

Case No. 2016-1235

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In the  
**Supreme Court of Ohio**  
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STATE EX REL. TRACY L. JONES, *et al.*,  
*Relators,*

v.

JON HUSTED,  
*Respondent.*

*Original Action in Mandamus*

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**RELATORS' CORRECTED MOTION FOR LEAVE TO FILE AN  
AMENDED COMPLAINT**

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*Counsel for Respondent*  
*Secretary of State Jon Husted*

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Relators hereby file a corrected motion to amend their Complaint. Attached to the motion submitted yesterday was a draft of the proposed amended complaint that did not contain the case caption page. Therefore, Relators are filing this corrected Motion.

Relators respectfully move to amend their Complaint filed herein to add nine county boards of elections as Respondents in the event that the Court believes that their joinder is necessary to decide the case on the merits and afford complete relief. A short memorandum in support follows. A copy of the amended complaint is attached hereto.

Respectfully submitted,

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*Counsel for Relators*

## MEMORANDUM IN SUPPORT

In their Complaint, Relators allege the following:

8. Ohio Rev. Code 3501.05(K) provides that the Ohio Secretary of State shall:

Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions.

9. Ohio Rev. Code 3501.05(L) provides that the Ohio Secretary of State shall:

Require such reports from the several boards as are provided by law, or as the secretary of state considers necessary.

10. Ohio Rev. Code 3501.05(M) provides that the Ohio Secretary of State shall:

Compel the observance by election officers in the several counties of the requirements of the election laws;

(Complaint at ¶¶ 8-10)

Boards of elections provide reports to the Secretary of State of validated part-petitions and signatures on state issue petitions pursuant to R.C. 3519.15 and 3519.16(E). See Complaint at ¶¶ 11-12. The legal duty of the Secretary of State to require reports from the boards of elections includes the reports required by R.C. 3519.15 and 3519.16(E) on state issue petitions. The boards are obviously required to follow the law in validating signatures and R.C. 3501.01(M) imposes a duty on the Secretary of State to compel the observance of the election laws by the boards. This Court has announced that Ohio law prohibits elections officials from rejecting a part-petition on the ground that someone other a signer, circulator or signer's agent struck one or more signatures from the part-petition prior to filing. *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief*, Slip Opinion No. 2016-5377 at ¶¶ 16-21.

However, in his Answer to the Complaint filed late Friday afternoon, August 19th, Respondent Secretary has raised as a ninth defense that "Relators fail to join necessary and indispensable parties to this Action." Although Respondent Secretary does not name who those parties are, presumably he is referring to the county boards of elections named in the Complaint. Further, despite being in physical possession of the actual petitions as verified by the boards and the first and second certification reports from the boards, in his Answer Respondent Secretary states that he is without information sufficient to form a belief as to the allegations regarding the part-petitions invalidated by the boards on the basis of someone other than a signer, circulator or signer's agent striking signatures, See Answer at ¶¶ 28-36, or a belief as to the mistaken rejection of 6 part-petitions by the Sandusky County Board, Id. at ¶ 37, or the part-petitions affected by the tie vote of the Delaware County Board, Id. at ¶ 38.

Relators' believe that Respondent Secretary Husted has the duty to determine the sufficiency of the Petition in compliance with the law as announced in *Ohioans for Drug Price Relief Act*, and that the boards of elections are not necessary or indispensable parties to this action. Secretary Husted has full authority to order the boards to prepare new part-petition certification reports if he believes he needs amended reports. Relators do not see the necessity of hailing local election officials into court in this instance in order to resolve the case on the merits. However, Respondent Secretary apparently may have a different view. Therefore, out of an abundance of caution, and even though Respondent Secretary could file his own motion to join parties, Relators are filing this motion.

Motions for leave to amend a complaint are freely given, and even in expedited elections cases such as this, this Court has allowed amended complaints to be filed even after a responsive

pleading has been served. *State ex. rel. Hackworth v. Hughes*, 97 Ohio St. 3d 110, 113, 776 N.E. 2d 1050 (2002).

This amendment would not unduly prejudice any party. As a practical matter, the case will not be decided prior to the Thursday, August 25, 2016 deadline for filing Relators' petitions to make up the 5,044 signature deficiency declared by the Court in *Ohioans for Drug Price Relief Act*, ¶¶ 46-47. Further, it is unlikely that the case will be decided before Ohio's county boards of elections are required to verify the signatures on the petitions, given that Respondent Secretary has leeway as to how soon he sends the petitions and how long he grants the boards to verify the petitions. During such period, new parties could file answers and join in Respondent Secretary's brief, or file their own.

Relators respectfully request leave of the Court to amend their Complaint, as attached, should the Court consider it necessary to join the nine named county boards of elections to this action.

Respectfully submitted,

/s/ Donald J. McTigue

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*Counsel for Relators*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was delivered via e-mail on  
August 22, 2016, upon:

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*Counsel for Respondent*  
*Secretary of State Jon Husted*

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

## STATE EX REL. TRACY L. JONES

**V.**

**PUTNAM COUNTY  
BOARD OF ELECTIONS**  
336 E. Main St.  
Ottawa, Ohio 45875

**ALTERNATIVE AND PEREMPTORY WRITS REQUESTED**



2020 Countryside Dr.  
Fremont, Ohio 43420

835 E. 5th St.  
Marysville, OH 43040

## Respondents.

[illegible]

**RELATORS' AMENDED COMPLAINT IN ORIGINAL ACTION IN MANDAMUS**

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NOW COME THE RELATORS, and hereby aver as follows:

**NATURE OF THE ACTION AND JURISDICTION**

1. This is an original action in mandamus commenced pursuant to this Court's jurisdiction under Article II, § 4.02(B) of the Constitution of the State of Ohio and Ohio Revised Code § 2731.02.
2. The instant action is a re-filing of *State ex rel. Tracy L. Jones, et al. v. Jon Husted, et al.*, Case No. 2016-455, but is more limited in scope based on the Court's August 15, 2016 decision in *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377 which invalidated 10,303 signatures from the petition proposing the Ohio Drug Price Relief Act to the General Assembly ("the Petition"), leaving the Petition 5,044 signatures below the constitutionally required threshold. However, the Court in *Ohio Mfrs. Assn.* also held that it is improper to invalidate part-petitions because they contain signatures crossed out by someone other than the circulator, signer, or signer's attorney-in-fact. The instant action seeks to recover such signatures that were rejected by Respondent Husted and the Respondent county boards of elections. The recovery of these signatures would more than make up the deficiency and further would moot the portion of the Court's decision that "[i]f the secretary 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.

3. Relators seek a Writ from this Court ordering that Respondent Husted amend his February 4, 2016 certification of the number of valid part-petitions and verified signatures of Ohio electors contained on the Petition filed with Respondent on December 22, 2015, to wit: (a) the 1,370 part-petitions and the 20,102 valid signatures contained thereon, that were twice verified as valid and certified by the Cuyahoga County Board of Elections, but were subsequently invalidated by Respondent Secretary because he believed the part-petitions contained signatures that may have been struck out by someone other than the circulator or signer. As explained by the Court in its recent August 15, 2016 opinion in *Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, per curiam, ¶¶ 11-32, this is not a valid basis for invalidating entire part-petitions. *See, id* at ¶ 16 (“The evidence therefore shows that signature deletions occurred that were not authorized by R.C. 3501.38(G) and (H). But [*OMA* Relators are] mistaken in [their] belief that the remedy for such a violation is to invalidate the entire part-petition”); (b) the 85 part-petitions and 324 valid signatures contained thereon, that were verified and certified by Respondent Delaware County Board of Elections that Respondent Secretary has refused to count in the final certification; (c) the approximately 96 part-petitions containing approximately 1,098 valid signatures thereon, that were invalidated by seven county boards of elections acting under Respondent Secretary’s Directive 2016-01 on the basis that the part-petitions contained signatures that they stated were improperly

struck out; and (d) the 6 part-petitions and 29 valid signatures contained thereon that were improperly invalidated by Respondent Sandusky County Board of Elections acting under Respondent's Directive 2016-01.

4. Relators affirmatively allege that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonable delay or lapse of time in asserting their rights herein and, further, there is no prejudice to Respondents. [See, e.g., *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277.]

### **PARTIES**

5. Relators Tracy L. Jones, William S. Booth, Daniel L. Darland, and Latonya D. Thurman ("Petitioners") are the individuals designated on the face of the initiative petition to represent the petitioners in all matters relating to the initiative petition or its circulation pursuant to Ohio Rev. Code § 3519.02.
6. Respondent Ohio Secretary of State Jon Husted ("Secretary") is the Ohio Secretary of State, the Chief Elections Officer of the State of Ohio. Upon filing of any initiative petition, Ohio Rev. Code § 3519.15 requires Respondent Secretary to forthwith separate the part-petitions by counties and transmit such part-petitions to the county boards of elections which are tasked with verifying the part-petitions and signatures and reporting to the Secretary the sufficiency or insufficiency of such signatures. Ohio Rev. Code § 3501.05(L) requires Respondent Secretary to require reports from the county boards, including those provided by Ohio Rev. Code § 3519.15, and Ohio Rev. Code §

3501.05(M) requires Respondent Secretary to compel the county elections officials to observe Ohio's election laws. Article II, Section 1b requires Respondent Secretary to certify the number of signatures verified and certified by the 88 county boards of elections, and determine from such certifications whether there is a sufficient number of valid signatures in order to transmit a proposed law to the Ohio General Assembly. Ohio Rev. Code § 3501.11(X) requires Respondent Secretary to summarily decide tie votes submitted to him by the county boards of elections.

7. Respondents Adams County Board of Elections, Darke County Board of Elections, Delaware County Board of Elections, Hocking County Board of Elections, Madison County Board of Elections, Miami County Board of Elections, Putnam County Board of Elections, Sandusky County Board of Elections, and Union County Board of Elections are the boards of elections for their respective counties

#### **ALLEGATIONS SUPPORTING CLAIM FOR RELIEF**

8. Pursuant to Ohio Constitution Article II, § 1b, the citizens of Ohio may propose a law by filing an initiative petition with the Secretary of State containing the signatures of three percent of the electors and verified as therein provided.

Article II, § 1b provides, in pertinent 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. \* \* \*

If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the General Assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the General Assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the General Assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the General Assembly.

9. Ohio Rev. Code 3501.05(K) provides that the Ohio Secretary of State shall:

Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions.

10. Ohio Rev. Code 3501.05(L) provides that the Ohio Secretary of State shall:

Require such reports from the several boards as are provided by law, or as the secretary of state considers necessary.

11. Ohio Rev. Code 3501.05(M) provides that the Ohio Secretary of State shall:

Compel the observance by election officers in the several counties of the requirements of the election laws;

12. Ohio Rev. Code 3519.15 provides:

Whenever any initiative or referendum petition has been filed with the secretary of state, he shall forthwith separate the part-petitions by counties and transmit such part-petitions to the boards of elections in the respective counties. The several boards shall proceed at once to ascertain whether each part-petition is properly verified, and whether the names on each part-petition are on the registration lists of such county, or whether the persons whose names appear on each part-petition are eligible to vote

in such county, and to determine any repetition or duplication of signatures, the number of illegal signatures, and the omission of any necessary details required by law. The boards shall make note opposite such signatures and submit a report to the secretary of state indicating the sufficiency or insufficiency of such signatures and indicating whether or not each part-petition is properly verified, eliminating, for the purpose of such report, all signatures on any part-petition that are not properly verified.

In determining the sufficiency of such a petition, only the signatures of those persons shall be counted who are electors at the time the boards examine the petition.

13. Ohio Rev. Code 3519.16(E) provides:

The properly verified part-petitions, together with an electronic copy of the part-petitions, shall be returned to the secretary of state not less than one hundred ten days before the election, provided that, in the case of an initiated law to be presented to the general assembly, the boards shall promptly check and return the petitions together with their report. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election. The secretary of state promptly shall notify the chairperson of the committee in charge of the circulation as to the sufficiency or insufficiency of the petition and the extent of the insufficiency.

14. Initiative proponents proposing a law must presently submit at least 91,677 valid signatures, a number equal to at least 3% of the total vote cast for the office of governor in the last gubernatorial election. [Sec. 1b, Art. II, Ohio Constitution.] Further, petitioners are required to submit valid signatures equal to at least one and a half percent of the total vote cast for governor at the most recent gubernatorial election in at least 44 of the 88 counties in Ohio. [Sec. 1g, Art. II, Ohio Constitution.] Finally, the petition must comply with various other constitutional and statutory requirements in order for the proposed amendment to be submitted to the electors, including the

requirements set forth in Art. II, Sec. 1g of the Ohio Constitution and Ohio Rev. Code 3519.01. Relators' initiative petition meets all legal requirements.

### **The Petition Filed with the Secretary of State**

15. On December 22, 2015, the Petitioners filed 10,029 part-petitions containing 171,205 signatures with Respondent Secretary of State.
16. On December 23, 2015, Respondent issued Directive 2015-40, "Instructions Regarding the Review, Examination, and Verification of the Petition proposing an Initiated Statute (Ohio Drug Price Relief Act)," to the boards of elections to provide instructions on the "review, examination, and verification of signatures on the petition proposing an initiated statute."
17. Directive 2015-40 instructed the boards of elections to review the instructions contained in Chapter 11 of the Election Official Manual regarding the review of circulator's statements and signatures and marking petitions. Neither Directive 2015-40 nor Chapter 11 of the Election Official Manual instructed boards of elections to invalidate whole part-petitions that contained signatures that were struck out by someone other than the circulator, a signer, or a signer's attorney in fact.
18. Directive 2015-40 further provided that once a board of elections completed the verification process, the director of the board of elections was to sign and return the county's certification form no later than 12:00 p.m. on December 30, 2015.
19. Respondent Secretary of State received certification forms from all of the 88 county boards of elections on or before December 30, 2015. Based on the



certification forms from the 88 county boards of elections reported (certified) that the initiative petition contained 119,031 valid signatures, 27,354 more than required by Art. II, § 1b of the Ohio Constitution, and 48 of the 88 counties met the county threshold requirement, four more than required by Art. II, § 1b of the Ohio Constitution

20. Despite the Constitutional threshold having been clearly met as of Directive 2015-40's deadline, Respondent Secretary did not transmit the petitions to the legislature at the start of the session, which was on Tuesday, January 5, 2016.
21. At 5:02 p.m. on December 30, 2015, an attorney from the law firm of Bricker & Eckler LLP transmitted an electronic mail communication to attorney Jack Christopher, General Counsel in the Ohio Secretary of State's office, on behalf of its client, the Pharmaceutical Research and Manufactures of America ("PhRMA"). That correspondence included a letter addressed to Secretary of State Husted setting forth two purported issues with the initiative petition and requesting that he take several actions ("PhRMA letter"), including:

"We respectfully ask that you direct the BOEs, consistent with Ohio law and with protecting the sanctity of the ballot and electors' signatures, to strike those part-petitions that demonstrate the issues outlined above."

\* \* \*

"Moreover, until such time as the Secretary can investigate and determine the sufficiency of the Petition, the Secretary cannot and should not transmit the Petition to the General Assembly."

22. PhRMA is an advocacy and public policy organization representing pharmaceutical companies. PhRMA is a known opponent of laws such as the one being initiated here.
23. In addition to the PhRMA letter, Bricker & Eckler LLP's December 30, 2015 email contained two spreadsheets, one of which purported to list the number of struck signatures on each part-petition.

### **The Second Directive**

24. On January 4, 2016, rather than transmit the Proposed Law to the General Assembly as required by the Ohio Constitution, Respondent issued Directive 2016-01, "Re-Review of the Ohio Drug Price Relief Act," returning the part-petitions to the county boards with instructions to re-review two aspects of them.
25. Directive 2016-01 instructed the county boards to re-review two aspects of the part-petitions. First, citing R.C. 3501.38 (G) and (H), the directive ordered the boards to determine whether petition signatures were improperly removed (i.e., crossed out) by unauthorized persons. Second, the directive ordered the boards to investigate whether circulator statements were invalid due to signature overreporting (i.e., preaffixing the number of signatures purportedly witnessed by the petition circulators to part-petitions containing fewer actual signatures).

26. Directive 2016-01 was not clear in its instructions to boards of elections regarding the legal effect of someone other than the three people identified in Ohio Rev. Code §§ 3501.38(G) and (H) striking out a signature from a part-petition. Nowhere did it provide that entire part-petitions should be invalidated because someone other than one of the three people identified in Ohio Rev. Code §§ 3501.38(G) and (H) struck out a signature on a part-petition. *See also, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, per curiam, ¶ 28 (“[Husted] ordered the boards to conduct their re-review, but, of critical importance, *he did not instruct the boards to disqualify petitions containing unauthorized deletions*. In fact, he gave no clear guidance on that point.”) (underline emphasis added; italics emphasis original.)
27. Indeed, nowhere in the Ohio Revised Code does it provide that entire part-petitions can or may be invalidated because someone other than one of the three people identified in Ohio Rev. Code §§ 3501.38 (G) and (H) struck out a signature on a part-petition. *See also, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, per curiam, ¶ 21 (“R.C. 3501.38(G) and (H) do not expressly state that a part-petition containing an unauthorized deletion is invalid.”)
28. Respondent Secretary ordered the boards to complete this review and recertify their results by January 29, 2016, twenty-five days after the date of the

Directive and twenty-four days after the General Assembly began its 2016 legislative session.

### **Results from the “Re-Review”**

29. The vast majority of the boards of elections re-reviewed the petitions for the issues identified in Directive 2016-01 and did not invalidate entire part-petitions solely because they contained crossed out signatures.
30. Seven county boards of elections invalidated entire part-petitions because they contained stricken signatures. These counties were Adams County; Darke County; Hocking County Madison County; Miami County; Putnam County; and Union County.
31. Respondent Adams County Board of Elections invalidated seventeen (17) part-petitions signatures because they contained crossed out signatures. These invalidated part-petitions contained approximately 288 signatures that were otherwise valid, based on the Respondent Board’s review pursuant to Directive 2015-40.
32. Respondent Darke County Board of Elections invalidated three (3) part-petitions because they contained crossed out signatures. These invalidated part-petitions contained approximately fourteen (14) signatures that were otherwise valid, based on the Respondent Board’s review pursuant to Directive 2015-40.
33. Respondent Hocking County Board of Elections invalidated three (3) part-petitions because they contained crossed out signatures. These invalidated

part-petitions contained approximately twenty three (23) signatures that were otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.

34. Respondent Madison County Board of Elections invalidated nine (9) part-petitions because they contained crossed out signatures. These invalidated part-petitions contained approximately sixty eight (68) signatures that were otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.
35. Respondent Miami County Board of Elections invalidated approximately fifty-nine (59) part-petitions because they contained crossed out signatures. These invalidated part-petitions contained approximately 631 signatures that were otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.
36. Respondent Putnam County Board of Elections invalidated two (2) part-petitions because they contained crossed out signatures. These invalidated part-petitions contained approximately eighteen (18) signatures that were otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.
37. Respondent Union County Board of Elections invalidated three (3) part-petitions because the part-petitions contained crossed out signatures. These invalidated part-petitions contained approximately 56 signatures that were

otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.

38. Respondent Sandusky County Board of Elections invalidated six (6) part-petitions purportedly because the part-petitions contained circulator statements that overreported the number of signatures appearing thereon; however, these six part-petitions did not overreport the number of signatures. These invalidated part-petitions contained approximately twenty nine (29) signatures that were otherwise valid, based on the Respondent Board's review pursuant to Directive 2015-40.
39. Respondent Delaware County Board of Elections tied 2-2 on whether or not to certify as valid the part-petitions that contained crossed out signatures. Respondent Delaware County Board of Elections submitted their tie vote to Respondent Secretary, pursuant to Ohio Rev. Code § 3501.11(X), but Respondent Secretary has never issued a decision on the Board's tie vote. As a result, Respondent Delaware County Board of Elections never submitted its certification form for the "re-review," and Respondent Secretary certified that there were zero valid signatures from Delaware County, despite that Respondent Delaware County Board of Elections had certified 85 valid part-petitions containing 324 valid signatures, pursuant to Directive 2015-40.
40. On August 15, 2016, the Court held in *Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, per curiam, that crossed out signatures are not a basis for invalidating whole part-petitions. *Id*

at ¶ 16 (“The evidence therefore shows that signature deletions occurred that were not authorized by R.C. 3501.38(G) and (H). But [Relator] is mistaken in its belief that the remedy for such a violation is to invalidate the entire part-petition”.) Indeed, the Court suggested that the “logical remedy” for crossed out signatures “would be to count the crossed-out signature (assuming it is otherwise valid)”. *Id.* at ¶ 18.

### **Post Re-Review**

41. As of the January 29, 2016 deadline set by Directive 2016-01, the boards of elections had certified a total of 117,038 valid signatures, more than 25,000 signatures above the 3% threshold, and 47 counties had met the 1.5% threshold.
42. On Friday, January 29, 2016, counsel for Petitioners submitted a request to Respondent Secretary’s office to certify and transmit the measure to the Ohio General Assembly based on the re-certifications by the boards. Respondent Secretary rejected this request.
43. On February 4, 2016, Respondent Secretary finally certified that the petition contained sufficient valid signatures and he transmitted the Proposed Law to the General Assembly, but only after sua sponte invalidating an additional 1,370 part-petitions containing 20,102 valid signatures from Cuyahoga County.
44. In his letter transmitting the Proposed Law to the General Assembly, Respondent Secretary explained that he invalidated the 20,102 valid

signatures from Cuyahoga County based on testimony from Pam Lauter, head of Ohio Petitioning Partners, LLC, one of the petition circulation companies that circulated the Petition, who testified before the Cuyahoga County Board of Elections that her company crossed out signatures that they determined were invalid. Respondent Secretary subsequently, and for the first time, explicitly took the position that if someone other than a circulator, signer or signer's attorney in fact crosses out a signature, then the entire part-petition is invalid. Pursuant to his newly-announced position, Respondent Secretary invalidated every part-petition circulated in Cuyahoga County by Ohio Petitioning Partners, LLC, and DRW Campaigns, LLC, who Ms. Lauter had been assisting. *See Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377, per curiam, ¶ 29 ("at the conclusion of the review, Husted appears to have changed his position. He took the extraordinary step, based on Lauter's testimony about 'purging the deck,' of unilaterally invalidating every part-petition circulated in Cuyahoga County by DRW Campaigns, LLC, and Ohio Petitioning Partners, LLC. And he explained his decision by using the legal reasoning urged by [the Petition's opponents].") (emphasis added).

45. Respondent Secretary had no legal authority to invalidate the part-petitions certified to him by the Cuyahoga County Board of Elections. Further, there is no basis in Ohio law for invalidating entire part-petitions because they contained signature that had been struck out by someone not referenced in



Ohio Rev. Code § 3501.38(G) and (H). *See, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377.

46. Additionally, Respondent Secretary has never decided the tie vote that was presented to him by the Delaware County Board of Elections as he is required to do by Ohio Rev. Code § 3501.11(X).
47. Respondent Secretary's inaction on this tie vote has left the Delaware County Board of Elections unable to re-certify the number of valid signatures collected in Delaware County.
48. Respondent Delaware County Board of Elections certified 324 valid signatures pursuant to Directive 2015-40. In the certification included in his transmittal letter, Respondent Secretary certified zero (0) valid signatures from Delaware County. In the absence of breaking the tie vote, Respondent Secretary is required to accept the original number of valid signatures certified by Respondent Delaware County Board of Elections.

#### **The General Assembly's Failure to Pass the Proposed Law**

49. Respondent Secretary transmitted the Proposed Law to the General Assembly on February 4, 2016. The General Assembly then had four months, i.e. until June 4, 2016, to consider the Proposed Law. The General Assembly took no action on the Proposed Law during the four month period.

### Circulation of the Supplementary Petition

50. On June 5, 2016, after the General Assembly failed to pass the Proposed Law, the Petitioners' 90-day supplementary petition period began. Petitioners have nearly completed the circulation and have until September 2, 2016 to submit their supplementary petition in order to place the Proposed Law before the voters on the 2017 general election ballot.

### Litigation

51. On February 29, 2016, PhRMA, joined by other special interest groups, filed a legal challenge to the sufficiency of the Petition, pursuant to Article II, Section 1g of the Ohio Constitution. PhRMA alleged, *inter alia*, that all part-petitions containing crossed out signatures were invalid under Ohio law. *See, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377.
52. In response to the filing of PhRMA's petition challenge, the Petitioners filed a mandamus action with the Court on March 25, 2016, to, *inter alia*, recover the part-petitions that the Secretary of State and county boards had unlawfully invalidated because they contained crossed out signatures. *See, State ex rel. Tracy L. Jones, et al. v. Jon Husted, et al.*, Case No. 2016-455. Given the same underlying factual background and the overlapping legal claims between Petitioners' mandamus action and PhRMA's petition challenge—as well as the fact that the outcome of the two cases would both affect the sufficiency of the Petition—Petitioners filed a Motion to Consolidate the mandamus action with

PhRMA's petition challenge. Respondent Secretary opposed the Motion to Consolidate, and the Court denied it as moot when, on June 15, 2016—two months before the Court's August 15 decision in the petition challenge filed by PhRMA—the Court dismissed Petitioners' mandamus action, without prejudice, "as premature."

53. The Court issued its decision in the petition challenge filed by PhRMA on August 15, 2016. *See, Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377. The Court sustained PhRMA's challenge in part, and denied it others, including denying PhRMA's claim that all part-petitions containing crossed out signatures were invalid under Ohio law. *Id.* at ¶¶ 11-32. Based on deficiencies unrelated to crossed out signatures, the Court invalidated 10,303 additional signatures, reducing the Petition's total number of valid signatures to 86,633, i.e., 5,044 signatures below the required threshold of 91,677 valid signatures. *Id.* at ¶ 46.
54. In its decision in *Ohioans for Drug Price Relief Act*, the Court explained that Respondent Secretary's reason for unilaterally invalidating the 20,102 signatures from Cuyahoga County, i.e., that signatures had been crossed out by unauthorized persons, was unlawful. *Id.* at ¶ 11-32. The Court first rejected the argument that R.C. 3501.38(G) and (H) require entire part-petitions to be invalidated if they contain signatures struck out by someone other than a circulator, signer, or signer's attorney in fact. *See, id.* at ¶ 20 ("Invalidating the entire part-petition because of an unauthorized deletion would serve no public

interest and would turn the implicit protection afforded by R.C. 3501.38 (G) and (H) on its head. For this reason, we also reject [*OMA Relators*'] claim that the part-petitions should be invalidated under R.C. 3501.39(A)(3) on the ground that they violate the requirements of R.C. Chapter 3501.”)

55. The Court in *Ohioans for Drug Price Relief Act* also rejected the argument that the crossed out signatures violated R.C. 3519.06. *Id.* at ¶ 25 (“But [*OMA Relators*'] statutory construction would create redundancies and contradictions in the Revised Code. If R.C. 3519.06(A) means that a part-petition is invalid if *any portion* of the petition is improperly filled out, then R.C. 3519.06(E), making a petition invalid if it contains two signatures from the same person, is redundant. And if R.C. 3519.06(C) imposes a blanket prohibition on alterations to the signature pages, then it conflicts with R.C. 3501.38(G) and (H), discussed above, which expressly authorizes alterations to the signature pages.”) (emphasis original).
56. The Court in *Ohioans for Drug Price Relief Act* further explained that although it must generally defer to the secretary of state’s reasonable interpretation of an election statute, Respondent Secretary had “vacillated on his interpretation” of R.C. 3501.38(G) and (H). *Id.* at ¶ 26. The Court noted that in Directive 2016-01, Respondent Secretary “did not instruct the boards to disqualify petitions containing unauthorized deletions,” and that he “gave no clear guidance on that point.” *Id.* at ¶ 28. But, the Court noted, at the end of the re-review, Respondent Secretary had “changed his position,” and “took the

extraordinary step” of sua sponte invalidating 20,102 valid signatures from Cuyahoga County due to part-petitions containing crossed out signatures. *Id.* at ¶ 29. The Court also noted that Respondent Secretary subsequently adopted the Petition’s opponents’ arguments regarding R.C. 3501.38(G) and (H) and R.C. 3519.06 in his memo contra to the Petitioners’ Motion for Judgment on the Pleadings. The Court concluded that, “[g]iven this history, we hold that the secretary of state has not announced a definitive statutory interpretation that warrants our deference.” *Id.*

57. Despite the Court’s conclusion that Respondent Secretary unlawfully invalidated 20,102 signatures from Cuyahoga County, the Court did not in that action restore these signatures to the certification of the Petition.
58. Restoring the Cuyahoga County signatures that were unlawfully invalidated by Respondent Secretary on the basis of signatures being struck out would add 20,102 valid signatures.
59. Restoring the signatures that were unlawfully invalidated by the Boards of Elections that rejected part-petitions on the basis of signatures being struck would add approximately 1,098 valid signatures.
60. Restoring the signatures that were unlawfully invalidated by the Sandusky County Board of Elections would add 29 valid signatures.
61. Restoring the valid signatures originally certified by the Delaware County Board of Elections as valid would further increase the number of valid signatures by 324.

62. Restoring such signatures would result in 108,186 total valid signatures, well above the minimum 91,677 required. It also would more than eliminate the deficiency of 5,044 announced in the Court's decision in *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, Slip Opinion No. 2016-Ohio-5377 and further make moot the portion of the Court's order that "[i]f the secretary 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.

### **CLAIMS FOR RELIEF**

#### **Issuance of a Writ of Mandamus Directing Respondent Secretary to Comply with His Obligation to Certify the 20,102 Signatures that were Verified and Certified By the Cuyahoga County Boards of Elections and Invalidated by Respondent Secretary in His February 4, 2016 Certification.**

63. Each and every allegation contained above is incorporated as if fully rewritten herein.
64. Respondent Secretary has a clear legal duty to include in his certification, the 20,102 signatures that were verified and certified by the Cuyahoga County Board of Elections pursuant to Directive 2016-01 and invalidated by Respondent Secretary in his February 4, 2016 certification.
65. Relators have a clear legal right to have Respondent Secretary include in his certification the 20,102 valid signatures that were verified and certified by the Cuyahoga County Board of Elections pursuant to Directive 2016-01 and invalidated by Respondent Secretary in his February 4, 2016 certification.

66. Respondent Secretary has abused his discretion and/or clearly disregarded applicable legal provisions in not including in his certification the 20,102 valid signatures that were verified and certified by the Cuyahoga County Board of Elections pursuant to Directive 2016-01 and invalidated by Respondent Secretary in his February 4, 2016 certification.

67. Relators lack an adequate remedy in the ordinary course of law.

**Issuance of a Writ of Mandamus Directing Respondent Secretary to Comply with His Obligation to Certify the 324 Valid Signatures Previously Verified and Certified by the Delaware County Board of Elections**

68. Each and every allegation contained above is incorporated as if fully rewritten herein.

69. Respondent Secretary has a clear legal duty to decide the tie vote submitted by the Delaware County Board of Elections in favor of not rejecting part-petitions for having struck out signatures and/or to incorporate in his certification, the total valid signatures originally certified by the Delaware County Board of Elections.

70. Respondent Delaware County Board of Elections has a clear legal duty to amend its report to Respondent Secretary to include as valid all valid signatures on such part-petitions and Respondent Secretary has a clear legal duty to include such signatures in his certification.

71. Relators have a clear legal right to have Respondent Secretary decide the tie vote submitted by the Delaware County Board of Elections in favor of not rejecting part-petitions for having struck out signatures and/or include in his

certification the total valid signatures originally certified or certified in an amended report by the Delaware County Board of Elections.

72. Relators have a clear legal right to have Respondent Delaware County Board of Elections amend its report to Respondent Secretary to include as valid all valid signatures on such part-petitions and to have Respondent Secretary include such signatures in his certification.
73. Respondent Secretary has abused his discretion and/or clearly disregarded applicable legal provisions in not deciding the tie vote submitted by the Delaware County Board of Elections and/or in not including in his certification the 324 signatures that were verified by the Delaware County Board of Elections pursuant to Directive 2015-40.
74. Respondent Delaware County Board of Elections abused its discretion and/or clearly disregarded applicable legal provisions in not reporting to Respondent Secretary all valid signatures on part-petitions of the Petition.
75. Relators lack an adequate remedy in the ordinary course of law.

**Issuance of a Writ of Mandamus Directing Respondent Secretary to Include in His Certification the Validated Signatures on the Part-Petitions That Were Improperly Invalidated Based on Struck Signatures**

76. Each and every allegation contained above is incorporated as if fully rewritten herein.
77. Respondent Secretary has a clear legal duty to include in his certification the validated signatures improperly rejected by the Adams County, Darke County,



Hocking County, Madison County, Miami County, Putnam County, and Union County Boards of Elections based on signatures being struck.

78. Respondents Adams County Board of Elections, Darke County Board of Elections, Hocking County Board of Elections, Madison County Board of Elections, Miami County Board of Elections, Putnam County Board of Elections, and Union County Board of Elections have a clear legal duty to amend their reports to Respondent Secretary to include as valid all valid signatures on such part-petitions and Respondent Secretary has a clear legal duty to include all such valid signatures in his certification.
79. Relators have a clear legal right to have Respondent Secretary include in his certification the validated signatures improperly rejected by these Boards based on signatures being struck.
80. Relators have a clear legal right to have Respondents Adams County Board of Elections, Darke County Board of Elections, Hocking County Board of Elections, Madison County Board of Elections, Miami County Board of Elections, Putnam County Board of Elections, and Union County Board of Elections amend their reports to Respondent Secretary to include as valid all valid signatures on such part-petitions, and to have Respondent Secretary include those signatures in his certification.
81. Respondent Secretary abused his discretion and/or clearly disregarded applicable legal provisions in not including in his certification validated signatures on the part-petitions containing the struck out signatures.

82. Respondents Adams County Board of Elections, Darke County Board of Elections, Hocking County Board of Elections, Madison County Board of Elections, Miami County Board of Elections, Putnam County Board of Elections, and Union County Board of Elections abused their discretion and/or clearly disregarded applicable legal provisions in not including as valid all valid signatures on part-petitions of the Petition in their reports to Respondent Secretary.

83. Relators lack an adequate remedy in the ordinary course of law.

**Issuance of a Writ of Mandamus Directing Respondent Secretary to Include in His Certification the Validated Signatures on the Part-Petitions That Were Improperly Invalidated By the Sandusky County Board of Elections**

84. Each and every allegation contained above is incorporated as if fully rewritten herein.

85. Respondent Secretary has a clear legal duty to include in his certification the validated signatures improperly rejected by the Sandusky County Boards of Elections on the six rejected part-petitions.

86. Respondent Sandusky County Board of Elections has a clear legal duty to amend its report to Respondent Secretary to include as valid all valid signatures on the six rejected part-petitions.

87. Relators have a clear legal right to have Respondent Secretary include in his certification the validated signatures improperly rejected by the Sandusky County Board of Elections.

88. Relators have a clear legal right to have Respondent Sandusky County Board of Elections amend its report to Respondent Secretary to include as valid all valid signatures on the six improperly rejected part-petitions of the Petition.
89. Respondent Secretary abused his discretion and/or clearly disregarded applicable legal provisions in not including in his certification validated signatures improperly rejected by the Sandusky County Board of Elections.
90. Respondent Sandusky County Board of Elections abused its discretion and/or clearly disregard applicable legal provisions in not including as valid all valid signatures on the six part-petitions of the Petition that were improperly rejected in its report to Respondent Secretary.
91. Relators lack an adequate remedy in the ordinary course of law.

#### **Prayer for Relief**

WHEREFORE, Relators respectfully pray the Court to grant the following relief:

- A. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondent Secretary (1) to certify as valid the 1,370 part-petitions, containing 20,102 valid signatures, that had been certified by the Cuyahoga County Board of Elections, or alternatively issue an Order, Judgment and/or Writ of Mandamus certifying the validity of the 1,370 part-petitions, containing 20,102 valid signatures, that had been certified by the Cuyahoga County Board of Elections; (2) to break the Delaware County Board of Elections' tie vote in favor of counting the part-petitions, to order the Delaware County Board of Elections to submit a report to him of the total valid signatures, and to include in his certification the number of valid signatures contained on the Delaware County Board's report, or alternatively issue an Order, Judgment and/or Writ of Mandamus certifying the validity of the 85 part-petitions, containing 324 valid signatures, that had been certified by the Delaware County Board of Elections; (3) to order the Adams County, Darke County, Hocking County, Madison County, Miami County, Putnam County, and Union County Boards of Elections to amend and resubmit their reports to include as valid the part-petitions that were wrongfully invalidated by these Boards, and to include in his certification the number of valid signatures contained on these Boards' amended reports, or alternatively issue an

Order, Judgment and/or Writ of Mandamus certifying the validity of the approximately 96 part-petitions that contain 1,098 valid signatures and were wrongfully invalidated by these Boards of Elections; and (4) to order the Sandusky County Board of Elections to amend and resubmit their report to include as valid the part-petitions that were wrongfully invalidated, and to include in his certification the number of valid signatures contained on the Sandusky County Board's amended report, or alternatively issue an Order, Judgment and/or Writ of Mandamus certifying the validity of the 6 part-petitions that contain 29 valid signatures and were wrongfully invalidated by the Sandusky County Boards of Elections;

- B. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondents Adams County Board of Elections, Darke County Board of Elections, Hocking County Board of Elections, Madison County Board of Elections, Miami County Board of Elections, Putnam County Board of Elections, and Union County Board of Elections to amend their certification reports to Respondent Secretary to include as valid all valid signatures on the part-petitions that were improperly invalidated due to strike-throughs;
- C. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondents Delaware County Board of Elections to issue a report to Respondent Secretary that includes as valid all valid signatures on the part-petitions with strike-throughs;
- D. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondent Sandusky County Board of Elections to amend its report to Respondent Secretary to include as valid all signatures on the part-petitions that were improperly invalidated;
- E. Grant a Peremptory Writ of Mandamus ordering the relief set forth above after the filing of Respondents' Answers to the Complaint;
- F. Assess the costs of this action against Respondents;
- G. Award Relators their attorneys' fees and expenses; and
- H. Award such other relief as may be appropriate.

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via e-mail communication and to the following on this the 22nd day of August, 2016:

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