently contain a sufficient number of valid signatures and should have been returned to the Committee for cure, rather than having been submitted to the General Assembly. But even if those deficiencies were non-existent, the Petition still does not qualify for the 2016 ballot because it was not verified at least ten days before the General Assembly convened. Rather, pursuant to the Ohio Constitution, the

earliest that the Secretary could possibly be permitted to transmit the Petition to the General Assembly is the first day it convenes in January 2017.

1. The Petition cannot qualify for the 2016 ballot because it was not submitted and verified at least ten days before the commencement of the 2016 session of the General Assembly.

Consideration of this issue begins with the express language contained in Article II, Section 1b of the Ohio Constitution. That section provides, in relevant part:

> ***When*** at any time, ***not less than ten days prior to the commencement of any session of the general assembly***, there shall have been ***filed*** with the secretary of state a petition signed by three per centum of the electors ***and verified*** as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. (Emphasis added.)

In regard to the phrase "verified as herein provided," this Court has held that the phrase requires the Secretary as chief elections officer to first determine that the petition contains sufficient signatures because that requirement is fundamental to the constitutional reservation of the right of initiative to the people. *See Cappelletti v. Celebrezze*, 58 Ohio St.2d 395, 396, 390 N.E.2d 829 (1979). In other words, pursuant to Section 1b of Article II of the Ohio Constitution, the duty of the Secretary to transmit a petition proposing a law to the General Assembly is triggered only when that petition is both filed with, and found to be sufficient by, the Secretary. *Id.* at 396.

In addition, Ohio law not only permits, but requires that the Secretary utilize the county boards of election to fulfill the constitutionally-required verification. As this Court has held,

> Verification and the determination of the status of the signers can best be, and is by statute to be, performed by sending the petitions purporting upon their face to contain more than the required number of signatures, affixed and certified as explicitly required by constitutional directions contained in that article, to the county boards of election to be viewed together with the records there kept for the purpose of assisting the Secretary of State in arriving at his verification of the signatures and his determination of the qualifications as elector of the individual resident signers.

Id. at 397.

But it is not sufficient for the Secretary merely to send the part-petitions to the county boards of election. Rather, the Secretary is also required to wait for the county boards of election to complete their review and certification of part-petitions and then the Secretary must verify the petition. Until such time that the Secretary receives reports from the county boards of election in accordance with R.C. 3519.15 to establish the sufficiency of a petition, the Secretary is not constitutionally permitted to transmit a petition to the General Assembly. *See State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 1, 2006-Ohio-4334, 854 N.E.2d 1025.

Contrary to the Committee's assertions, the requisite number of signatures is not established merely by filing a petition that facially contains enough signatures. Nor is the requirement met by individual board review of part-petitions. Rather, the Constitution is clear: the sufficiency of the petition can only be established when a petition is filed with the Secretary ***and verified*** "as herein provided." Article II, Section 1b, Ohio Constitution. Verification "as herein provided" is governed by Article II, Section 1g of the Constitution, which mandates that "[t]he secretary of state shall determine the sufficiency of the signatures." Thus the Secretary, with the assistance of the boards, completes the required verification.

Finally, Article II, Section 1b of the Ohio Constitution contains an important time deadline—"ten days prior to the commencement of any session of the General Assembly." This Court has held that if an initiative petition is filed with the Secretary within ten days prior to the commencement of a regular session of the General Assembly, the Secretary is constitutionally required to withhold his certification and transmission of the petition until the following session. *See State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 10, 591 N.E.2d 1186 (1992).

Accordingly, the plain language of Article II, Section 1b of the Ohio Constitution, as well as this Court's holdings in *Cappelletti*, *Hodges*, and *Evans* require that a petition be ***both*** filed with ***and verified by*** the Secretary before it is properly transmitted to the General Assembly. Furthermore, if such filing and verification occurs later than ten days prior to the commencement of a regular session of the General Assembly, then the Secretary is constitutionally required to withhold transmission of the petition until the regular session next following.

Here, there is no dispute that the Petition was ***filed*** with the Secretary before the threshold December 26, 2015 deadline. But it is also clear that that the Petition was ***not verified*** by December 26, 2015. There were not enough signatures or counties certified by the boards of elections at that point, and there was no verification by the Secretary until over a month later. As noted previously, as of December 26, 2015, only 16 counties had certified their results to the Secretary, with a total of less than 5000 signatures had been certified as valid. This is far short of the total of 91,677 signatures required statewide (and far short of the sufficient signatures required from 44 counties). *See* fn. 3 *supra*.

As such, pursuant to the Ohio Constitution, the earliest the Secretary could be permitted to transmit the Petition to the General Assembly is the first day of its 2017 session. Plainly, the Committee did not have a right, constitutional or otherwise, to have the Petition immediately transmitted to the General Assembly under Section 1b, Article II of the Ohio Constitution. The Petition cannot qualify for the 2016 ballot in any event.

2. The Committee's claimed "right" to the 2016 ballot is ill founded.

While the Committee repeatedly claims that it has a "right" to appear on the 2016 ballot, no such right exists, nor has any mechanism been triggered to serve as a platform for such an argument. The Committee takes the position that because it filed its (as yet unverified) Petition prior to December 26, 2015, some lock-step process has been triggered that can only culminate

in placement of the issue on the 2016 ballot. But as outlined above, there are a number of steps that must be completed before any such "entitlement" exists.

Moreover, this Court has already ruled that a petitioner is not entitled to be placed on a particular ballot simply because they began their petition process at a certain time. In *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, ¶ 64, this Court flatly rejected an argument by relators who argued that they should be entitled to additional time in order to gather signatures to be placed on the ballot for the general election that same year:

> Therefore, relators need not be awarded an extension of time to place this issue on the November 2, 2010 ballot when they could seek placement of this initiative on the 2011, 2012, or 2014 general-election ballot without prejudice to their proposal or a departure from the constitutional deadlines. *Id*. at ¶ 64.

The Petition has not yet qualified to the ballot for 2016, 2017, or any year. No election is imminent and no voters are deprived of a right to vote on the Petition . . . if it does qualify to the ballot.

B. The Petition Does Not Contain The Required Number Of Valid Signatures Or The Required Number Of Counties And Must Be Cured Before It Can Be Transmitted To The General Assembly.

The Committee must submit at least 91,677 valid signatures, which is three percent of the total vote cast for the office of governor in the last gubernatorial election. Article II, Section 1b, Ohio Constitution. Additionally, the Committee must submit valid signatures equal to at least 1.5 percent of the total vote cast for the governor in the most recent gubernatorial election in at least 44 of the 88 counties. Article II, Section 1g, Ohio Constitution. The Petition is demonstrably deficient in both regards and on several bases, any one of which renders the Petition ineligible for transmission to the General Assembly.

Despite noting that the evidence before him "paints a picture of how the laws protecting the integrity of the sacred right to petition one's government were abused in this instance," the Secretary did not feel he had sufficient evidence or time to systemically review the breadth and depth of the deficiency. (Transmittal Ltr. at 2.) That evidence and the time to review it exist now, and the Petition's deficiency is squarely and properly before this Court. Article II, Section 1g provides that this Court has original, exclusive jurisdiction over this challenge and must rule on the challenge.

As to the evidence, and as a backdrop to each of the arguments that follow, it is well-settled that election laws are mandatory and require strict compliance. Substantial compliance is acceptable only when an election statute says that it is. *State ex rel. Vickers v. Summit Cty. Council*, 97 Ohio St.3d 204, 2002-Ohio-5583, 777 N.E.2d 830, ¶ 32; *Phillips v. Lorain Cty. Bd. of Elec.*, 93 Ohio St.3d 535, 2001-Ohio-1627, 757 N.E.2d 319, ¶ 49. None of the laws applicable here expressly provide for substantial compliance.

The General Assembly has sought to protect Ohio's initiative process by providing safeguards in the way statewide initiative petitions are circulated and verified, including the circulator's statement, and this Court has consistently demanded strict compliance with the requirements for circulators' statements. *See State ex rel. Committee for the Referendum of City of Lorain Ordinance No. 77-01*, 96 Ohio St.3d 308, 2002-Ohio-419, 774 N.E.2d 239, ¶49; *State ex rel. Citizens for Responsible Taxation v. Scioto Cty. Bd. of Elections*, 65 Ohio St.3d 167, 174, 602 N.E.2d 615 (1992). Failure to accurately complete the circulator's statement results in invalidation of the part-petition. *See Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶¶ 8-14; *State ex rel. Committee for the Referendum of City of*

Lorain Ordinance, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶¶ 47-50; *State ex rel. Spadafora v. Toledo City Council*, 71 Ohio St.3d 546, 549, 646 N.E.2d 393 (1994).

This Petition is fatally deficient for three separate reasons: (1) false circulator addresses on part-petitions; (2) unlawful alterations of part-petitions (i.e., "strike-throughs" of names); and (3) false circulator attestations as to number of signatures on the part-petitions.[5] Any ***one*** of these reasons, standing alone, renders the Petition deficient and requiring a cure before it can be properly submitted to the General Assembly. Taken in sum, the magnitude of the deficiency is extensive.

1. The Petition is deficient and was not properly submitted to the General Assembly due to the number of part-petitions on which circulators listed false permanent residence addresses.

Ohio law is clear: "the circulator shall identify the circulator's name, the ***address of the circulator's permanent residence***, and the name and address of the person employing the circulator. . ." R.C. 3501.38(E)(1) (emphasis added). As set forth in Relators' motion for partial summary judgment, several circulators listed non-residential addresses, such as hotels, a commercial warehouse, and a commercial mailing and shipping center as their "permanent residence address." Relators refer the Court to their motion for partial summary judgment filed on May 13, 2016.

Significantly, invalidating the part-petitions of just one of these circulators – Fifi Harper ("Harper") –renders the entire Petition deficient, triggers a requirement to cure the Petition, and moots the February 4, 2016 transmission to the General Assembly.

[5] Relators are no longer pursuing their argument that part-petitions circulated by felons should be stricken because the felons who were served did not appear for deposition and unlike the other three arguments herein, the number of signatures collected by potentially ineligible felons does not render the Petition deficient.

As stated in Relators' motion for partial summary judgment, Harper listed a postal box for her "permanent residence" address on approximately 200 part-petitions containing 3,750 signatures. (*See* Complaint, App. 9, Ex. J, First Affidavit of David R. Hasman.) Without Harper's signatures, Knox, Licking, Morrow, and Scioto Counties no longer qualify toward the 44-county minimum required by the Ohio Constitution, reducing the total number of qualifying counties to just 43 and rendering the Petition deficient. (*Id*.)

Harper listed her permanent residence address on those part-petitions as 4022 E. Greenway Rd. #11-312, Phoenix, Arizona, 85032, which is a Pack, Ship, and Print Center ("Pack and Ship") located in the middle of a commercial strip mall. (*See* Relators' Motion for Partial Summary Judgment, Ex. F, Affidavit of Joe Abate; Ex. G, Affidavit of Jim Fenton.) Pack and Ship is a commercial mailing and shipping center where Harper has never resided and where there are no residences. (*Id*.)

On August 27, 2015, Harper rented mailbox #312 at the Pack and Ship for a three-month period. (*See Id.*) Harper's application to the Pack and Ship includes a copy of her driver's license, issued in February 2015, listing 4802 N. 12th Street, Apt. 2102, Phoenix AZ 85014-4094 as her address. (*Id*.) The application for a P.O. Box, completed six months later on August 27, 2015, lists the same apartment address as "applicant's home address." (*Id*.) Within weeks, Harper began collecting signatures in Ohio and continued collecting signatures in this state for approximately one month.

The address Harper provided in Ohio as her "permanent residence" address is apparently not permanent and is definitely not a residence. Clearly, Harper cannot be located at the Pack and Ship address she provided. As evidenced by the unclaimed, months-old piece of certified mail in her box from the Scioto County Board of Elections, she did not pick up mail there (or did

so selectively) and could not be served there either. (*See* Relators' Motion for Partial Summary Judgment, Ex. G, Affidavit of Jim Fenton, Ex. A thereto.)

The Committee posits several ill-conceived arguments in its memorandum in opposition to motion for partial summary judgment in an attempt to evade the significance of this deficiency. First, the Committee argues that the number of signatures collected by Harper is insignificant because, if the Committee prevails in *Jones v. Husted*, Case No. 2016-0455, then Madison County will be restored as a threshold county and Petition-Respondents will have 44 qualified counties, the minimum required by the Constitution." *See* Committee's Memorandum in Opposition to Relators' Motion for Partial Summary Judgment ("Committee's Memo in Opp."), at 5. Yet even if the Committee prevails on its argument as to Madison County, in Case No. 2016-0455, invalidating Harper signatures in this matter ***still*** brings the number of valid remaining signatures below the 1.5 percent threshold needed for Madison County to qualify. In other words, Madison County does not qualify toward the 44-county requirement today and, if Harper's signatures are invalidated, ***Madison County will still not qualify*** even if the Committee prevails in Case No. 2016-0455. (Ex. A, Hasman Third Aff. at ¶ 12 and Ex. 1 thereto.)

Second, the Committee argues (again) its "right to seek to qualify for the November 8, 2016 general election ballot." (*See* Committee's Memo in Opp., at 6). As previously stated herein, no such "right" exists or has been recognized by this Court. On the contrary, such a claim was specifically rejected by this Court in *State ex rel. Ohio Liberty Council*, 125 Ohio St.3d at 315, at ¶¶ 62-64.

Finally, the Committee raises a tardy constitutional argument that should be barred on the basis of laches and waiver and is, at any rate, ill-founded. Relators' motion to strike this argument is still pending before this Court and Relators refer the Court to that motion for more

detail regarding why that argument should not be considered. In addition, Relators note the complete fallacy of the Committee's argument on this point. The Committee argues that Harper and the other three false address circulators identified are effectively homeless because of the itinerant nature of their work. The Committee cites to a series of cases discussing the constitutionality of statutes requiring that a petition circulator actually be a resident of a particular state—a very different scenario than the one presented here in which only the listing of a residence address, from ***any*** jurisdiction, is required. But this case is not about a circulator residency requirement. That issue is now settled in Ohio. *See Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 443 (6th Cir. 2016).

None of the cases relied upon by the Committee support its suggested proposition that requiring circulators to provide a residence address may be unconstitutional. On the contrary, many of the cases the Committee cites ***specifically refute the Committee's own position*** and ***uphold*** state requirements that initiative petition circulators provide their residence address to circulate a petition. For example, in *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 316 (4th Cir. 2013), the court struck down Virginia's requirement that petition circulators be residents of Virginia. But when discussing acceptable less restrictive means, the court specifically approved of statutory requirements which, like Ohio's, require disclosure of a residence address: "requiring non-residents to sign agreements providing their contact information and swearing to return in the event of a protest is a more narrowly tailored option." *Id.* at 318, quoting *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1030 (10th Cir. 2008). Ohio's law is even narrower still because it requires only the most minimal of contact information be provided. Ironically, the Committee also cites to *Nader v. Brewer*, 531 F.3d 1028, 1037 (9th Cir. 2008) and *Krislov v. Rednour*, 226 F.3d 851, 860 (7th Cir. 2000), both of

which support Relators' position and undermine the Committee's own argument by suggesting that lesser restrictive means of locating circulators after a petition drive will pass constitutional muster.

Even the watershed case of *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999), relied upon by the Committee, refutes the Committee's position. In *Buckley*, the Court noted Colorado's "strong interest in policing lawbreakers among petition circulators" and favorably viewed the Colorado law that required "that each circulator submit an affidavit setting out, among several particulars, the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.'" *Id.* at 196.

This Court has long ago rejected the use of a post office box as a sufficient disclosure of a residence address in the context of election laws and, more specifically, ballot issue petitions. *See State ex rel. Citizens for Responsible Taxation*, 65 Ohio St.3d at 171 (finding it improper for a signer to list a post office box number on a part-petition). Relators respectfully urge this Court to reject the use of a post office box again in this context. Harper provided a residence address to get a drivers' license several months before coming to Ohio. She provided the same address on her application to obtain the mail box from the Pack and Ship several weeks before coming to Ohio.

Despite the Committee's claim that it could not produce information about Harper to Relators because it "did not engage persons or companies to circulate the petition or themselves utilize persons or companies to circulate the petition,"[6] the Committee was able to locate Harper and obtain an affidavit from her within ten days of the date after Relators filed their motion for partial summary judgment. Having claimed an inability to provide information about Harper,

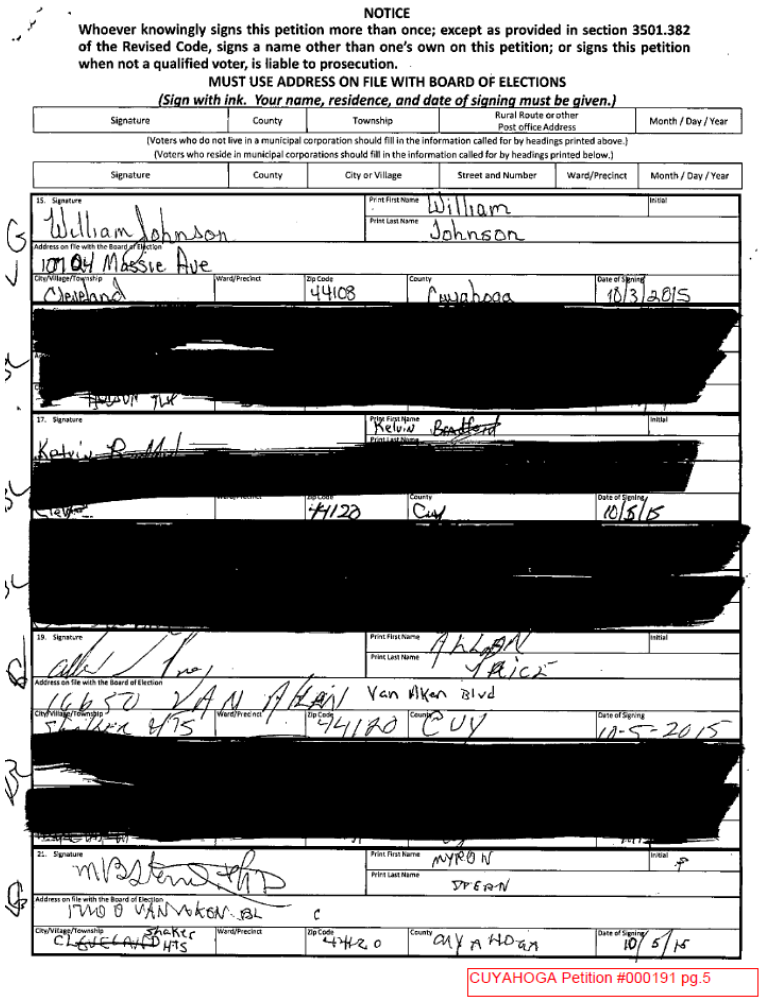
[6] *See* Ex. C, for Answer to Interrogatory No. 8, at 11.

and then promptly finding her when it suited its own purposes, the Committee should be estopped from now arguing that Harper could not provide a residence address or any information that could at least meet the spirit of Ohio law.

2. The Petition is deficient and was not properly submitted to the General Assembly due to the number of part-petitions that have been unlawfully altered.

R.C. 3501.38(G) and (H) authorize only three people to strike signatures on a part-petition before the petition is filed with the Secretary: (1) the circulator; (2) the signer; and (3) an attorney in fact for a disabled voter acting pursuant to R.C. 3501.382. The evidence before this Court confirms that thousands of part-petitions filed with the Secretary were altered by the petition circulation companies, and not one of the three individuals set forth in the statute.

Well over half of all part-petitions submitted to the Secretary were altered with signatures that were uniformly struck through using a thick, black marker. For example:



NOTICE

Whoever knowingly signs this petition more than once; except as provided in section 3501.382 of the Revised Code, signs a name other than one's own on this petition; or signs this petition when not a qualified voter, is liable to prosecution.

MUST USE ADDRESS ON FILE WITH BOARD OF ELECTIONS

(Sign with ink. Your name, residence, and date of signing must be given.)

Signature	County	Township	Rural Route or other Post office Address	Month / Day / Year

(Voters who do not live in a municipal corporation should fill in the information called for by headings printed above.)
(Voters who reside in municipal corporations should fill in the information called for by headings printed below.)

Signature	County	City or Village	Street and Number	Ward/Precinct	Month / Day / Year

15. Signature: William Johnson — Print First Name: William — Print Last Name: Johnson — Initial
Address on file with the Board of Election: 1104 Massie Ave
City/Village/Township: Cleveland — Ward/Precinct — Zip Code: 44108 — County: Cuyahoga — Date of Signing: 10/3/2015

[redacted]

17. Signature: [redacted] — Print First Name: Kelvin — Print Last Name: Bradford — Initial
Zip Code: 44120 — County: Cuy — Date of Signing: 10/5/15

[redacted]

19. Signature: [redacted] — Print First Name: [redacted] — Print Last Name: [redacted] — Initial
Address on file with the Board of Election: 16650 Van Aken Blvd
City/Village/Township: Shaker Hts — Ward/Precinct — Zip Code: 44120 — County: CUY — Date of Signing: 11-5-2015

[redacted]

21. Signature: [redacted] — Print First Name: MYRON — Print Last Name: [redacted] — Initial: P
Address on file with the Board of Election: 17110 VANAKEN BL C
City/Village/Township: CLEVELAND SHAKER HTS — Ward/Precinct — Zip Code: 44120 — County: CUYAHOGA — Date of Signing: 10/5/15

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Not only was this method of striking signatures done throughout the state, but it was found on at least one part-petition circulated by every company that circulated in Ohio. (Hasman Third Aff. at ¶ 13, at Exs. 1 and 4 thereto.)

The Secretary struck part-petitions that were shown to have been altered by someone other than the circulator, signer or attorney-in-fact based on the testimony of Pamela Lauter, the sole owner of Ohio Petitioning Partners, LLC ("OPP"), an Ohio-based circulating company based in Ohio. (*See* Ex. E, Deposition of Pamela Lauter ("Lauter Dep."), at 13-14, 51, 53-54.) OPP was hired to act as a "coordinator" for Elite Campaigns, one of the lead petitioning companies for the Committee. (*Id.* at 21-22, 24.)

In her role as coordinator with OPP, one of Lauter's duties was to review the individual part-petitions submitted by the circulators and "purge the deck." (*Id*. at 51, ¶¶ 7-16.) Lauter explained that "purging the deck" is a "common practice" in the industry and involves reviewing the part-petitions after the circulator turns them in and using a thick black marker to strike those signatures that "do not belong and will not be counted by the local board of elections, by the state, by the head contractor, or by the client." (*Id*. at 51, ¶ 7-16; 53-55.) Put simply, "purging the deck" means that someone ***other*** than the three individuals authorized by Ohio law strikes through signatures on the part-petitions.

Lauter testified specifically about her practice of "purging the deck" with regard to this petition effort before the Cuyahoga County Board of Elections:

> Q: So your staff goes through and checks them, and then if [the signatures] are bad, what do you do?
>
> A: And it's usually myself, actually. If they are Summit County and they are not from Cuyahoga County a line can go through it.
>
> Q: You'll put a line through it?
>
> A: I put a line through it. * * *

(Complaint, Appendix 27, Exhibit O, Cuyahoga Tr., at 125, ¶¶ 6-19).

In addition to OPP, Lauter also assisted DRW Campaigns LLC ("DRW"), another circulating company, during this same petition effort and has first-hand knowledge that DRW engaged in the same purging practice:

> Q: Other people working for DRW at your side, to your left or your right on any given day, it was their policy or was their instruction to you as an employee for them, to do exactly that, is to strike those petitions?
>
> A: If they didn't count, yes, they were supposed to mark them off, absolutely.
>
> Q: So somebody other than the circulator was striking the petitions?
>
> A: That would be me.

Q: Yes.

A: Yes.

Q: You or somebody just like you for DRW, were told to strike those petitions?

A: Exactly.

(*Id*. at 148, ¶¶ 6-20.)

Based on the testimony of Lauter, which the Secretary found to be "reliable, substantive evidence," the Secretary invalidated every part-petition with strikethroughs circulated by DRW and OPP in Cuyahoga County. (Transmittal Ltr. at 3.) As the Secretary observed in his Transmittal Letter, however, it was very unlikely that these "improper practices by DRW and OPP under the direction of the PCI were just limited to" Cuyahoga County. *Id.*

The Secretary was exactly right. While the Secretary did not have sufficient evidence about this practice in other counties before him at the time he verified the Petition, that evidence exists now.

Angelo Paparella, the President of the petition management company PCI, unabashedly admitted that his company orchestrated the strike-throughs on the Petition. (Paparella Dep. at 22-24.) PCI's own website boasts that "we actively cross-off all invalid signatures" and Paparella confirmed that this was indeed the systemic practice that PCI employed on the Petition. (*Id*. at 22-24 and Ex. 1 thereto; *see also* Complaint, App. 28, Ex. Q).

Paparella testified that he is the owner of PCI, which was retained by the Committee to oversee the entire signature collection effort. (*Id.* at 53.) Signed part-petitions were collected in Ohio by circulators, gathered by other under known and unidentified individuals in Ohio, and shipped to Paparella's California processing center to review signatures and strike out those that they did not believe were valid. *Id*. at 22-23.

While the Secretary has already struck improperly altered DRW and OPP petitions in Cuyahoga County, the remaining part-petitions are equally invalid. And if they are invalidated, the Committee would be well below the requisite county and signature thresholds.

Because this practice is a clear violation of Ohio law, the part-petitions should be rejected in their entirety. R.C. 3501.39(A)(3) provides in relevant part: "The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless * * * the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law." Here, the unauthorized removal of signatures violates R.C. 3501.38(G) and (H) thus, the part-petitions should be rejected under R.C. 3501.39(A)(3). *See, e.g., State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 539, 2014-Ohio-1417, 8 N.E.3d 940 (finding that secretary of state had authority under R.C. 3501.39 to investigate noncompliance by a part-petition circulator and to reject the part-petitions for noncompliance).

Additionally, the alteration of the part-petitions by improperly striking signatures violates R.C. 3519.06(C), which 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[.]" The "statement" referred to in R.C. 3519.06(C) is the statement required by R.C. 3519.05, which sets forth the requirements for initiative part-petitions. "Statement," however, is not defined in R.C. 3519.05, nor is it even mentioned in that section. Thus, because the reference is to R.C. 3519.05, which sets forth the requirements of the entire part-petition. It is not unreasonable to construe "statement" to include the entire part-petition, and conclude as the Secretary did here, that any erasure or interlineation on any part of the part-petition violates R.C. 3519.06(C) and results in the entire part-petition being invalid.

This Court has repeatedly accorded the Secretary's reasonable interpretation of election laws great deference. *See State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St. 3d 346, 2015-Ohio-4097, 43 N.E.3d 406; *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 57 ("The secretary of state's construction is reasonably supported by the pertinent provisions, and in accordance with well-settled precedent, the court must defer to that reasonable interpretation.") *See also State ex rel. Herman v. Klopfleisch*, 72 Ohio St.3d 581, 586, 651 N.E.2d 995 (1995). Similarly, the Secretary's determination regarding these strike throughs should be accorded deference and now that there is proof of the extent of the strike throughs, the Secretary's reasoning and decision should be extrapolated statewide.

Here, the evidence is clear that unauthorized individuals struck signatures, and thus altered many of the submitted part-petitions. Accordingly, all part-petitions where signatures were stricken by a thick black marker should be invalidated.

3. The Petition is deficient and was not properly submitted to the General Assembly due to the number of part-petitions containing false circulator statements.

It is undisputed that Ohio election laws definitively require that a circulator attest to the number of signatures collected in a part-petition in the circulator statement or attestation. Specifically, R.C. 3501.38(E) requires that "the circulator [of a part-petition] ***shall indicate the number of signatures contained on it***, and shall sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature * * *" (emphasis added); *see also State ex rel. Citizens for Responsible Taxation*, 65 Ohio St.3d at 172 ("circulators ***must correctly state*** the pertinent number of petition signatures") (emphasis added).

It is well-established by this Court that this requirement is mandatory, subject to strict, not substantial compliance. *See State ex rel. Barton v. Butler Cty. Bd. of Election*, 44 Ohio St.2d 33, 35, 336 N.E.2d. 849 (1975) ("We hold that inclusion of the circulator statement as required

by R.C. 3501.38(E) must be strictly complied with.") Among other things, this requirement is intended to serve as "a protection against signatures being added later." *State ex rel. Loss v. Bd. of Elections of Lucas Cty.*, 29 Ohio St.2d 233, 234, 281 N.E.2d 186 (1972). In fact, this Court has already ruled in this case that: "If that is true [circulators attesting to a higher number of signatures than they witnessed], there is at least a question as to how many signatures the circulators actually witnessed, if any." *Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-3038.

The evidence shows that this is not only true, but that the practice was widespread. Approximately 1,600 of the Petition's part-petitions, containing approximately 15,557 signatures, contain false circulator affidavits. Specifically, a number of circulators did not truthfully attest to having witnessed the number of signatures actually claimed. (*See* Complaint, App. 9-11, Exhibit J) While these circulators declared, under penalty of election falsification, that they were the circulator "of the foregoing petition paper containing the ***signatures of 28 electors***,"[7] their part-petitions do not actually contain 28 signatures. (*Id*.) Indeed, many of the part-petitions contain only one or two signatures. (*Id*.)

When asked about this practice during their depositions, Lauter was surprised that this was permitted and Paparella admitted that was false. (Ex. B, Paparella Dep. at 40-41.) Paparella admitted that circulator statements that contained the number "28" when the part-petition never contained 28 signatures are false:

> Q: Okay. So "I, Kelvin Moore, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of," and then somebody has written in "28 electors." Do you see that?
>
> A: "Ashland 28"

[7] The number "28" represents the maximum number of signatures lines on each part-petition.

Q: "Ashland 28." ***And so that's false? There's not 28 signatures?***

A: ***That's correct.***

Q: ***He's declared under penalty of perjury that there's 28 signatures when there's not, right?***

A: ***That's correct.***

(Paparella Dep. at 40-41, emphasis added.)

Lauter testified that the practice of automatically affixing the number "28" to numerous part-petitions "doesn't even make any sense" to her. (Lauter Dep., at 59, ¶¶ 6-7). When shown a part-petition that contained only one signature, but claimed to have 28, Lauter was appalled and confused:

A: I can promise you I would have never ever taken this paperwork from this person and let them put a 28 back with one signature in that book. I don't know who let that happen, but I would never have let that happen.

Q: Why wouldn't you have let that happen?

A: Because that's not how many signatures are in that book.

(Lauter Dep., at 58, ¶¶ 3-9).

A: I can't even say why somebody would do something like this. This is not anything that we teach to be done, that's for sure. Yeah. I don't know why anybody would do that. . . And whoever took this person's paperwork, I would like to think they would have said, what are you doing? Why in the world did you do that? That doesn't make sense to me.

(*Id*. at 58, ¶¶ 24-25; at 59, ¶¶ 1-8).

Paparella acknowledged that circulators should not have attested to collecting 28 signatures on a part-petition when the actual number of signatures they collected was nowhere near that figure:

Q: Do you have any problem with a circulator signing under penalty of perjury a declaration that the petition he's signing contains 28 signatures when it does not?

* * *

A: * * * To answer your question directly, if I have a book with one signatures, ***should the petitioners have written 28 on the back of the petition? No, they should not. The same standard of being somewhat close should have been adhered to. * * ****

(Paparella Depo. at 43-44, emphasis added.)

Paparella also readily admitted that attesting to witnessing 28 signatures on a part-petition when only one signature was collected is not compliant with Ohio law:

Q: * * * I want to make sure we are clear about this. Do you think it is legal – is it your understanding from your research of Ohio law, which you said it's your obligation to do so, as you market to your customers, I want to know your understanding, ***do you believe it is perfectly fine under Ohio law for someone to declare under penalty of perjury that they witnessed 28 signatures when there's only one?***

A: ***No. I already answered that. I said no.***

(Paparella Dep. at 45-46, emphasis added.)

Failure to accurately complete the circulator's statement results in invalidation of the entire part-petition. *See Rust*, 108 Ohio St.3d 139, at ¶¶ 8-14; *State ex rel. Committee for the Referendum of City of Lorain Ordinance*, 96 Ohio St.3d at 317, ¶¶ 47-50; *State ex rel. Spadafora*, 71 Ohio St.3d at 549. Similarly, pursuant to R.C. 3519.06(A) and (D), part-petitions with circulator statements that are "not properly filled out" and/or "false" cannot be properly verified. *See In re Protest of Brooks*, 155 Ohio App.3d 370, 383, 2003-Ohio-6348, 801 N.E.2d 503 (" . . . a false circulator's statement renders a part-petition invalid.")

As a result, when a circulator attests in the circulator statement to witnessing more signatures than actually appear on the part-petition, the circulator violates well-established

election laws. Because such laws require strict compliance, part-petitions containing circulator statements that are not accurately completed or are false in ***any respect*** should be struck in their entirety. *See In re Protest of Brooks*, 155 Ohio App.3d at 383 (". . . a part-petition is invalid if it is not properly filled out or false in any respect"); *see also State ex rel. Committee for the Referendum of Lorain Ordinance*, 96 Ohio St.3d 308, ¶ 49 (holding that because election laws require strict compliance, and a false circulator statement in a part-petition does not comply with such laws, invalidation of the entire part-petition was appropriate). Specifically, when a circulator statement contains a false signature total – a number of signatures that never appeared on the part-petition – that part-petition must be invalidated. Therefore, in the instant challenge, the Court must invalidate all part-petitions that contain such circulator statements.

This Court has never allowed any degree of miscount unless some plausible explanation of signature miscounts was proffered. *See State ex rel. Curtis v. Summit Cty. Bd. of Elections*, 143 Ohio St.3d 1457, 2015-Ohio-3637, 37 N.E.3d 171, ¶¶ 8-10. While the law does allow for the occasional clerical or counting error as a plausible explanation for signature miscounts, the part-petitions at issue here do not suffer from a simple clerical mistake. *See State ex rel. Citizens for Responsible Taxation*, 65 Ohio St.3d at 172. The level of deviation between the number of signatures claimed and the number actually collected varies; however, all such discrepancies are significant in nature and demonstrate that the signature counts were improperly completed.

Part-petitions from every county included false circulator attestations. (Hasman Third Aff. at ¶ 5, 14 and Exs. 1 and 4 thereto.) Indeed, more than 50 percent of the 1,600 part-petitions at issue[8] contained signature counts of 28, but the part-petitions actually contain 10 or less

[8] Approximately 950 part-petitions containing at least 3,588 signatures purport to contain 28 signatures but in reality contain ten or fewer signatures. (Hasman Third Aff. at ¶ 14 and Exs. 1 and 4 thereto)

signatures. (*Id.* at ¶ 14 and Exs. 1 and 4 thereto.) One cannot plausibly blame these intentional and systematic deviations on a mere clerical or counting error. Instead, the evidence supports that circulators were instructed to include "28" in their circulator statements when they never witnessed 28 people signing the part-petition. Several circulators confirmed that the "28" was filled in prior to circulating the petition. And worse still, at least one circulator testified that that the "28" on a part-petition she signed was not in her handwriting.

Circulators testified that they were instructed by their superiors to "mark 28 in the box always," even when they had not in fact collected 28 signatures. (Complaint, App. 28, Ex. T, Transcript of Adrienne Raishawn Collins by Franklin County Board of Elections, at 16, ¶¶ 19-20.) Adrienne Collins testified that she worked as a circulator for the Elite Campaigns, but quit as a result of her discomfort over being required to attest that she witnessed 28 signatures, when she had not:

> Q: But initially you put 28 [on the circulator statement]?
>
> A: Yes.
>
> Q: Okay. With that 28 there - -
>
> A: But it's not 28. It's like, 17 maybe, a little bit under 28. There was one page I didn't complete that day. [Dean] said go ahead and put the 28 there and turn it in.

(Complaint, App. 28, Ex. T, at 7, ¶¶ 6-12.)

> Q: What I am trying to get clarified here is this. When did you put 28 there?
>
> A: This was the day that I was given—that I quit. I told him, I'm going home. This is not right. I only have 16 signatures, but I am going home. I'm done.
>
> Q: Okay.
>
> A: Well, he said, Put 28 there in that box. It will be fine. I said, Why am I putting 28 here when it's only 16 signatures here? He said, Because its 28 boxes, rectangles.

(*Id.* at 17, ¶¶ 11-12; ¶¶18-21.)

Worse still, there is also evidence that the signature counts were completed by someone other than the circulators themselves. Circulators testified that they did not complete the circulator attestation and that the handwriting contained on the attestation was not theirs. Gloria Torrence, who testified that she worked as circulator for DRW Campaigns, LLC, testified that she did not complete the signature count on several part-petitions that she circulated in Lorain County. Torrence was presented with a petition that included the following circulator affidavit:

STATEMENT OF CIRCULATOR

I, Gloria Torrence, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of 28 electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

DRW Campaigns, Inc. 3549 Dort Hwy
Flint, Mi 48507

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Gloria Torrence
(Signed)

127 Academy Ct.
(Address of circulator's permanent residence)
Number and Street, Road or Rural Route

Elyria
City, Village or Township

Ohio 44035
State Zip Code

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

Q: And it's your testimony that you did not that put that 28 in there beside your signature?

A: Yeah, that 8 don't look like mine because I do not do double O's. I do not do that. I write too good to have put a double O.

(Exhibit F, Excerpt of Transcript Lorain County Board of Elections, testimony of Gloria Torrence at 21, ¶¶ 14-18.)

Q: Part-petition 51 on the back, the statement of the circulator, there's a 28 on there and then your signature down below.

A: Uh-huh.

Q: Does that look like your handwriting?

A: Not no zeros.

Q: Okay.

A: Because I don't do that. It's just – it's just something I don't do. I don't put no double O's on nothing.

(*Id*. at 22, ¶¶ 1-10).

The part-petitions referenced by Ms. Torrence in her testimony all purported to contain 28 signatures, but did not in fact contain 28 signatures. Further, Ms. Torrence testified that she left the signature count blank on these part-petitions and that "somebody had to have filed it in" because the handwriting was not hers. (*Id.* at 28, ¶¶ 13-15.)

Q: What I'm trying to figure out is if you didn't do it, how it would have happened. Would it have been possible for you to have signed—?

A: Left it blank.

Q: Signed it and left it blank?

A: I have some petitions that I know for a fact that they told me that was coming back to me because I forgot to do something on it, either not sign my name or not putting the number in, but I never got the petitions back.

Q: Okay. So that would explain how that possibly could have happened?

A: Yep.

Q: You would have signed –

A: I would think so because –

Q: All right. Let me finish. You would have signed, left the number blanks, and then somebody – well –

A: Yeah, somebody had to have filled it in because that's not my 8.

(*Id*.)

It is a complete circumvention of Ohio law to attest to 28 signatures when some lesser number of signatures was collected, or leaving the number blank and allowing someone other than the circulator to complete the already-signed attestation. The evidence makes clear that what happened on this Petition is very different from the minor clerical or mathematical error that this Court has considered in previous cases. Rather, this Petition exhibits a systemic and widespread practice of intentionally falsifying the circulator's attestation. This practice, especially when coupled with the fact that these part-petitions travelled through an unknown number of hands all the way to California and back, is hardly the "protection against signatures being added later" that this Court found to be critical. *State ex rel. Loss*, 29 Ohio St.2d at 234.

Ohio law requires that a part-petition "speak, on its face, the truth." *See State ex rel. Spadafora*, 61 Ohio St.3d at 549. Based upon the evidence before this Court, approximately 1,600 part-petitions have clearly violated this statute. Accordingly, each part-petition containing a false circulator statement should be invalidated in its entirety.

C. The Committee's Delay In Filing the Petition And Its Resistance To Discovery Estops It From Using Evidence It Should Have Produced.

While the Committee has repeatedly complained about delay and timelines, the truth is twofold. First, the timeline was entirely within the Committee's control and was intentionally orchestrated by the Committee to rush the Petition toward the ballot so quickly that no one would see its flaws. Second, the Committee's conduct during discovery in this case has caused delay and prevented key depositions from occurring prior to the deadline for filing this merit brief.

Although 90% of the signatures were collected by mid-November, the Committee waited until December 22, 2015 to file the Petition with the Secretary. (*See* Complaint, App. 1, Ex. A.) By waiting to file the Petition until immediately before the holidays, the Committee created an enormous strain on the Secretary and county boards of elections, no doubt intentionally calculated to ensure that the time for review of part-petitions was severely limited.[9]

R.C. 3519.02 broadly makes the Committee responsible for "all matters relating to" the Petition. If "all matters relating to" is to have any meaning at all, it must include the basic details of petition circulation such as the names, addresses, and procedures employed by the circulators of the part-petitions. Yet the Committee has resisted and evaded discovery at every turn and repeatedly disclaimed knowledge of various facts which later proved to be well within the Committee's control. *See* Joint Report on the Status of Discovery from June 1, 2016, at 1-6.

For instance, in response to various interrogatories, document requests and admissions, the Committee variously claimed to have no knowledge or records about circulators or petition companies because it "did not engage persons or companies to circulate the petition or themselves utilize persons or companies to circulate the petition." (Ex. C, Answer to Interrogatory No. 8, at 11.) The Committee repeatedly responded that it had no documents related to circulators or companies that Relators wished to question. (*Id.* at Request for Production of Documents Nos. 4 – 15, Ex. D, Ans. to Interrogatory No. 7 and Ans. to Request for Production of Documents No. 3.)

[9] In contrast, an initiative petition for the "Fresh Start Act" also circulated last year and was filed with the Secretary on September 29, 2015. The Secretary forwarded the part-petitions to the boards of elections, which had a full month to review the part-petitions. That initiative was certified and transmitted to the General Assembly on January 5, 2016. (See Appendix 1, Ex. B, Directive 2015-18.)

Yet, despite purportedly having no knowledge about the circulation companies or circulators, the Committee was remarkably able to obtain signed affidavits to submit in opposition to Relators' motion for partial summary judgment from Angelo Paparella, Kelvin Moore, Kacey Veliquette, and Fifi Harper within a ten-day period between May 13 and May 23, 2016. These are some of the same individuals of whom the Committee disclaimed knowledge in its responses to Relators' written discovery requests. The Committee not only knew how to reach these witnesses, but was able to obtain affidavits from them on short notice, and all while under a continuing obligation to provide information to Relators about these very same individuals.

And while hiding behind PCI and disclaiming knowledge of PCI's practices on the one hand, the Committee was helping to orchestrate the entire petition drive through its attorney on the other hand. (Paparella Dep. at 26, 30, 32, 37, 39, 57, and 82.)

The Committee's conduct is contrary to its statutory responsibility for "all matters relating to" the Petition and should not be without consequence. R.C. 3519.02. The Committee cannot have it both ways. It cannot simultaneously refuse to provide information it is statutorily required to produce and complain about purported delay by Relators, then be permitted to rely upon evidence that conveniently only appeared when the Committee wanted it to oppose summary judgment.

The Committee's conduct perverts this process and only furthers the perception among petition circulation companies that Ohio is the wild west of election law. This is the precise scenario the doctrine of quasi-estoppel evolved to prevent. Quasi-estoppel applies to protect the integrity of litigation by not permitting a party to "blow both hot and cold," taking inconsistent positions to suit the situation. *Pace Indus. Union-Mgmt. Pension Fund v. Dannex Manuf. Co.*,

394 Fed. Appx. 188, 199 (6th Cir. 2010) (estopping party from claiming funds were distributions in litigation when also claiming to the IRS to get tax advantages that the same funds were loans); *Hampshire County Trust Co. v. Stevenson*, 114 Ohio St. 1, 150 N.E. 726, 730 (1926) (quasi-estoppel precludes acceptance of benefits derived from taking inconsistent positions); *City of Fairlawn v. Fraley*, 9th Dist. Summit No. 9827, 1981 Ohio App. LEXIS 13742, at *8 (Feb. 11, 1981) (party estopped from complaining about requirement for sidewalks in ordinance of which it took advantage to build subdivision).

Here, quasi-estoppel should preclude the Committee from relying upon evidence it should have produced in discovery. The Committee's affidavits at Exhibits C-F to its opposition to Relators' motion for partial summary judgment should be disregarded. And, the Committee should be estopped from presenting evidence regarding the circulation companies' and circulators' practices and any irregularities related to the circulators and circulation companies.

IV. CONCLUSION

This case is not, as the Committee contends, about its supposed right to rush toward the ballot and the election of its choosing. This case involves the integrity of the statewide initiative process and enforcement of Ohio laws. This Court has repeatedly stressed the importance of "ensuring the integrity of and confidence in the process." *In re Protest Filed with the Franklin Cty. Bd. of Elec. by Citizens for the Merit Selection of Judges, Inc.*, 49 Ohio St.3d 10, 551 N.E.2d 150 (1990); *see also* Article II, Section 1g Ohio Constitution (allowing laws to "facilitate" the statewide initiative process). Adherence to reasonable requirements enacted by the General Assembly is vital to maintaining the integrity of the initiative process in Ohio. *See Buckley*, 525 U.S. at 191 ("[S]tates allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally."); *In re Protest of Keith Brooks*, 155 Ohio App.3d at 375-77, citing *Buckley, supra*.

The Ohio Constitution does not require that an initiative petition that is verified during a legislative session be transmitted and considered by the General Assembly during that session. Ohio law does not allow a circulation company to strike signatures from a part-petition. Ohio law does not allow circulators to attest to witnessing more signatures than they actually did, or allow someone other than the circulator to complete the attestation. And Ohio law requires that circulators provide a permanent residence address. Over the years, petition circulation companies have become adept at stretching the interpretation of these laws beyond all reasonable boundaries, and to the point of breaking.

The Petition was not properly transmitted to the General Assembly because it was not filed and verified at least ten days before the start of the 2016 legislative session and because, for the reasons cited above, the Petition does not contain a sufficient number of valid signatures. Relators urge this Court to enforce the laws as they were drafted and intended.

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 June 8, 2016 upon:

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