

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

NO. 20-3526

CHAD THOMPSON; WILLIAM T. SCHMITT; DON KEENEY

Plaintiffs - Appellees

v.

**RICHARD MICHAEL DEWINE, in his capacity as the Governor of Ohio;
AMY ACTON, in her official capacity as Director of Ohio Department of
Health; FRANK LAROSE, in his official capacity as Ohio Secretary of State**

Defendants - Appellants

**OHIOANS FOR SECURE AND FAIR ELECTIONS; DARLENE L.
ENGLISH; LAURA A. GOLD; ISABEL C. ROBERTSON; EBONY
SPEAKES-HALL; PAUL MOKE; ANDRE WASHINGTON; SCOTT A.
CAMPBELL; SUSAN ZEIGLER; HASAN KWAME JEFFRIES; OHIOANS
FOR RAISING THE WAGE; ANTHONY CALDWELL; JAMES E. HAYES;
DAVID G. LATANICK; PIERRETTE M. TALLEY**

Proposed Intervenors - Appellees

**OHIOANS FOR RAISING THE WAGE APPELLEES'
RESPONSE IN OPPOSITION TO MOTION FOR STAY**

INTRODUCTION

Appellees Ohioans for Raising the Wage, Anthony Caldwell, James Hayes, David Latanick, and Pierrette Talley (collectively, “OFRW Appellees”) hereby oppose the Defendants-Appellants’ (hereinafter, the “State”) Combined Emergency Motion for an Administrative Stay and Stay Pending Appeal (Corrected), Doc. # 8 (hereinafter, the “Motion”).

In asking for a stay of the District Court’s order pending appeal, the State seeks to run out the clock on the Plaintiffs’ ability to circulate their initiative petitions in time to submit their proposal to the voters at the November 3, 2020 general election. Indeed, the State has nothing to gain from this Court staying the District Court’s order pending appeal, but Plaintiffs have everything to lose. This is because since mid-March 2020, when the COVID-19 pandemic shut down Ohio, Plaintiffs have been unable to comply with the State’s ballot access requirements for initiative petitions. And every day that passes without a mechanism for them to safely collect signatures for their initiatives is another day they are harmed. The State knows this, and now seeks to stay the District Court’s order pending their meritless appeal. But because the State has failed to demonstrate any of the factors needed for a stay, this Court should deny their Motion.

ARGUMENT

In deciding whether to grant a stay of a preliminary injunction, this Court

considers four factors: (1) whether the movant has shown a strong likelihood of success on the merits of the appeal; (2) whether the movant will suffer irreparable harm absent a stay; (3) the prospect of that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *See DV Diamond Club of Flint, LLC v. United States SBA*, Case No. 20-1437, 2020 U.S. App. LEXIS 15822, *5 (6th Cir. May 15, 2020) (citation omitted) These factors “are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Id.* As the moving party, the State has the burden of showing it is entitled to a stay. *Id.* The State failed to meet this burden.

I. The State’s Motion Fails to Comply with the Federal Rules of Appellate Procedure.

As an initial matter, the State’s Motion should be denied because the State failed to comply with the mandatory Federal Rule of Appellate Procedure requiring a party moving for a stay to include parts of the record necessary to decide the motion. Specifically, the State failed to attach the Plaintiffs-Appellees’ declarations that had been presented to the District Court and upon which the District Court made its factual conclusions that were vital to its decision. The Federal Rules of Appellate Procedure provide that a motion for stay of a District Court’s order pending appeal must include “originals or copies of affidavits or other sworn statements supporting facts subject to dispute” and “relevant parts of the record.” FRAP 8(a)(2)(B)(ii)-(iii). Additionally, this Court’s rule for emergency motions, which the State has captioned

their motion as, provides that such motions must have attached “any other parts of the record necessary to decide the motion.” 6 Cir. R. 27(c)(2). The State failed to comply with these important rules.

In support of their motions for preliminary injunctions, OFRW Appellees submitted declarations from two individuals, Chris Gallaway and Gavin Devore Leonard, supporting the facts subject to the dispute; copies of these declarations are attached to this Response. These statements established virtually all the facts subject to the dispute: their extensive efforts to circulate their petitions prior to the COVID-19 pandemic hitting Ohio; the preclusive effect of the COVID-19 pandemic and the State’s response to it on their efforts to circulate their petitions; and the irreparable harm they will face absent injunctive relief. Importantly, these facts went unrebutted by the State, and the District Court subsequently relied heavily upon them in making its decision to grant injunctive relief.

By failing to include these sworn statements with their Motion, the State asks this Court to find that the District Court’s key factual findings were clearly erroneous without providing the Court with the records that the District Court relied upon. In other words, the State asks this Court to not bother verifying any of the State’s characterizations of the record before the District Court.

II. The State will not prevail on the merits of their appeal.

The State’s Motion should be denied because the State failed to show a strong

likelihood of success on the merits of their appeal. This factor requires the Court to “decide whether Defendants are ‘likely to be able to show that the district court abused its discretion in granting the preliminary injunction.’” *Graveline v. Johnson*, 747 Fed. Appx. 408, 412 (6th Cir. 2018) (quoting *U.S. Student Ass’n Found. v. Land*, 547 F.3d 373, 380 (6th Cir. 2008)). The abuse-of-discretion standard is “highly deferential” to the District Court’s decision. *See id.* This means that the District Court’s decision will be “disturbed only if the district court relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard.” *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 888 (6th Cir. 2000). Here, the State cannot demonstrate that the District Court abused its discretion in issuing the preliminary injunction.

A. The District Court appropriately applied *Anderson-Burdick*.

The State cannot show that the District Court erred in applying the *Anderson-Burdick* framework, which applies strict scrutiny to a State’s law that severely burdens ballot access and intermediate scrutiny to a law that imposes lesser burdens. *See Esshaki v. Whitmer*, Case No. 20-1336, 2020 U.S. App. LEXIS 14376, *3 (6th Cir. May 5, 2020) (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992)). As the State’s own Motion concedes, it is well-settled in this Court that the *Anderson-Burdick* framework applies to ballot access laws. *See* State’s Motion, Doc. # 8, PageID # 14; *see also Schmitt v. LaRose*, 933 F.3d 628

(6th Cir. 2019), *reh'g en banc denied* (6th Cir. Sept. 4, 2019), *cert. pending*, No. 19-974 (filed Feb. 3, 2020) (applying *Anderson-Burdick*); *Committee to Impose Term Limits v. Ohio Ballot Board*, 885 F.3d 443 (6th Cir. 2018) (same). Indeed, this Court reaffirmed that *Anderson-Burdick* is the appropriate framework only two weeks prior to the District Court's decision. *Esshaki*, 2020 U.S. App. LEXIS 14376, at *3 ("In deciding this claim, the district court properly applied the *Anderson-Burdick* test"). The State, therefore, cannot demonstrate that the District Court abused its discretion in following this Court's binding precedent and applying *Anderson-Burdick*.

B. The District Court correctly determined that Plaintiffs' First Amendment rights are severely burdened.

The State cannot demonstrate that the District Court abused its discretion in finding that Plaintiffs' constitutional rights are severely burdened by the combination of the State's strict enforcement of its ballot access provisions, the COVID-19 pandemic, and the State's response to pandemic.

Under *Anderson-Burdick*, the "first, most critical step is to consider the severity of the restriction." *Schmitt*, 933 F.3d at 639. The "hallmark of a severe burden is exclusion or virtual exclusion from the ballot." *Id* quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016). Laws imposing "severe burdens on plaintiffs' rights" are subject to strict scrutiny, but "lesser burdens . . . trigger less exacting review, and a State's important regulatory interests will usually

be enough to justify reasonable, nondiscriminatory restrictions.” *Id* (quoting). Regulations that “fall in the middle ‘warrant a flexible analysis that weighs the state’s interests and chosen means of pursuing them against the burden of the restriction.’” *Id* (quoting *Grimes*, 835 F.3d at 574).

1. Plaintiffs’ First Amendment rights are at stake.

The State asks this Court to ignore its own precedent that initiative petitions implicate the First Amendment. It is correct that the First Amendment does not provide a right to place initiatives or referendum on the ballot. However, this Court has long held that “a state that adopts an initiative procedure violates the federal Constitution if it unduly restricts the First Amendment rights of its citizens who support the initiative.” *Taxpayers United*, 994 F.2d 291, 295 (6th Cir. 1993) (citing *Meyer v. Grant*, 486 U.S. 414 (1988)). Accordingly, the District Court correctly followed this Court’s precedent in explaining that “although the Constitution does not require a state to create an initiative procedure, if it creates such a procedure, the state cannot place restrictions on its use that violate the federal Constitution.” Opinion and Order, *Thompson v. DeWine*, Case No. 2:20-cv-2129, Doc. #44, PageID # 650 (S.D. Ohio May 19, 2020) (quoting *Taxpayers United*, 994 F.2d at 295).

For more than 100 years, Ohio has had a process for petitioners proposing a constitutional amendment to seek ballot access at any general election by filing a qualifying a petition with the Secretary of State by the 125th day before the election.

Thus, having created this right, the State cannot place restrictions on it that unduly burden petitioners' First Amendment rights.

Still, the State suggests that Plaintiffs have not been harmed because they can simply wait for another election to submit their proposal. *See* Motion, Doc. # 8, PageID #17. But the same is also true of candidates. There is no federal constitutional right to run for office at a particular election. *See Esshaki v. Whitmer*, Case No. 2:20-cv-10831 (E.D. Mich. Apr. 20, 2020) (“there is no fundamental right to run for elective office”). Here, the state has created rights for individuals proposing a constitutional amendment to seek ballot access at each general election and rights for candidates to seek ballot access each year that an office is up for election. Regardless of the year, the requirements for ballot access are subject to a First Amendment analysis, and the First Amendment protections do not get pushed to a later time in the future. This is why, despite the lack of a federal right to run for office at a particular election, courts, including this Court, have regularly intervened when states' ballot access requirements are unduly burdensome. The District Court correctly acknowledged this, and the State cannot demonstrate otherwise.

2. The District Court correctly focused on Ohio's enforcement of its ballot access requirements in the face of the COVID-19 pandemic.

The State seeks to paint Plaintiffs' challenges as contesting the State's Stay-at-Home Orders, but this mischaracterizes Plaintiffs' claims. The crux of the action is Ohio's strict enforcement of the ballot access provisions *in light of the COVID-19*

pandemic and the State's response to it. The District Court even directly acknowledged this in its Opinion. Opinion and Order, *Thompson v. DeWine*, Case No. 2:20-cv-2129, Doc. #44, PageID # 653 (S.D. Ohio May 19, 2020).

Moreover, it was appropriate for the District Court to consider the combination of the State's strict enforcement of the ballot access provisions in light of the COVID-19 pandemic in determining the burden on the Plaintiffs. This Court confirmed as much in *Esshaki v. Whitmer*, which was issued only two weeks before the District Court's decision. *Esshaki*, 2020 U.S. App. LEXIS 14376, at *3 ("The district court correctly determined that the combination of the State's strict enforcement of the ballot access provisions and the Stay-at-Home Orders imposed a severe burden on the plaintiffs' ballot access").

The State attempts to distinguish *Esshaki*, but it cannot. Much of the State's attempt to distinguish *Esshaki* rests upon the purported First Amendment exception in Ohio's stay-at-home orders. The State contends Ohio's stay-at-home orders except First Amendment activities, including initiative petition circulation, while Michigan's did not. But this assertion is factually wrong. The State of Michigan has repeatedly told citizens that First Amendment activities *are* excepted from its stay-at-home orders, explaining that "[p]ersons may engage in expressive activities protected by the First Amendment within the State of Michigan," and that such

persons “must adhere to social distancing measures . . . including remaining at least six feet from people outside the person’s household.”¹

Even if it was the case that Michigan’s stay-at-home order contained no exceptions for First Amendment activities, this would not change the fact that with or without a First Amendment exception in Ohio’s stay-at-home orders, petitioning activity simply cannot take place amidst the COVID-19 pandemic. Ohio’s orders still require persons engaging in First Amendment activities to adhere to the social distancing requirements, including maintaining six feet of distance from other persons while in public spaces.² OFRW Appellees provided un rebutted evidence that given the mechanics of petition circulation—a circulator must physically hand the

¹ State of Michigan, *Executive Order 2020-21 FAQs*, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-522631--,00.html; State of Michigan, *Executive Order 2020-42 FAQs*, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-525278--,00.html; State of Michigan, *Executive Order 2020-59 FAQs*, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-527027--,00.html; State of Michigan, *Executive Order 2020-70 FAQs*, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-528027--,00.html; State of Michigan, *Executive Order 2020-77 FAQs*, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-528528--,00.html.

² The March 22 Stay-at-Home Order includes “First amendment protected speech” in its definition of “Essential Businesses and Operations,” (Sec. 12g), but it also provides that all Essential Businesses and Operations (including First amendment protected speech activities) “shall” comply with the social distancing requirements defined in the order, including maintaining six-foot social distancing “at all times.” (Sec 2).

same petition document and a pen to dozens of people while also keeping a close enough distance to witness the signature—it is, as a practical matter, impossible to circulate a petition while adhering to the State’s mandatory social distancing requirements. *See* Gallaway Dec. ¶ 23 (“The social distancing recommendations additionally diminish petition circulator’s ability to interact with residents at their homes or in public places as most potential signers will be apprehensive to engage in close-proximity conversations and to handle items which the petition circulator has touched, including the petition itself”).

Further, the purported exceptions for First Amendment activities do not actually alleviate the burdens imposed by the State’s strict enforcement of the ballot access requirements in light of the ongoing pandemic. The reality is—and Plaintiffs un rebutted facts demonstrated—that the pandemic has foreclosed Plaintiffs ability to collect signatures. In addition to the fact that people have to get within six feet of each other to sign or circulate a petition, *supra*, the pandemic and the stay-at-home orders have resulted in the cancellation of virtually every community event in the state planned prior to the July 1 filing deadline. Petitioners rely upon venues that attract a large number of individuals in order to engage with a high volume of potential petition signers; these include sporting events, parades, fairs, festivals, concerts, libraries, busy government offices such as courthouses, crowded urban areas outside malls, restaurants, and bars, and other large social and recreational

functions.³ *See* Gallaway Dec. ¶ 7. The closure of all these venues “severely limit[s] any Ohio petitioners’ ability to collect the large volume of signatures needed to place an issue on the ballot for the 2020 General Election.” *Id.* at ¶ 21.

This is not mere speculation either. OFRW Appellees had a well-organized and well-funded campaign in place prior to the pandemic, and they observed first-hand the inability to collect signatures as the pandemic worsened and events were cancelled. Prior the pandemic, OFRW Appellees had printed 65,000 copies of the Petition, entered into a contract with FieldWorks, LLC, a nationally recognized petition circulation firm that has significant experience with statewide petitions in Ohio, to hire circulators to collect the signatures, and established quality control processes and a volunteer collection effort to supplement the paid circulator program. *See* Devore Leonard Dec. ¶ 5. In total, and to date, OFRW has raised and spent over \$1.5 million for expenses related to placing the proposal on the ballot, and another \$150,000 has been spent by other organizations supporting the effort. *Id.* at ¶ 3.

For their part, FieldWorks hit the ground running. Pursuant to their contract, and prior to suspending operations due to the COVID-19 pandemic, FieldWorks recruited, vetted, hired, and trained 1,087 professional petition circulators, and

³ Going door-to-door to collect signatures is insufficient to collect the large number of signatures needed for a statewide petition. *See* Gallaway Dec. ¶ 8.

employed 3 quality control managers, 35 quality control office staff, and 15 field office directors and deputy directors at six regional field offices throughout Ohio. Gallaway Dec. ¶ 28-29. They began circulating the petition on February 28, 2020, and in the approximately two weeks they circulated before having to shut down operations, they had collected approximately 73,968 signatures on the petition, which is an average of about 5,689 signatures per day. *Id* at ¶ 30.

Prior to suspending operations due to the pandemic and the State's orders, FieldWorks had additional plans in place to expand their daily collection efforts. For instance, FieldWorks had planned to hire approximately 3,000 more circulators. *Id* at ¶ 28. They had also planned to make a big push outside polling locations on the day of the March 17, 2020 presidential primary election; FieldWorks planned to have 788 shifts of petition circulators collecting signatures on this day, and they estimated that they would have been able to collect approximately 47,280 signatures on this day alone. *Id* at ¶ 26. But on March 16, the State closed all the polling locations, thereby cancelling FieldWorks' plans. *Id* at ¶ 25.

Based on FieldWorks' experience qualifying initiatives around the country and especially in Ohio, OFRW Appellees were, prior to the pandemic, on track to collect a sufficient number of signatures to submit their proposal to the Secretary of State by the July 1 filing deadline to qualify for the November 3, 2020 general election ballot. *Id.* at ¶ 36; *see also* Devore Leonard Dec. ¶ 4. ("OFRW also obtained

funds and commitments for funds to be able to complete the task before the July 1, 2020 filing deadline”). And although OFRW Appellees still attempted to circulate their petition during the first few days after the initial orders limiting large gatherings, they experienced inability to collect sufficient signature due to the pandemic and the State’s orders. *Id.* at ¶ 21, 34-35. Based on this evidence, the District Court correctly determined that, with or without the State’s limited and ambiguous First Amendment exception, the circulation of a petition is still foreclosed by the COVID-19 pandemic.

3. The District Court’s findings are well-supported by the Plaintiffs’ un rebutted facts.

The State also cannot show that the District Court’s findings were clearly erroneous. Plaintiffs provided the District Court with extensive evidence demonstrating that the combination of the State’s strict enforcement of its ballot access provisions, the COVID-19 pandemic, and the State’s response to the COVID-19 pandemic operate to “exclude or virtually exclude” Plaintiffs from the November 3, 2020 general election ballot (*supra*), which is the “hallmark” of a severe burden. *Schmitt*, 933 F.3d at 639 (quoting *Grimes*, 835.3d at 574).

Of critical importance for purposes of the instant motion, the State utterly failed to rebut any of the Plaintiffs’ evidence before the District Court. Instead, the State submitted a single pro forma affidavit from the Secretary’s office; a copy of this affidavit is attached. This affidavit consists of mere restatements of Ohio’s laws

concerning initiative petitions and a short explanation of the Secretary's office's procedures for reviewing initiative petitions. It does not contain a single rebuttal to the Plaintiffs' claims, nor does it contain any factual claims that the State would suffer any harm whatsoever were the District Court to issue a preliminary injunction. Given the State's failure to rebut the Plaintiffs' evidence and their failure to support their own claims of harm from the injunctive relief, the State cannot now contend that the District Court's findings were clearly erroneous.

C. The District Court correctly applied strict scrutiny.

Given the overwhelming and unrebutted evidence demonstrating the burden imposed upon Plaintiffs, the State cannot demonstrate that the District Court abused its discretion in applying strict scrutiny. *See also Esshaki*, 2020 U.S. App. LEXIS 14376, at *3 (holding that the district court correctly applied strict scrutiny to Michigan's ballot access laws in light of the COVID-19 pandemic).

Under the strict scrutiny analysis, the State was required to show that its ballot access requirements are "narrowly drawn to advance a state interest of compelling importance." *See Burdick*, 504 U.S. at 434. But the State failed to even attempt an argue to the District Court that its ballot access requirements are narrowly drawn to the present circumstances, contending instead that such an analysis is unwarranted. *See Opinion and Order, Thompson*, Doc. # 44, PageID 664. For this reason, the

State's after-the-fact critiques of the District Court's strict scrutiny analysis in its Motion ring hollow.

D. The District Court's remedy is appropriate.

The State spends much of its Motion attacking the concept of electronic signatures, which the District Court ordered the State to accept from the Plaintiffs in the limited circumstances of the COVID-19 pandemic and the November 3, 2020 general election. However, the State's criticisms are riddled with exaggerations, scare tactics, and unsupported assertions.

First, the State asks how it is supposed to "create" a system for electronic signatures and questions what the costs of such a system would be. But, importantly, the District Court did not order the State to create a system. Instead, Plaintiffs have already developed a secure system that relies upon DocuSign—a well-established company that specializes in electronic document management—and they presented to this plan to the District Court. Briefly, the process would work by establishing a dedicated website for online signature collection. The landing page would ask for support to place the issue on the ballot and allow viewers to read the summary and full text of the amendment. To sign, it would require Ohio registered voters to enter the usual required information (name and address), as well as the last four digits of their social security number to provide an additional method to verify the identity of the voter. It will then allow a voter to affix a cursive-version of their signature onto

the petition. This would also maintain the “circulator” requirement by having the administrators of the website serve as the circulators, who, in turn would monitor for duplicate names and any suspicious activity. Paper copies of all this information can be printed and filed with the Secretary of State. The District Court ordered the State to accept this plan, and to confer with the Plaintiffs about any remaining concerns or technical issues the State has with the plan.

Next, the State contends, without evidence—and without having argued this to the District Court—that allowing Plaintiffs to collect online signatures, in these limited circumstances, will result in identity thieves tricking people into “handing over their social security numbers.” State’s Motion, Doc. # 8, PageID # 21. But this is just a scare tactic. The State made no effort whatsoever to explain how or support their assertion that the District Court’s limited relief will result in a proliferation of identity thieves posing as initiative petitioners.

The State also says, without evidence, that allowing electronic signatures would be “quite costly, quite difficult, and quite burdensome.” State’s Motion, Doc. # 8, PageID # 21. Under the current practice, boards of elections engage in a time-consuming and inexact process of having staff compare each signature on a petition to the copy of the voter’s signature on file with the boards of elections. This process is not set forth in the Ohio Constitution or Revised Code but exists only due to Secretary of State’s directives. And, for a variety of reasons, voters’ signatures on

petitions often do not correspond to the signature on file—people’s signatures vary from document to document, and signatures often change as people age. As a result, boards often reject good signatures and even accept bad signatures, which, in turn, undermines the right of initiative.

What is important to understand about this signature verification process is that its purpose is to establish the authenticity of the elector signing the petition, not the authenticity of the signature itself. *State ex rel. White v. Franklin Cty. Bd. of Elections*, 2020-Ohio-524, ¶ 11 quoting *Georgetown v. Brown Cty. Bd. of Elections*, 158 Ohio St.3d 4, ¶ 24, 2019-Ohio-2915 (“the duty of the boards of elections is to establish the authenticity of the *elector*, not the signature”) (emphasis sic). Comparing a signature as it appears on a petition with the signature of the purported person in the registration records is but one way of verifying the authenticity of the elector, but elections officials and courts have relied upon other verification methods, as well. *See, Georgetown*, ¶ 13, 30 (relying upon testimony and a letter signed by signers); *State ex rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St.3d 346, 2015-Ohio-4097, ¶ 11 (relying upon affidavits from signers to prove authenticity); *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, ¶ 18, 2014-Ohio-1685 (relying upon testimony from a signer to prove authenticity). Thus, the critical issue is whether the authenticity of the elector signing a petition can be established.

Electronic signatures, by requiring verification information that only signers would know, can more efficiently and more securely establish the authenticity of an elector signing a petition. The information provided by the elector, including the verification information can be quickly cross-checked by the Secretary and the boards of elections, all of whom have access to voters' last four digits of their social security number and their driver's license or state identification numbers. This would streamline this verification process while also doing as much, if not far more, than the current system to detect fraud. The District Court recognized this, and for this reason, the State cannot demonstrate that the District Court abused its discretion in ordering the State to accept the Plaintiffs' plan for electronic signatures.

III. The State Fails to Satisfy Any Other Stay Factors

The State contends that it and all Ohio citizens will be harmed by the District Court's injunction of the State's ballot access requirements. But the District Court did not hold that the signature requirements in Ohio's Constitution were facially invalid nor did it order permanent relief. Instead, the District Court found those requirements to be unconstitutional only as applied to the Plaintiffs in these extraordinary and unprecedented times, and temporarily enjoined enforcement of those ballot access provisions for the November 3, 2020 general election only.

The State also cannot demonstrate that it will be irreparably harmed absent a stay because it faces no immediate harm from the District Court's Order. Under the

Order, the State's only obligations in the near future are to confer with Plaintiffs about the Plaintiffs' plan to collect signatures electronically and to report back to the District Court by May 26. The District Court did not order the State to develop a plan from scratch within this timeframe.

In contrast, granting a stay would irreparably harm OFRW Appellees. If a stay is granted, OFRW Appellees will continue to be unable to circulate their petition due to the COVID-19 pandemic and the State's response to it—this is the very harm that served as the basis of the District Court's decision to issue a preliminary injunction. Moreover, OFRW Appellees are concerned that if a stay is granted and the State inevitably fails in their appeal, the State will then claim (again) that it does not have enough time to implement the District Court's remedy. Indeed, when viewed in this light, the State's Motion appears to be nothing but an attempt to run out the clock on Plaintiffs' ability to circulate initiative petitions for submission at the November 3, 2020 general election.⁴

For these same reasons, the public interest favors denying the requested stay. OFRW Appellees' constitutional rights would continue to be violated by granting the stay, and it "is always in the public interest to prevent the violation of a party's

⁴ Indeed, the State's arguments regarding harm to the plaintiffs and the public interest are circular in that they simply say that no one is harmed when the law is followed.

constitutional rights.” *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014).

CONCLUSION

For these reasons, as well as the reasons set forth in the District Court’s denial of the State’s motion to stay pending appeal (*see* Doc. # 20), the Court should deny the State’s Motion.

Respectfully submitted,

/s/ Donald J. McTigue

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this *Response* complies with the type-volume requirements and contains 4,687 words.

/s/ Donald J. McTigue
Donald J. McTigue

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, the foregoing was filed electronically through the Court's CM/ECF system, causing a copy of the same to be served by electronic mail upon all counsel of record.

/s/ Donald J. McTigue
Donald J. McTigue

DECLARATION
(Pursuant to 28 U.S.C. 1746)

I, Christopher Gallaway, hereby state under the penalty of perjury of the laws of the United States, that the following are true and correct:

1. I am over 18 years of age and have personal knowledge of the facts stated herein.
2. I am a Member of FieldWorks, LLC (FieldWorks), which assists clients with the management, operations, signature gathering, and qualification for ballot initiative campaigns.
3. I have fourteen years of experience as a professional petition circulation manager and consultant. This experience includes work on six statewide petitions in Ohio.
4. On February 17, 2020 FieldWorks was retained by Ohioans for Raising the Wage to assist with circulating the Raise the Wage Ohio amendment to the Ohio Constitution that would raise the State of Ohio's minimum wage.
5. Ohioans for Raising the Wage has made a significant financial commitment to FieldWorks, including significant payments for services which will be performed over the duration of the 2020 signature gathering process.
6. FieldWorks has recruited, vetted, and trained professional circulators to gather signatures on the Raise the Wage Ohio amendment, secured and organized regional field offices to gather signatures, and tracked data relating to the gathering of signatures.
7. FieldWorks and other petition circulation firms rely on venues which attract a large number of individuals in order to engage with a high volume of potential petition signers. These venues include sporting events, parades, fairs, festivals, concerts, libraries, busy government offices such as courthouses, crowded urban areas outside malls, restaurants, and bars where large number of individuals congregate, and other large social and recreational functions which attract large numbers of individuals.

8. In my experience, and based on the consensus of the professional petition circulation industry, petition circulation strategies which rely on door-to-door circulation or other methods which do not engage with concentrated gatherings of individuals are insufficient to collect large numbers of signatures on a petition.

9. Ohioans for Raising the Wage retained FieldWorks in order to collect enough signatures to place the Raise the Wage Ohio constitutional amendment on the November 3, 2020 general election ballot.

10. In order to qualify for the ballot, petitioners are required to file a petition with the Ohio Secretary of State 125 days before the General Election, which this year falls on July 1, 2020.

11. In order to qualify for the ballot, petitioners must file a petition containing valid signatures of Ohio electors equal to 10% of the number of votes for Governor during the previous General Election, and that number is currently 442,958 valid signatures.

12. Although 442,958 valid signatures are required, petition companies often have to obtain one and a half to two times that amount of signatures to account for signers who may not be qualified to sign the petition and additional deficiencies that are common with petition circulation.

13. In order to qualify for the ballot, petitioners must file a petition containing valid signatures of at least 5% of the electors on a least half of Ohio's 88 counties.

14. Petitioners proposing an amendment to the Ohio Constitution must submit to the Secretary of State an electronic copy of the entire petition (i.e. a scanned copy of every page of every part-petition). Petitioners must also submit a summary of the number of part-petitions submitted by copy and an electronic index of the electronic copy of the entire petition.

15. Proposed constitutional amendments must contain only the signatures of residents of a single county on each separate part-petition, and each part-petition must be labeled and numbered by county and submitted to the Secretary of State accordingly.

16. Based on my experience managing statewide petition campaigns in Ohio, the cumulative effect of the electronic copy and index submission requirement and the requirement to arrange and number each separate part-petition by county, is that petition circulation must end approximately 5-6 days before petitions are filed with the Secretary of State to allow sufficient time to fully comply with these requirements.

17. After a petition proposing a constitutional amendment is submitted to the Secretary of State the petition is sent to the boards of elections for each county whose residents' signatures are on the petition to verify the signatures. The boards of elections certify to the Secretary of State the number of valid signatures on the petition. After the number of valid signatures have been certified to the Secretary of State, and if the petition does not contain enough valid signatures to qualify for the ballot, the petitioners have an additional ten days to collect additional signatures to submit to the Secretary of State and "cure" the insufficiency. However, petitioners may not begin collecting any additional signatures until the Secretary of State has notified the petitioners of any such insufficiency.

18. I am familiar with the Orders issued by Ohio Governor Mike DeWine and Ohio Director of Health Amy Acton that have been issued since March 9, 2020 and have increasingly added restrictions on mass gatherings and other activities in the State of Ohio.

19. The Health Director's March 12, 2020 order limited "mass gatherings" to no more than 100 people in a single room or space. This was further restricted to no more than 50 people through a March 17, 2020 order, which was announced on March 16.

20. The Health Director's March 22, 2020 prohibited individuals from conducting non-essential activities outside of their homes and ordered the closure of non-essential businesses. This order prohibits gatherings of ten or more persons.

21. The "mass gathering" restrictions and limitations that have been put in place will severely limit any Ohio petitioners' ability to collect the large volume of signatures needed to place an issue on the ballot for the 2020 General Election, which is set to take place on November 3, 2020.

22. Additionally, on March 15, 2020, the Health Director imposed an order which recommended social distancing of six feet or more, which is consistent with what national health experts are recommending.

23. The social distancing recommendations additionally diminish petition circulator's ability to interact with residents at their homes or in public places as most potential petition signers will be apprehensive to engage in close-proximity conversations and to handle items which the petition circulator has touched, including the petition itself.

24. On March 16, 2020, the Health Director ordered that the polls be closed on the Primary Election Day scheduled for the following day.

25. The closure of the polls removed a significant opportunity to interact with civic-minded registered voters who are traditionally willing to interact with petition circulators about ballot proposals and to sign petitions. Additionally, individuals who appear to vote at their polling location on Election Day are registered to vote at higher proportions than members of the general public.

26. FieldWorks had planned to have 788 shifts of petition circulators collecting signatures at polling locations on March 17. I estimate that FieldWorks would have been able to collect approximately 47,280 signatures through circulating the Raise the Wage Ohio petition outside of polling locations on March 17, 2020.

27. Between February 17 and February 28, FieldWorks expended considerable time and money putting in place the mechanics to conduct a statewide circulation campaign.

28. All circulators supervised by FieldWorks are hired as W-2 employees and must pass background checks. Prior to suspending circulation, FieldWorks had hired and trained 1,087 circulators. FieldWorks expected to hire approximately 3,000 additional circulators before completing circulation. FieldWorks pays petition circulators \$16 per hour. Circulator team leaders, which constitute approximately 25% of field staff, are paid \$18 per hour.

29. FieldWorks employed 3 quality-control managers and 35 quality control office staff for the Raise the Wage Ohio petition drive and operated a quality control office located in Hilliard. FieldWorks also employed 15 field office directors and deputy directors at six field offices in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo.

30. FieldWorks began circulating the Ohio Raise the Wage petition on February 28, 2020. Between February 28 and March 12, when the first order restricting mass gatherings was issued, FieldWorks collected approximately 73,968 signatures on the petition, an average of over 5,689 signatures per day.

31. On average, trained circulators can collect 45-50 signatures per shift. This is based on 5.5 hours spent in the field per 7.5 hour shift.

32. On March 13 FieldWorks was able to collect 5,655 signatures. On March 14 FieldWorks was able to collect 3,971 signatures. On March 15 FieldWorks was able to collect 4,474 signatures.

33. Based on my experience as a petition circulation manager and consultant, petition circulators improve the number of signatures they are able to collect over time and therefore the

number of signatures that can be collected per day by the same number of circulators generally increases over time.

34. On March 15, due to the diminishing returns of signature collection, the announcement of the Health Director's order closing bars and restaurants, and for the protection of the public and FieldWorks employees, FieldWorks suspended circulation of the petition.

35. Based on feedback from petition circulators in the field and my personal experience as a petition circulator manager, FieldWorks' ability to obtain petition signatures for the Raise the Wage Ohio petition has been severely impacted by the COVID-19 public health crisis.

36. In my experience as a professional petition circulation manager and consultant, prior to March 12 and the subsequent orders from the Ohio Department of Health limiting mass gatherings and ordering Ohio residents to stay at home, Ohioans for Raising the Wage was on track to collect a sufficient number of signatures to submit the Raise the Wage Ohio petition to the Secretary of State on July 1, 2020 to qualify for the 2020 general election ballot.

37. In my opinion as a professional petition circulation manager and consultant, the proposed relief of allowing electronic signatures, reducing the signature requirement to 6% of the gubernatorial vote, removing the 44 county 5% signature requirement, and extending the filing deadline to August 21, 2020 would make it possible for Raise the Wage Ohio constitutional amendment to qualify to be placed on the 2020 General Election ballot.



Christopher Gallaway

4/30/2020

Executed on Date

DECLARATION
(Pursuant to 28 U.S.C. 1746)

I, Gavin DeVore Leonard, hereby state under the penalty of perjury of the laws of the United States, that the following are true and correct:

1. I am a founding board member of Plaintiff Ohioans for Raising the Wage (OFRW), the Ohio ballot issue committee that is responsible for and funding the initiative petition proposing the Raise the Wage Ohio constitutional amendment, which if adopted by the voters would raise the state's minimum wage to \$9.60 effective January 1, 2021 and thereafter in equal annual increments for 4 years until reaching \$13 per hour on January 1, 2025.

2. The other Plaintiffs, the committee members listed on the front of the petition pursuant to Ohio Revised Code 3519.02, are: Anthony A. Caldwell, Public Affairs Director for SEIU 1199; James E. Hayes, Deputy Director of Ohio Voice; Pierrette M. Taley, former Secretary-Treasurer of the Ohio AFL-CIO and currently Convenor of the Ohio Unity Coalition; and David G. Latanick, formerly outside general counsel to the Ohio Education and Ohio Nurses Associations.

3. To date, OFRW has raised and expended over \$1.5 million dollars for expenses related to seeking to place the Raise the Wage Ohio Amendment on the November 3, 2020 general election ballot. In addition, approximately \$150,000 has been expended by organizations supporting the effort.

4. Prior to having to discontinue the collection of in-person signature on the petition due to COVID 19, OFRW was well on its way to being able to collect more than a sufficient number of signatures to file the petition with the Ohio Secretary of State by July 1, 2020 and qualify for the 2020 general election ballot. OFRW had entered into a multi-million-dollar contract with FieldWorks, LLC, a nationally recognized petition signature collection firm with significant prior experience with Ohio statewide initiative and referendum petitions. OFRW also obtained funds and commitments for funds to be able to complete the task before the July 1, 2020 filing deadline.

5. Immediately after the Ohio Ballot Board certified the proposed amendment as constituting a single amendment on February 5, 2020, OFRW proceeded to take the steps necessary to commence a statewide petition drive to collect over 800,000 signatures. These steps included printing 65,000 petition packets, finalizing its contract with FieldWorks, and establishing quality control processes and a volunteer collection effort to supplement the paid circulator program. These steps could not be taken until OFRW successfully first obtained the Attorney General and Ballot Board certifications imposed by the General Assembly. For example, the Attorney General's certification is required to be printed on the petition.

6. If OFRW is not able to qualify its petition for the November 3, 2020 general election, then all of the money and effort expended to date will be for naught. OFRW will not be able to simply continue to collect signatures on its petition after COVID 19 restrictions are lifted and place the

issue on the ballot in a later year because the proposed amendment expressly mandates the first wage increase taking effect January 1, 2020 and the final one on January 1, 2025. In other words, OFRW will have to start over from the beginning, including drafting a new amendment and summary, circulating the summary petition and gaining the Ohio Attorney General's approval pursuant to R. C. 3519.01, having the proposed amendment then reviewed by the Ohio Ballot Board to certify that it constitutes a single amendment, raising millions of dollars in funds, and finally preparing and implementing the infrastructure for a statewide petition signature collection effort.

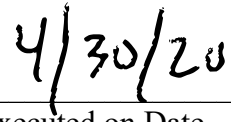
7. OFRW and its national partners have dedicated extensive time since the COVID 19 shut downs in developing a model for an on-line signature collection plan that will allow it to obtain sufficient and verifiable signatures of Ohio electors to qualify by July 1, 2020 in time to qualify for the 2020 general election ballot. Attached to this affidavit are slides that show how the process would work. It will be under a contract with DocuSign, the country's leading company for execution of electronic signatures on legal documents. The plan has been uniquely developed specifically to comply with Ohio's requirements for state initiative petitions, with additional safeguards to ensure that signatures are those of the persons whom they purport to be.

8. Briefly, the model would work as follows:

- OFRW will establish a dedicated website for the on-line signature collection.
- The landing page will ask for support to place the issue on the ballot to raise the minimum wage and provide a link for the person to read the full text. It will notify persons that only Ohio registered voters are permitted to sign.
- If the person elects to proceed, they will enter their name, voter registration address, county, the last 4 digits of their social security number, and their email address.
- They will hit 'next' and be directed to a PDF of the petition that looks exactly like the paper version except that: it will have only one signature line, it will have a field for the last 4 digits of their SSN, and the circulator statement will have additional wording due to the on-line nature. All of the fields will populate from the information provided by the person on the prior page and they will be asked to confirm the information and authorize the placing of their signature on the petition. If they do, a cursive version of their signature will be affixed to the signature field. The document will be a self-contained single signature complete part-petition.
- The circulator will be the administrator of the on-line petition, who will monitor the activity on the website. This includes monitoring for duplicate names and multiple uses of an IP address. A confirming email will be sent to each signer using the email address provided to verify that the signature was affixed to the petition by the named person.
- The part-petitions can be printed out for filing or filed on a hard drive, sorted by county, and consecutively numbered.
- The Secretary of State will be provided the last 4 digits of the SSNs of the signers for purposes of authenticating that the signer is who he or she purports to be.



Gavin DeVore Leonard



Executed on Date



SIGN OUR OFFICIAL PETITION TO RAISE THE MINIMUM WAGE IN OHIO. IT ONLY TAKES A COUPLE OF MINUTES.

Ohioans who work full time should earn enough to cover their basic needs, but minimum wage workers in our state make less than \$18,000 a year. We should reward hard work — now more than ever — and raise the minimum wage to help ensure that no one who works full time lives in poverty.

Due to COVID-19, we are collecting signatures electronically to help us qualify a minimum wage increase for the ballot, and we need your help! Please fill out the form below to sign the petition to raise the minimum wage online.

After you fill out this form, you will be redirected to a site where you will sign the official petition.

First Name*	Last Name*	Middle Initial
<input type="text"/>	<input type="text"/>	<input type="text"/>

Street Address* *(Address on File with the Board of Elections)*

City, Village, or Township*	State*	ZIP Code*	County (ex: Cuyahoga)*
<input type="text"/>	<input type="text" value="OH"/>	<input type="text"/>	<input type="text"/>

Last 4 of Social Security Number* *(This helps the elections division confirm your identity to verify your signature)*

Email Address*	Mobile Number <i>(Optional)</i>
<input type="text"/>	<input type="text"/>

I AM A REGISTERED OHIO VOTER AND I WANT TO SIGN THE PETITION TO RAISE THE MINIMUM WAGE

Note: The full text of the proposed amendment will be available for review on the signature page. It is also linked here if you'd like to review: [Initiative Petition](#)



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MEMORANDUM FOR THE SIGNATURE USER
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START

County: Montgomery

Number: _____

INITIATIVE PETITION

Amendment to the Constitution

Proposed by Initiative Petition

To be Submitted Directly to the Electors

AMENDMENT**TITLE***Raise the Wage Ohio***SUMMARY**

The Amendment would amend Article II, Section 34a of the Ohio Constitution to increase the state minimum wage rate. Specifically, the Amendment would:

- Increase the state minimum wage rate to \$9.60 per hour on January 1, 2021.
- After January 1, 2021, increase the state minimum wage rate in equal increments annually for four years to reach \$13 per hour on January 1, 2025.
- After January 1, 2025, annually adjust the state minimum wage rate for inflation, consistent with the existing language.
- Provide that the state minimum wage will increase to match the federal minimum wage if the federal minimum wage is higher at any time, and that the state minimum wage shall be subject to the subsequent rate of inflation increases set forth in the Section and, if less than thirteen dollars per hour, shall be increased in equal increments annually until it is \$13 per hour on January 1, 2025.

The Amendment does not change any exemptions to the state minimum wage currently in the Section.

CERTIFICATION OF ATTORNEY GENERAL

Without passing on the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed amendment.

DAVE YOST
Ohio Attorney General
January 27, 2020

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

Anthony A. Caldwell	5112 Maple Valley Drive, Columbus, Ohio 43228
James E. Hayes	1495 Bycroft Road, Columbus, Ohio 43206
David G. Latanick	374 Wilber Avenue, Columbus, Ohio 43215
Pierrette M. Talley	935 Parkside Boulevard, Toledo, Ohio 43607



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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
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(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
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1. Print Your Name Amy	Print Last Name Steinhoff	MI C
Street Address (Your address on file with the Board of Elections) 805 E 18th Ave, #11		
City, Village, or Township Dayton	County Montgomery	Zip Code 45404
Signature 	Date of Signing 04/18/2020	

NEXT

My Signatures and Initials



+ ADD

Amy Steinhoff

DocuSigned by:



222A43F322FE42C...

DS



Edit



ADOPT

CANCEL

(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
1. Print First Name Amy	Print Last Name Steinhoff	MI C	Street Address (Your Address on File with the Board of Elections) 805 E 18th Ave, #11		
City, Village, or Township Dayton	County Montgomery	Zip Code 45402	Ward/Precinct		
Signature DocuSigned by: 				Date of Signing 04/17/2020	



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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
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(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
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Print First Name Amy		Print Last Name Steinhoff		MI C
Street Address (Your Address as file with the Board of Elections) 805 E 18th Ave, #11				
City, Village, or Township Day		County Montgomery	Zip Code 45404	Ward/Precinct
Signature <i>Amy Steinhoff</i>			Date of Signing 04/18/2020	



OFRW-2003-01 Single Signature Line.pdf

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FULL TEXT OF PROPOSED AMENDMENT
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Be it Resolved by the People of the State of Ohio that Article II is hereby amended to add the following language to Section 34a shown underlined and in all capital letters below, and repeals the existing language shown by strikethrough. Current language that is not changed appears without underline or strikethrough:

Article II, Section 34a

Except as provided in this section, every employer shall pay their employees a wage rate of not less than ~~six dollars and eighty-five cents~~ NINE DOLLARS AND SIXTY CENTS per hour beginning January 1, ~~2007~~ 2021. ~~THEREAFTER, THIS STATE MINIMUM WAGE RATE SHALL BE INCREASED IN EQUAL INCREMENTS ANNUALLY FOR FOUR YEARS TO REACH THIRTEEN DOLLARS PER HOUR ON JANUARY 1, 2025.~~ On the thirtieth day of each September, beginning in ~~2007~~ 2025, this state minimum wage rate shall be increased effective the first day of the following January by the rate of inflation for the twelve month period prior to that September according to the consumer price index or its successor index, for all urban wage earners and clerical workers for all items as calculated by the federal government rounded to the nearest five cents. IF AT ANY TIME THE FEDERAL MINIMUM WAGE RATE IS HIGHER THAN THE STATE MINIMUM WAGE RATE, THE STATE RATE SHALL BE INCREASED TO THE AMOUNT OF THE FEDERAL RATE AND SHALL BE SUBJECT TO THE SUBSEQUENT RATE OF INFLATION INCREASES SET FORTH IN THIS SECTION AND, IF LESS THAN THIRTEEN DOLLARS PER HOUR, SHALL BE INCREASED IN EQUAL INCREMENTS ANNUALLY UNTIL IT IS THIRTEEN DOLLARS PER HOUR ON JANUARY 1, 2025.

Employees under the age of sixteen and employees of businesses with annual gross receipts of two hundred fifty thousand dollars or less for the preceding calendar year shall be paid a wage rate of not less than that established under the federal Fair Labor Standards Act or its successor law. This gross revenue figure shall be increased each year beginning January 1, 2008 by the change in the consumer price index or its successor index in the same manner as the required annual adjustment in the minimum wage rate set forth above rounded to the nearest one thousand dollars. An employer may pay an employee less than, but not less than half, the minimum wage rate required by this section if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked. The provisions of this section shall not apply to employees of a solely family owned and operated business who are family members of an owner. The state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.

As used in this section: "employer," "employee," "employ," "person" and "independent contractor" have the same meanings as under the federal Fair Labor Standards Act or its successor law, except that "employer" shall also include the state and every political subdivision and "employee" shall not include an individual employed in or about the property of the employer or individual's residence on a casual basis. Only the exemptions set forth in this section shall apply to this section.

An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes. An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years

OFRW-2003-01 Single Signature Line.pdf

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following the last date the employee was employed. Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request. An employee, person acting on behalf of one or more employees and/or any other interested party may file a complaint with the state for a violation of any provision of this section or any law or regulation implementing its provisions. Such complaint shall be promptly investigated and resolved by the state. The employee's name shall be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. The state may on its own initiative investigate an employer's compliance with this section and any law or regulation implementing its provisions. The employer shall make available to the state any records related to such investigation and other information required for enforcement of this section or any law or regulation implementing its provisions. No employer shall discharge or in any other manner discriminate or retaliate against an employee for exercising any right under this section or any law or regulation implementing its provisions or against any person for providing assistance to an employee or information regarding the same.

An action for equitable and monetary relief may be brought against an employer by the attorney general and/or an employee or person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction, including the common pleas court of an employee's county of residence, for any violation of this section or any law or regulation implementing its provisions within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Where an employer is found by the state or a court to have violated any provision of this section, the employer shall within thirty days of the finding pay the employee back wages, damages, and the employee's costs and reasonable attorney's fees. Damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. Payment under this paragraph shall not be stayed pending any appeal.

This section shall be liberally construed in favor of its purposes. Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of this constitution with respect to the same.

If any part of this section is held invalid, the remainder of the section shall not be affected by such holding and shall continue in full force and effect.

FINISH

STATEMENT OF CIRCULATOR

I, _____, declare under penalty of election falsification that I am the circulator of the foregoing petition containing the electronic signatures of _____ electors, that the electronic signatures appended hereto were made online at <INSERT URL> on the date set opposite each respective name, and are the electronic 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

(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 electronic signature is to the best of my knowledge and belief the electronic signature of the person whose electronic signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signed)

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

City, Village or Township

State

Zip Code

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

Defendant's Exhibit A
Affidavit of Amanda Grandjean

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

OHIOANS FOR RAISING THE WAGE, et al.	:	
	:	
Plaintiffs,	:	Case No. 20CV002381
	:	
v.	:	Judge David Young
	:	
OHIO SECRETARY OF STATE FRANK LAROSE,	:	
	:	
Defendant.	:	

AFFIDAVIT OF AMANDA M. GRANDJEAN

I, Amanda M. Grandjean, having been duly sworn and cautioned, hereby state that I am over the age of eighteen years and am competent to testify to the following on the basis of personal, firsthand knowledge:

1. From September 2016 to January 2019, I was an associate attorney with the law firm of Bricker and Eckler, LLP, and focused my practice of law on the areas of government relations, election law, campaign finance, and litigation.

2. In January 2019, I was appointed by Secretary of State Frank LaRose to the position of Deputy Assistant Secretary of State and State Elections Director in the Elections Division of the Ohio Secretary of State’s Office, where I am responsible for developing and implementing policies, procedures, and guidelines for the administration of federal, state, and local elections to assist county boards of elections in the fulfillment of their statutory duties, as well as having oversight of the statewide voter registration database (“SWVRD”), the receipt, review, and distribution of statewide candidate and issue petition filings, and campaign finance regulations and related filings.

3. I am a member of the National Association of State Election Directors, the National Association of Secretaries of State, the United States Election Assistance Commission Standards Board, the Bipartisan Policy Center Elections Task Force, and an executive board member of the Electronic Registration Information Center.

4. Based on my professional background and my responsibilities at the Secretary of State’s Office, my review of Directives of this office, what I have come to know and discussions with all of the eighty-eight county boards of elections since starting this position in 2019, I have first-hand knowledge of the responsibilities and tasks required of the eighty-eight county boards of elections and the Secretary of State’s Office in processing an initiative petition proposing a constitutional amendment filed with the Secretary of State’s Office.

5. An initiative petition proposing an amendment to the Ohio Constitution must satisfy two signature requirements. It must contain a number of valid signatures equal to ten per cent of the electors who voted in the most-recent gubernatorial election. Additionally, part-petitions must be filed from at least 44 of Ohio's 88 counties bearing the signatures of not less than five per cent of the electors of each such county in the most-recent gubernatorial election.
6. If, at the time of the filing of the petition, the person(s) filing the petition presents completed voter registration forms, the Secretary of State's Office accepts the voter registration forms. If voter registration forms are filed with the petition, the Secretary of State's Office time-stamps each form, sorts the forms by county, and sends the forms to the appropriate county board of elections.
7. In order to determine the sufficiency of the signatures, the Secretary of State's Office must transmit the part-petitions to the appropriate county board of elections for signature verification. The appropriate county board of elections is the board of elections of the county where a majority of the signatures on the part-petition were gathered. The part-petitions are packaged carefully and transmitted via trackable delivery method to the appropriate county board of elections. Each package is sealed with tamper-evident tape.
8. Before transmitting part-petitions to the county boards of elections, the Secretary of State's Office sorts the part-petitions by county, affixes a Bates-stamp number to each part-petition, and tallies the number of signatures reported on the circulator's statement attached to each part-petition. While at the Secretary of State's office, the part petitions are stored in a room with a dual-entry lock.
9. The Secretary of State's Office issues a directive instructing county boards of elections on the procedures for verifying the part-petitions and signatures thereon and advising the boards of elections of the deadline by which they must complete their examination and verification of the part-petitions, report their findings to the Secretary of State, and return the part-petitions to the Secretary of State's Office.
10. The Secretary of State's Office prepares a report form for the county boards of elections. Each board receiving part-petitions must use that form to report the total number of the part-petitions it received; the number of part-petitions that are valid; the number of part-petitions that are invalid; and the number of valid and invalid signatures contained on the part-petitions.
11. A county board of elections reviews each signature in accordance with the requirements of R.C. 3501.38 to determine whether the signature matches the signature on file with the board of elections. Secretary of State Directive 2019-17.
12. No one may sign a petition more than once. *See* R.C. 3501.38(D). If a person does sign a petition more than once, after the first signature has been marked valid, each successive occurrence of the signature must be invalidated. Secretary of State Directive 2019-17.

13. A county board of elections also reviews the circulator's statement on each part-petition to ensure that it complies with the requirements of law. Secretary of State Directive 2019-17.
14. Each circulator's statement must contain the circulator's signature and the number of signatures witnessed by the circulator. For a petition proposing a constitutional amendment, it also must contain the circulator's name and address and the name and address of the person employing the circulator to circulate the petition, if any. *See* R.C. 3501.38(E).
15. The board must accept the circulator statement on a part-petition at face value unless there are inconsistencies with the number of signatures witnessed or with information about the circulator across part-petitions reviewed within a single county (i.e., the circulator writes different permanent residence addresses on different part-petitions). Secretary of State Directive 2019-17.
16. If a board of elections has questions regarding the part-petitions, the board contacts the Secretary of State's staff for assistance. The Secretary of State's staff responds to such questions as quickly as possible.
17. After the board of elections completes its verification of all of the part-petitions and signatures that have been transmitted to the board, the board completes the report form, submits it to the Secretary of State's Office, and returns the part-petitions to the Secretary of State's Office via trackable delivery.
18. The Secretary of State reviews the findings reported by the boards of elections. If the Secretary of State determines that those findings indicate that the petition contains sufficient valid signatures to satisfy both the total signature requirement and the 44 county distribution requirement, the Secretary of State notifies the committee for the petitioners in writing that the petition is sufficient. Conversely, if the Secretary determines that the findings reported by the boards of elections indicate that the petition contains insufficient valid signatures to satisfy either the total signature requirement or the 44 county distribution requirement, the Secretary of State notifies the committee for the petitioners in writing that the petition is insufficient, the nature of the insufficiency, and that petitioners have 10 days in which to file additional signatures to overcome the insufficiency.
19. Pursuant to Article II, Section 1a, of the Ohio Constitution, the filing deadline for an initiative petition proposing a constitutional amendment to appear on the ballot in the general election is 125 days prior to the general election. This year, the filing deadline is July 1, 2020 for the November 3, 2020 Presidential General Election.
20. Pursuant to Article II, Section 1g, of the Ohio Constitution, the following deadlines apply to a petition:
 - a. The Ohio Secretary of State must determine the sufficiency of the signatures no later than 105 days before the general election (which is July 21, 2020).

- b. Any challenges to the petition and the signatures must be filed in the Ohio Supreme Court not later than 95 days before the general election (which is July 31, 2020).
 - c. The Ohio Supreme Court must rule on any challenges no later than 85 days before the general election (which is August 10, 2020).
 - d. If the Ohio Supreme Court does not issue a ruling determining the petition or signatures to be insufficient by the deadline, then the petition and signatures shall be presumed to be sufficient in all respects.
 - e. If the Ohio Supreme Court determines that the petition or signatures are insufficient, the petitioners have ten additional days to file supplemental signatures with the Secretary of State.
 - f. If supplemental signatures are filed, the Secretary of State must send the part-petitions with signatures to the county boards of elections for verification as described above, receive the verified part-petitions back from the boards of elections, and determine the sufficiency of the supplemental signatures no later than 65 days before the general election (which is August 30, 2020).
 - g. Any challenge to the supplemental signatures must be filed in the Ohio Supreme Court not later than 55 days before the general election (which is September 9, 2020).
 - h. The Ohio Supreme Court must rule on any challenge to the supplemental signatures no later than 45 days before the general election (which is September 19, 2020).
 - i. If the Ohio Supreme Court does not issue a ruling determining the supplemental signatures to be insufficient by the deadline, then the petition and signatures shall be presumed to be sufficient in all respects.
 - j. The proposed amendment to the Constitution, together with arguments for and against the amendment, then must be published once a week for three consecutive weeks preceding the election in one newspaper of general circulation in each county of the state where a newspaper is published.
21. The Secretary of State must certify the form of official ballots for the November 3, 2020 Presidential General Election to county boards of elections not later than 50 days before general election. Section 735.11 of H.B. 166 (133rd G.A.).
22. Absentee ballots for UOCAVA (“Uniformed and Overseas Citizens Absentee Voting Act”) voters must be sent beginning the 46th day prior to the November 3, 2020 Presidential General Election, which is September 18, 2020. R.C. 3511.04(B).
23. Absentee voting for all other electors for the November 3, 2020 Presidential General Election begins on October 6, 2020. R.C. 3509.01(B)(2).

Further Affiant Sayeth Naught.


AMANDA M. GRANDJEAN

Sworn to before me and signed in my presence, a Notary Public in and for said State of Ohio on this 13th day of April, 2020.



Brian L. Katz, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

 (My commission does not expire)