

IN THE SUPREME COURT OF OHIO

FIRSTENERGY SOLUTIONS CORP., et al., :
:
: **Relators,** : **Case No. 2019-1220**
:
: **v.** : **Original Action for Petition Challenge**
: **Under Art. II, Section 1g of**
OHIOANS AGAINST CORPORATE : **Ohio Constitution and for**
BAILOUTS, et al., : **Writ of Mandamus**
:
Respondents. :

MEMORANDUM IN OPPOSITION TO RELATORS' MOTION FOR
EXPEDITED CASE SCHEDULE

Respectfully submitted,

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Memorandum in Opposition to Relators' Motion For Expedited Case Schedule

This is not an Expedited Election case under the Ohio Supreme Court Rules of Practice and this Court should reject the Relators' attempt to treat it as such. Under S.Ct.Prac.R. 12.08 “[b]ecause of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case, *if the action is filed within ninety days prior the election[]*” the case is placed on an expedited schedule. This is not one of those cases for at least two reasons.

First, as the *Petition* makes clear, the Relators are trying to prevent the circulation of petitions in support of a House Bill 6 (“H.B. 6”) referendum. *Petition*, ¶ 11. But the referendum can only reach the ballot if the Petitioners obtain sufficient signatures to get it there, which they have not yet done. *Id.*, ¶ 35. Simply put, a referendum on H.B. 6 is not yet on the ballot, and there is no pending election at which the issue will put before voters.

Second, even if Petitioners had received sufficient signatures for a H.B. 6 referendum, it will not appear on the ballot until November 3, 2020. *Id.*, Ex. C. This action was not filed within ninety days of pending election in which the referendum *might* appear such that there is “a necessity [for] a prompt disposition.” And, contrary to Relator’s assertion, treating it as an expedited election matter pursuant to S.Ct.Prac.R. 12.08 *will* prejudice Respondent Ohio Secretary of State LaRose, as that Rule forecloses Secretary LaRose’s ability to file a motion to dismiss or for judgment on the pleadings. S.Ct.Prac.R. 12.08(A)(3) (“Motions to dismiss and for judgment on the pleadings *shall not be filed* in expedited election cases.” (emphasis added)).

The constitutional right to referendum set forth in Ohio Constitution, Article II, Section 1(C) “is of paramount importance.” *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 18, citing, *State ex rel. Ohio Gen. Assembly v. Brunner*,

115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232, ¶ 3. There is no basis to litigate a case that implicates such a significant constitutionally guaranteed right on an expedited basis where, as here, the election at which the referendum might appear on the ballot is still over a year away. Respondent LaRose respectfully requests that Relators' motion to treat this as an expedited election case be denied and that this case be litigated in accordance with the S.Ct.Prac.R. 12.04.

Respectfully submitted,

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/s/ Bridget C. Coontz

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the court's electronic filing system and a copy is being served via email on this 6th day of September, 2019, upon each of the following:

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