

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.

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

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**REPLY IN SUPPORT OF INITIAL *EN BANC* REVIEW**

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The State will not respond to all of the plaintiffs’ many arguments for and against *en banc* review. But the plaintiffs make one argument that deserves a response. In particular, they claim that, although the circuits are split concerning the First Amendment’s application to *subject-matter limits* on the initiative process, no court has held that the First Amendment is inapplicable to laws governing the mechanics of the initiative process. *See, e.g.*, Thompson Resp., Doc.48-1 at 6; OSFE & OFRW Combined Resp., Doc. 49 at 2–3. That is incorrect. In *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082 (10th Cir. 2006) (*en banc*), the Tenth Circuit held that a provision of the Utah Constitution “imposing a supermajority requirement for enactment of initiatives on specific topics”—in other words, a provision regulating the mechanics of the initiative process—did “not implicate the freedom of speech.” *Id.* at 1085.

In any event, there is no relevant distinction between laws imposing subject-matter restrictions on the initiative process and laws (like the laws at issue here) imposing other, content-neutral eligibility requirements for ballot access. *All* of these laws dictate the mechanics of legislating by initiative. Thus, even if the Tenth Circuit had addressed only a subject-matter limitation, its reasoning would apply with full force here.

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 contains 212 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Equity type.

/s/ Benjamin M. Flowers

Benjamin M. Flowers

## CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, the foregoing was lodged with the Sixth Circuit Clerk's Office for electronic filing. If accepted for filing, notice of the 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.

I additionally certify that I will serve this reply by email on the following individuals:

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