

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

OHIOANS FOR RAISING THE WAGE, ET AL.	:	
	:	Case No.
Plaintiffs,	:	
	:	
v.	:	Judge
	:	
OHIO SECRETARY OF STATE	:	
FRANK LAROSE,	:	
	:	
Defendant.	:	

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**MOTION FOR A PRELIMINARY INJUNCTION**

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Now come Plaintiffs and respectfully move the Court, pursuant to Civ. R. 65, for a preliminary injunction enjoining, as applied to the Raise the Wage Ohio initiative petition, certain provisions of Ohio law regulating circulating and filing of state initiative petitions, as set forth in more detail in the attached Memorandum. This Motion is further supported by the attached Affidavit of Christopher Gallaway.

Respectfully submitted,

/s/ Ben F.C. Wallace  
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## MEMORANDUM IN SUPPORT

### **I. INTRODUCTION**

Plaintiffs are proponents of Raise the Wage Ohio (“the Petition”), a citizen-initiated amendment to the Ohio Constitution. Defendant is Ohio Secretary of State Frank LaRose (“Secretary LaRose”), who administers Ohio’s election laws, including laws pertaining to citizen-initiated ballot measures.

Plaintiffs move the Court for a preliminary injunction with respect to the Petition as follows:

1. Enjoining enforcement of Ohio Constitution, Article II, Section 1g’s deadline of July 1, 2020 for submission of the proposed Amendment to the voters at the November 3, 2020 general election, if the Petition is filed with Defendant by August 21, 2020;
2. Enjoining enforcement of Ohio Constitution, Article II, Section 1a’s requirement that the Petition contain signatures of electors equal to ten per cent of the number of electors that voted in the 2018 gubernatorial election, if the Petition contains signatures of electors equal to six per cent of the number of electors that voted in the 2018 gubernatorial election and is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election;
3. Enjoining enforcement of Ohio Constitution, Article II, Section 1g’s requirement that the Petition contain signatures from at least five percent (5%) of electors in at least half of the Ohio counties, if the Petition is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election;
4. Enjoining enforcement of Ohio Revised Code 3519.14’s provision that Defendant may not accept for filing the Petition if it does not contain on its face a prescribed minimum

number of signatures, and if the Petition is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election; and

5. Enjoining enforcement of Ohio Revised Code § 3519.16's prohibition on collecting signatures on a Supplementary Petition prior to commencement of the ten-day period specified therein, and the prohibition on filing such signatures, if the Petition is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election.

In the alternative to the above relief, Plaintiffs move the Court for a preliminary injunction enjoining requirements that signatures on the petition must be handwritten by signers in ink and witnessed by circulators, if Plaintiffs file sufficient signatures obtained electronically or a sufficient combination of such signatures and handwritten signatures witnessed by circulators, and if the Petition is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election.

In addition to the above requested relief, Plaintiffs move the Court for a preliminary injunction enjoining enforcement of R. C. §§ 3519.05 and 3519.16's requirements for filing an electronic copy of the Petition with Defendant, if the Petition is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election.

The relief requested is narrowly tailored to redress only the undue and unconstitutional burdens imposed by these statutory and constitutional requirements during the present COVID-19 public health crisis.

## **II. STATEMENT OF FACTS**

The constitutional amendment proposed by the Petition would, if adopted by voters at the 2020 General Election, amend the Ohio Constitution to raise the state minimum wage to \$9.60

per hour beginning January 1, 2021 and thereafter increase it annually until it is set at \$13 per hour on January 1, 2025.

Plaintiffs have completed all the initial procedural steps required for a citizen-initiated constitutional amendment. The summary of the petition was circulated, signed by approximately 1,898 electors, and approved by the Ohio Attorney General. The Ballot Board certified that the Petition contained a single-subject. Petitioners began circulating the petition on February 28, 2020, using trained circulators operating out of six regional field offices. As of March 12, 2020, Plaintiffs had gathered approximately 73,968 signatures on the Petition.

Plaintiffs were, as of March 12, 2020, on track to garner a sufficient number of signatures to submit the Petition to the Secretary of State by the July 1 deadline and qualify for the 2020 General Election ballot. Since then, the COVID-19 public health crisis has foreclosed any possibility of Plaintiffs being able to qualify the amendment proposed by the Petition for the 2020 General Election ballot under the existing statutory and constitutional requirements.

Ohio, the United States, and communities all over the globe are in the midst of the COVID-19 pandemic, an emergency which is nearly unprecedented in its scope and severity. In response to the crisis, the Ohio Department of Health (“ODH”), issued a series of orders closing bars and restaurants, prohibiting gatherings of 50 persons or more, including all fairs, festivals, parades, concerts, and sporting events, and, through the official statement of Governor DeWine and ODH Director Dr. Amy Acton, encouraged all Ohioans to engage in “social distancing,” which, among other elements, entails maintaining a six-foot distance from other individuals.

While these Orders are entirely appropriate at this time to protect public health, the pandemic and resulting Orders are a devastating blow to Plaintiffs’ ability to exercise their rights to engage in free expression and association and to circulate a petition proposing an amendment

to the Ohio Constitution for the 2020 General Election. These rights are themselves protected by the Ohio Constitution and this Court has the authority to order equitable relief to ensure that those rights are not foreclosed.

### III. CONSTITUTIONAL RIGHTS AT STAKE

Under the Ohio Constitution, the power to change the form of government of the State is reserved to the People, who must approve any amendment to the Ohio Constitution that is passed by the General Assembly and who may propose amendments to the Ohio Constitution through initiative petition. Ohio Constitution, Art. II, Sec. 1. As the Ohio Supreme Court observed shortly after the initiative system was adopted, “the people's right to the use of the initiative and referendum is one of the most essential safeguards to representative government.” *State ex rel. Nolan v. Clendenning*, 93 Ohio St. 264, 277-278, 112 N.E. 1029 (1915). Consistent with this importance of the initiative to Ohio’s system of governance, the Ohio Supreme Court has consistently held that the right to initiative must be “liberally construed to effectuate the rights reserved” to the people of Ohio. *State ex rel. Hodges v. Taft*, 64 Ohio St. 3d 1, 5, 591 N.E.2d 1186 (1992).

The process of circulating a petition proposing an amendment to the Ohio Constitution involves the exercise of other individual rights which are essential in a democratic form of government and which are also protected by the Ohio Constitution. These include the right protected by Article I, Section 3 “to assemble together, in a peaceable manner, to consult for their common good” and Article I, Section 11’s protection of free speech, which provides that “Every citizen may freely speak, write, and publish his sentiments on all subjects.” The process of circulating a petition involves Ohioans organizing and associating with one another for the

purpose of expressing their views on important matters. These are foundational rights in a free society and are protected by the Ohio Constitution.

These rights under the Ohio Constitution are coextensive with the protections afforded by the First Amendment to the United States Constitution. *State ex rel. Toledo Blade Co. v. Henry County Court of Common Pleas*, 125 Ohio St.3d 149, ¶ 22, 210 Ohio 1533, 926 N.E.2d 634; *Eastwood Mall v. Slanco*, 68 Ohio St. 3d 221, 222-223, 626 N.E.2d 59 (1994). The speech and association of individuals circulating an initiative petition constitutes “core political speech” under the First Amendment to the United States Constitution. *Meyer v. Grant*, 486 U.S. 414, 421-422 (1988). When a state grants its residents the right to circulate petitions seeking to change state law or the state constitution the state may not restrict those rights in a manner which violates the First Amendment to the United States Constitution and any such restriction is subject to “exacting scrutiny.” *Doe v. Reed*, 561 U.S. 186, 196 (2010); *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 201-202 (1999).

#### **IV. THE COURT HAS THE AUTHORITY TO GRANT THE REQUESTED RELIEF**

In those instances in which extraordinary circumstances infringe the constitutional rights of individuals the courts of common pleas are the appropriate venue to seek equitable relief to protect those rights from being foreclosed. *State ex rel. Blackwell v. Crawford*, 106 Ohio St. 3d 447, ¶ 22, 2005-Ohio-5124, 85 N.E.2d 1232 (2005). Ohio courts have routinely granted relief similar to what Plaintiffs are seeking when the exercise of constitutional rights would otherwise be impaired or eliminated entirely.

During a 2007 special congressional election, voting machines used by the Putnam County Board of Elections experienced failures on the day of the election. In response to a request by the Board of Elections, the Secretary of State brought a friendly lawsuit in this Court

to extend the polling hours. This Court granted the requested relief. *Jennifer Brunner v. Putnam County Bd. of Elections*, Franklin C.P. Case No. 07-cv-015136 (Nov. 7, 2007).

Similar equitable relief to what Plaintiffs seek was also granted during the 2008 presidential primary elections, when heavy rains and flooding forced the relocation of three polling locations in Jefferson County approximately nine hours before voting was to begin. The Secretary of State sought emergency relief in this Court to allow any voter whose polling location had been moved to cast a provisional ballot at the Jefferson County Board of Elections headquarters. The Court found that voters would suffer irreparable harm in the absence of injunctive relief and granted the Secretary of State's motion for a temporary restraining order. *Jennifer Brunner v. Jefferson County Bd. of Elections*, Franklin C.P. Case No. 08-vs-003264 (March 4, 2008).

The Secretary of State brought another lawsuit on March 4, 2008 to extend polling hours to allow Ohioans to exercise their right to vote. That day a printer used to print ballots in Sandusky County failed and could not be repaired, leaving voters unable to cast ballots. The Secretary of State sought emergency relief in the Sandusky County Court of Common Pleas, which found that voters would suffer irreparable harm if polling hours were not extended and granted the Secretary of State's motion for an emergency injunction to allow voters additional time to cast a ballot. *See* Secretary of State Directive 2008-36.

During the 2015 general election courts granted equitable relief in Hamilton County, which experienced numerous problems stemming from the use of new electronic poll books and a shortage of provisional ballots. Individuals supporting a statewide ballot measure sought a temporary restraining order in the Hamilton County Court of Common Pleas to extend voting hours, which was found to be warranted by the court and granted. *See* Howard Wilkinson, *Judge*

*Extends Hamilton County Voting Hours Until 9 P.M.*, WVXU (Nov. 3, 2015)  
<https://www.wvxu.org/post/judge-extends-hamilton-county-voting-hours-until-9-pm>.

In each of these instances, the Ohio courts granted an injunction under its authority to issue equitable relief to prevent the right to engage in constitutionally protected activities from being infringed in the face of unforeseen circumstances. The Plaintiffs are requesting similar relief to prevent the loss of their rights to free speech, association, and to propose an amendment to the Ohio Constitution.

As the COVID-19 pandemic and accompanying public health crisis grips the United States, other courts have recognized that certain ballot access and election regulations are unduly restrictive in the current context and have issued narrow injunctive relief for the 2020 election cycle. A candidate in Virginia was recently granted injunctive relief allowing him to appear on the ballot with fewer than the statutorily required number of signatures, with the court in that case acknowledging that the signature requirement, although only a modest burden under normal circumstances, constituted a severe burden in light of the COVID-19 public health crisis. *Omari Faulkner et al. v. Virginia Dep't of Elections et al.*, CL-20-1456 (Va. Cir. Ct. March 25, 2020). A federal court in Wisconsin recently issued an injunction extending the deadline for online voter registration. In issuing the injunction, that court noted the “excruciating dilemma that will soon be faced by eligible voters who did not register by the March 18, 2020, deadline: either venture into public spaces, contrary to public directives and health guidelines or stay at home and lose the opportunity to vote.” *Democratic Party of Wisconsin et al. v. Bostelmann, et al.*, 20-CV-249-WMC (W.D. Wisc. March 20, 2020).

Plaintiffs are not seeking a general reprieve from Ohio’s statutory and constitutional requirements for initiated constitutional amendment ballot access. Plaintiffs seek only the relief

that is necessary to exercise and effectuate their rights in light of the current public health crisis. This Court has the authority to issue the relief requested which will allow Plaintiffs to continue to exercise their important and constitutionally protected rights.

## V. STANDARD FOR INJUNCTIVE RELIEF

Ohio courts consider four factors in determining whether to issue a preliminary injunction: (1) whether the moving party has demonstrated a substantial likelihood of prevailing on the merits of their claim; (2) whether the moving party will suffer irreparable injury in the absence of the injunctive relief requested; (3) whether injunctive relief will unjustifiably harm third parties; and (4) whether injunctive relief is in the public interest. *Valco Cincinnati, Inc. v. N & D Machining Serv., Inc.* (1986), 24 Ohio St.3d 41, 24 Ohio B. 83, 492 N.E.2d 814; *Schaller v. Rogers*, 2008 Ohio 4664, ¶ 30, 2008 Ohio App. LEXIS, 3774 (10th Dist.).

The facts averred in the Complaint and supporting Affidavit clearly demonstrate Plaintiffs' likelihood of success on the merits. Prior to March 16th, Plaintiffs were on course to realize the goal of their protected speech and petition activities: to place the minimum wage amendment proposed by the Petition on the 2020 general election ballot. The COVID-19 public health crisis has eliminated all the social fora in which Plaintiffs could effectively exercise their protected speech, assembly, and petitioning rights. COVID-19 has foreclosed any possibility that Plaintiffs will be able to collect sufficient in-person signatures to meet the 10% signature threshold by the July 1 deadline. Plaintiffs' rights under the Ohio Constitution to speak and associate for the purpose of circulating an initiative petition to be placed on the 2020 General Election ballot in the context of the COVID-19 crisis are not only unduly burdened by the state law requirements for ballot access—these rights are being foreclosed entirely at the present time. Under the rigorous “exacting scrutiny” standard established by the United State Supreme Court,

*Meyer v. Grant*, 486 U.S. at 421-422, Plaintiffs are likely to succeed on the merits of their argument that their rights have been violated.

Plaintiffs are additionally likely to succeed on the merits of their claim that their right to ballot access is being unduly burdened under the United States Supreme Court's *Anderson-Burdick* standard. Under this "flexible standard," *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), if the burden on ballot access is not severe, "the State's important regulatory interests are generally sufficient to justify" those restrictions. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). However, if the burden on ballot access rights is severe, those restrictions must be "narrowly drawn to advance a state interest of compelling importance." *Burdick* 504 U.S. 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). In the context of the public health crisis precipitated by the COVID-19 pandemic, the statutory and constitutional provisions which Plaintiffs have moved the Court to enjoin severely burden Plaintiffs rights, as they have the effect of completely foreclosing Plaintiffs from realizing their right to place the amendment proposed on the Petition on the 2020 General Election ballot. Because Plaintiffs' rights are being severely burdened, Defendant therefore must demonstrate that these regulations are "narrowly drawn to advance a compelling state interest," a burden which he is unable to meet. Therefore, under any applicable standard for judicial review, Plaintiffs are likely to succeed on the merits of their claim that the challenged restrictions unduly burden their rights.

Plaintiffs will suffer irreparable harm in the absence of immediate injunctive relief. At this juncture in the initiated constitutional amendment process, in the absence of the requested injunctive relief, Plaintiffs must immediately abandon the effort to place the Petition on the ballot. As attested in the affidavit of Chris Gallaway, petition circulation strategies which do not involve circulation at mass gatherings of individuals—which are now prohibited in Ohio—are

not a viable method of obtaining the required number of signatures to place a statewide initiative on the ballot. Gallaway Aff. ¶ 8. Further, during the present public health crisis, engaging in door-to-door or person-to-person petition circulation is not acceptable due to the health risk to petition circulators and signers. In the absence of injunctive relief, Plaintiffs would also suffer irreparable harm in the form of loss of significant amounts of money and other resources spent on the current organizing efforts made to date. These funds cannot be recouped.

Plaintiffs will suffer further irreparable harm absent injunctive relief because the timeline upon which the proposed increase in the state minimum wage to \$13 per hour is predicated upon passage at the 2020 General Election. The proposed amendment requires an increase in the minimum wage to \$9.60 effective January 1, 2021 and increases annually thereafter in equal increments to \$13 in 2025.

Additionally, and perhaps most importantly, Plaintiffs and all potential supporters of the Petition would suffer irreparable harm if they are prevented from voting on the Raise the Wage Ohio amendment to the Ohio Constitution at the 2020 General Election. Ohio residents currently face an unprecedented economic collapse, precipitated by the shuttering of businesses and economic activity under the State of Ohio's Orders in response to the COVID-19 pandemic. The economic fallout appears likely to extend months and potentially years into the future. The Petition offers Ohioans an opportunity to enact timely economic relief for families who are suffering.

No third parties will be harmed, and the requested relief will serve the public interest. Injunctive relief to ensure that Plaintiffs are able to exercise their right to place the Petition on the 2020 ballot will not harm any parties—once the Petition is placed on the ballot, Plaintiffs and other supporters of raising the minimum wage will make their case to the public and any

opponents will have the opportunity to make their case as well. The public interest is served by granting Plaintiffs the ability—as is their right under the Ohio Constitution—to place their proposed amendment on the 2020 ballot. This will give all Ohioans the opportunity, regardless of whether they support or oppose the Raise the Wage Ohio amendment, to have their voice heard and to grant them agency in their economic future and the economic future of the State of Ohio. In this time of crisis and uncertainty, no outcome could better serve the public interest.

## VI. CONCLUSION

The factors in this case weigh heavily in support of immediate injunctive relief. The COVID-19 public health crisis has effectively foreclosed Plaintiffs’ ability to comply with statutory and constitutional requirements for initiative petitions and to exercise their rights under the Ohio Constitution to freedom of speech and association and their right to place a citizen-initiated constitutional amendment on the ballot for the 2020 General Election. Unless Plaintiffs are immediately granted the relief requested, they will be forced to forego the exercise of their rights under the Ohio Constitution.

Respectfully submitted,

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