

Case No. 20-3526

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

Chad Thompson, et al.

Plaintiffs-Appellees

v.

Governor of Ohio, Mike DeWine, et al.

Defendants-Appellants

Ohioans for Secure and Fair Elections, Ohioans for Raising the Wage, et al.

Proposed Intervenors/Appellees.

**On Appeal from the United States District Court for the
Southern District of Ohio, Case No. 2:20-cv-2129**

**REPLY OF AMICI CURIAE
TO RESPONSE OF OHIOANS FOR RAISING THE WAGE APPELLEES**

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REPLY MEMORANDUM

Amici curiae would like to briefly address the arguments raised by Ohioans for Raising the Wage Appellees' Memo in Opposition to Amici Curiae's Motion for Leave to File Memorandum in Support of Motion of Appellants' Motion to Stay.

I. There is precedent for participation at this stage despite the lack of a specific rule

Even though there is no specific rule allowing or disallowing amicus participation at this stage of the appeal, there is precedent for allowing amici to weigh in on motions to stay prior to briefing on the merits. *See Miller v. Davis*, No. 15-5880, 2015 WL 10692640 (6th Cir. Aug. 26, 2015); *Southern Ohio Coal Co. v. Dept. of Interior, Office of Surface Mining, Reclamation and Enforcement*, No. 93-3878, 1993 WL 642401 (6th Cir. Aug. 30, 1993). Amici filed in the spirit of this authority and this authority serves as “the source of its authority to file.”

II. Amici disclosures under Fed.R.App.P. 29(a)(4)(E) and 29(b)(4)

Amici was not certain that the disclosures under Fed. R. App. P. 29(a)(4)(E) and 29(b)(4) were required for their filing because these requirements are specific to briefs, and a brief was not filed. To the extent that these disclosures are required, amici assure the court that they have been met: (1) amici counsel authored the motion for leave and memorandum in whole, (2) amici contributed money intended to fund the preparation and submission of the motion for leave and memorandum in support

that has been filed, and (3) no person other than the amici and their members contributed money intended to fund the preparation and submission of the motion at issue. *See* Fed. R. App. P. 29(a)(4)(E) and 29(b)(4).

III. Timeliness

Counsel for amici was retained on May 22, 2020, one day after the notice of appeal was filed. And the motion for amici was filed within 12 hours of being retained. Under the rules for briefs and en banc motions, amici can file one week after the principal brief of the party being supported is filed. *See* Fed. R. App. R. 29(a)(6) and Fed. R. App. P. 29(b)(5). Amici recognized the expedited nature of this appeal and filed as soon as they possibly could under the circumstances.

While Ohioans for Raising the Wage Appellees claim prejudice, they have had the opportunity to oppose (and have opposed) amici's motion for leave before this Court has ruled on the motion to stay, thus underscoring that Ohioans for Raising the Wage have not been prejudiced.

Ohioans for Raising the Wage Appellees claim that they only had until close of business on Friday, May 22, to respond to Appellants' motion to stay and that amici should have filed before Appellees were required to file their response to the Appellants' motion to stay. The district court's decision is an outlier and came as a surprise to amici. And as Ohioans for Raising the Wage Appellees have noted, amici were not involved in the district court proceedings. In short, amici had no idea that

the Appellants were going to file their appeal and motion to stay as quickly as they did. Not surprisingly, it reasonably took some time (about a day) for amici to convene and discuss options, decide on a course of action, and hire legal counsel. Amici filed as soon as possible and did not delay their filing to prejudice Appellees. (In fact, at the time amici filed their motion, they were not certain whether the other two Appellees would consent to their filing as did counsel for Chad Thompson, William Schmitt, and Don Keeney.)

IV. Amici have an interest in opposing the preliminary relief granted by the district court

Contrary to Ohioans for Raising the Wage Appellees' assertion, amici have an interest in opposing the preliminary relief granted and have identified this interest in their motion and memorandum. Their interest (as stated in their motion and memorandum), in short, is maintaining the integrity of Ohio's initiative process, including the constitutional time periods for collecting signatures and challenging signatures and petitions for noncompliance with Ohio law. The district court's decision extends the constitutional time period to collect signatures to the same date on which challenges to the petition must be filed. This makes it impossible to file a meaningful challenge, even though there is a constitutional right to do so.

V. Amici have raised practical concerns that this Court should consider

Amici have not misconstrued the record and have not engaged in fearmongering; instead, they have raised practical concerns that this Court should

consider as it decides the important motion to stay before it. To illustrate the point that out-of-state interests have been behind petition initiatives in Ohio, the Court need not look any further than the initiative that the Ohio Supreme Court struck down in 2018. *See Ohio Renal Association v. Kidney Dialysis Patient Protection Amendment Committee*, 154 Ohio St.3d 86, 2018-Ohio-3220 111 N.E.3d 1139. According to the Form 30-B-1 filed with the Secretary of State, the Kidney Dialysis Patient Protection Amendment was funded by an entity located in Los Angeles, California.

Appellees' argument that there is no evidence in the record to support the argument that boards of elections have no sure way to verify electronic signatures is a red herring. The point is that boards of elections have never been tasked with verifying electronic signatures and have no protocols for doing so. Amici merely point out the obvious — those who register to vote on paper are not required to provide Social Security numbers to the boards of elections. Hence, not all electors have provided their Social Security numbers to the boards of elections. It seems unnecessary for Ohioans for Raising the Wage Appellees to take issue with this premise — especially when they did not (and cannot) provide evidence that every registered voter in Ohio has provided the last four digits of their Social Security number to their county board of elections. This is only one of multiple ways that the proposed system of validating signatures is flawed.

Ohioans for Raising the Wage Appellees argue that arguments about the ability to challenge petitions are premature and can be addressed later. But when? Under the district court's order, the deadline for submitting the requisite number of signatures to the Secretary of State is July 31, 2020 — which is also the deadline for challenges to be filed. According to Appellees, it is premature to raise this issue now, but waiting until July 31, 2020 (when petitions will likely be submitted, or later) is extremely risky.¹ Amici believe it is important for the Court to understand now — not at a later date when it may be too late — that the district court's decision cuts off the constitutional right to challenge signatures and petitions.

Lastly, neither the district court's decision nor Ohioans for Raising the Wage Appellees have addressed why they (or any of the Appellees) have a right to be on the November 2020 general election ballot. Most likely this is because they have no such right. *See Jones v. Husted*, 2016 WL 3453658, *4 (S.D. Ohio June 20, 2016).

¹ For instance, the deadline for submitting statewide initiative petitions for the November 2018 election was July 4, 2018. That day, both statewide initiative petitions seeking placement on the November 2018 ballot were submitted to the Secretary.

Respectfully submitted,

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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 *Reply* complies with the type-volume requirements and contains 1249 words. *See* Fed. R. App. P. 27(d)(2)(A).

/s/ Anne Marie Sferra

Anne Marie Sferra (0030855)

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020 a true copy of the foregoing was filed electronically through the CM/ECF system. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anne Marie Sferra

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