
**COMPLAINT FOR DECLARATORY JUDGMENT AND
PRELIMINARY AND PERMANENT INJUNCTIONS**

For their Complaint, Plaintiffs, CITIZENS IN CHARGE, REJECT H.B. 545 COMMITTEE, STEPHEN J. SCHALLER, ROBERT M. GRIESER, BRIDGETTE C. ROMAN, LAM TRANG, and CRAIG SILKO state the following claims and causes of action against Defendant JENNIFER BRUNNER, OHIO SECRETARY OF STATE:

INTRODUCTION

1. In this complaint Plaintiffs seek declaratory, and preliminary and permanent injunctive relief:

a. enjoining the Secretary from enforcing against Plaintiffs the requirement that proponents of a referendum petition submit a “summary” of their referendum before circulating petitions, for the reason that such requirement significantly reduces proponents’ constitutionally-allowed number of days for gathering signatures and thereby imposes a severe burden on Plaintiffs’ fundamental right to vote and on their rights to political speech and association, which imposition violates the First and Fourteenth Amendments;

b. enjoining the Secretary from enforcing against Plaintiffs the requirement that petition signatures be gathered from forty-four counties in an amount equal to at least three percent of the total votes cast in those counties in the previous gubernatorial election, for the reason that such requirement dilutes the vote of voters in densely populated counties in violation of the “one-man, one-vote” requirement of the Equal Protection Clause of the Fourteenth Amendment; and

c. enjoining the Secretary from enforcing against Plaintiffs the requirement that persons compensating others or being compensated for supervising, managing, or organizing a referendum petition effort file a statement with the Secretary before any signatures are obtained

or *before* the person is engaged, for the reason that such requirement is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment, and imposes a severe burden on Plaintiffs' fundamental right to vote and on their core rights to political speech and association, in violation of the First and Fourteenth Amendments.

PARTIES

2. Plaintiff CITIZENS IN CHARGE (CIC) is a Nebraska nonprofit corporation that seeks, both in Ohio and across the country, to protect and expand citizens' initiative and referendum rights. Among CIC's members and supporters are qualified electors of the State of Ohio who desire to vote on laws enacted by the General Assembly.

3. Plaintiff REJECT H.B. 545 COMMITTEE is an Ohio non-profit corporation registered as a ballot issue committee under R.C. Chapter 3517. The Reject H.B. 545 Committee recently completed circulation of a statewide referendum petition to order the submission of Section 3 of Amended House Bill 545 to Ohio electors for approval or rejection at the general election in November of 2008. This limited issue was certified for the November 4, 2008 ballot by Ohio Secretary of State Jennifer Brunner on October 23, 2008. The Committee desires to circulate another statewide referendum petition to order the submission of H.B. 545 in its entirety to Ohio electors for approval or rejection at the general election in November of 2009. Further, the Committee anticipates that if Section 3 of H.B. 545 is rejected by the voters, the Ohio legislature will enact a new law similar to H.B. 545. If that occurs, the Committee will attempt to refer that measure to the voters by referendum as well.

4. Plaintiffs STEPHEN J. SCHALLER, ROBERT M. GRIESER, and BRIDGETTE C. ROMAN are each qualified electors of Ohio who together constitute the committee designated pursuant to R.C. Section 3519.02 to represent the petitioners of the failed referendum petition on H.B. 545 (as elaborated in greater detail *infra*) and the referendum petition on Section

3 of H.B. 545. Plaintiffs Schaller, Grieser, and Roman each desire: (i) to persuade Ohio voters to sign a referendum petition to refer H.B. 545 in its entirety to Ohio electors at the general election in November of 2009, (ii) to educate Ohio voters about H.B. 545, to urge them to vote against it, and to associate with others who share these same political objectives, and (iii) to vote on the question of whether H.B. 545 (in its entirety) should be approved or rejected.

5. Plaintiff LAM TRANG is a qualified elector of the State of Ohio, who resides and is registered to vote in Franklin County. Mr. Trang signed the referendum petition to refer Section 3 of H.B. 545 to the voters for approval or rejection. Mr. Trang desires to sign a petition to refer H.B. 545 in its entirety, and to vote to approve or reject it.

6. Plaintiff CRAIG SILKO is a qualified elector of the State of Ohio, who resides and is registered to vote in Cuyahoga County. Mr. Silko signed the referendum petition to refer Section 3 of H.B. 545 to the voters for approval or rejection. Mr. Silko desires to sign a petition to refer H.B. 545 in its entirety, and to vote to approve or reject it.

7. Defendant JENNIFER BRUNNER is the Ohio Secretary of State and is named in this lawsuit as such in her official capacity. Pursuant to Ohio law, the Secretary's duties include reviewing and examining referendum petitions for compliance with Ohio law and, ultimately, certifying (or rejecting) the measure sought to be referred in the referendum petition for placement on the ballot.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, in that this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), because it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), because it seeks to secure equitable relief under Acts of Congress,

specifically, 42 U.S.C. § 1983 and 42 U.S.C. § 2000cc, that provide causes of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), because it is an action to secure declaratory relief; under 28 U.S.C. 2202, because it seeks to secure preliminary and permanent injunctive relief; and under 42 U.S.C. § 1988 in that Plaintiffs pray for relief regarding costs, including reasonable attorneys' fees.

9. Venue in this action is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, in that the Defendant is situated within this judicial district and division.

ALLEGATIONS IN SUPPORT OF ALL CLAIMS FOR RELIEF

H.B. 545

10. On May 20, 2008, the Ohio General Assembly passed H.B. 545. On June 2, 2008 the governor signed the bill into law and filed it with the Ohio Secretary of State.

11. H.B. 545 makes changes to certain consumer lending laws in Ohio.

12. In particular, H.B. 545 repeals existing laws regulating “check-cashing businesses” (O.R.C. § 1315.35 through O.R.C. § 1315.44) and enacts new provisions regulating “short term loans.” (O.R.C. § 1321.35 through O.R.C. § 1321.47). Although there are many differences between the two, the key difference is that the new law significantly restricts the total amount that lenders are permitted to charge for “short term loans.” For example, under the existing law, check-cashing businesses are permitted to charge a modest fee of up to \$15 on a two-week loan in the amount of \$100. Under the new law, the amount that may be charged on the same loan is less than \$1.

13. Additionally, H.B. 545 changes the previous definition of “interest” to include all charges and fees connected with a loan transaction (1321.35(C)). It forbids making loans over the telephone, by mail, or over the internet, (O.R.C. § O.R.C. § 1321.36 (B)) requiring that

borrowers be physically present at the business location (O.R.C. § 1321.36 (A)). The bill raises the fee for applying for a lender's license from \$500 to \$1,000 (O.R.C. § 1321.37(A)) and subjects such applicants to a fingerprint-based criminal record check. (O.R.C. § 1321.37 (B)). It requires lenders to post a minimum \$100,000 surety bond (O.R.C. § 1321.37(D)). The bill drops the maximum amount of a loan from \$800 to \$500 (O.R.C. § 1321.39(A)), sets the minimum repayment period at 31 days (O.R.C. § 1321.39(B), and requires the lender to offer an extended repayment plan which the borrower can choose to accept at anytime before the maturation of the loan (O.R.C. § 1321.39 (D)). It forbids lenders from bringing legal action against borrowers on the basis of a returned or dishonored instrument unless the borrower engaged in fraud (O.R.C. § 1321.41(N)). It forbids making more than two loans within ninety days unless the borrower has undergone a mandatory financial literacy program (O.R.C. § 1321.41(N)) and forbids, under any circumstances, making more than four loans to a borrower in a calendar year (O.R.C. § 1321.41 (R)). Finally, the bill requires the Superintendent to examine each lender's records at least once a year.

14. If the existing laws regulating check-cashing businesses (O.R.C. § 1315.35, *et al.*) are repealed, the check-cashing businesses will be forced out of the check-cashing business. If they are not repealed, Plaintiffs anticipate that the Ohio legislature will enact new (and perhaps even more restrictive) laws regulating check-cashing businesses.¹

15. The Committee desires to exercise their right of referendum, as guaranteed by the Ohio Constitution, so that the people will have the opportunity to exercise their constitutional right to review H.B. 545 in its entirety.

¹ See Siegel, Jim, *Push for Referendum: Payday Lenders File Far More Signatures Than Needed for Vote*, COLUMBUS DISPATCH (Sept. 1, 2008) ("Even if payday lenders win on Nov. 4, some legislators already are saying they would take aim at the industry again when they return after the election." (available at http://www.dispatchpolitics.com/live/content/local_news/stories/2008/09/01/copy/payday01x.ART_ART_09-01-08_B1_99B6QRA.html?adsec=politics&sid=101) (last checked October 23, 2008).

The Referendum Process in Ohio

The Constitutional Framework

16. The Ohio Constitution expressly reserves the right of referendum to the people. Indeed, in Article II, Section 1, the people have reserved expressly: “. . . the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly.”

17. The basic requirements for a referendum petition are set forth in Article II, Sections 1c and 1g. To submit a law enacted by the General Assembly to the electors, referendum proponents must submit a petition containing the signatures of six percent of the electors within 90 days after the law has been filed by the Governor with the Ohio Secretary of State.

18. In a particular year, the number of signatures that a referendum petition must contain is equal to the total number of votes cast for the office of governor at the immediately preceding election for that office. For example, in 2008 (and 2009 and 2010), the number of signatures that must be submitted to qualify a referendum petition for the ballot is 241,366.²

19. If the referendum petition is submitted prior to 60 days before the next succeeding general election, the referendum is submitted to the voters at that election. If the petition is submitted subsequent to 60 days before the next general election, the referendum is submitted to the voters at the general election in the following year.

Procedural Requirements

20. Section 1g, Article II of the Ohio Constitution contains detailed procedural requirements for referendum petitions, including the following:

² See <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2006ElectionsResults/061107GovPercentChart.aspx> (last checked October 23, 2008).

a. A referendum petition may be presented in separate parts, but each part must contain a full and correct copy of the title and text of the law sought to be referred.

b. Each signer must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence.

c. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature.

d. The referendum petition and the signatures on the referendum part petitions are presumed to be "in all respects sufficient," unless they are proved otherwise not later than 40 days before the election, in which case the petitioner is afforded an additional 10 days to submit additional signatures.

21. Section 1g also provides in exquisite detail the method of preparing arguments and explanations of the law to be referred, by proponents and opponents of the law, and provides for the full text of the law along with the arguments and explanations to be published by the Ohio Secretary of State in newspapers of general circulation in every county of Ohio.

County Distribution Rule

22. In addition to requiring this total number of signatures, Section 1g further requires that the referendum petition bear the signatures of at least three percent of the electors from no less than 44 of the 88 counties in the state.

23. Similar to the standard for the total number of signatures, for a county to be included as one of the 44 counties (*i.e.*, for its "vote" as a county to count) the number of signatures that must be submitted from a county is based on the total number of votes for governor in that county that were cast in the last gubernatorial election.

24. For example, for the “vote” of the electors in Cuyahoga County to count toward satisfying the county distribution rule for a referendum petition in 2008, the referendum petition must contain at least 13,623 valid signatures of electors from that county.

25. However, for the “vote” of the electors of Vinton County to count toward satisfying the county distribution rule for a referendum petition in 2008, the referendum petition need contain only 133 valid signatures of electors from that county.

Statutes Regulating the Referendum Process

26. In addition to the detailed and “self executing” provisions in Section 1g, that Section also grants limited authority to the General Assembly to enact laws facilitating, but not restricting, the right of referendum. Indeed, Section 1g concludes, as follows:

The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

27. Pursuant to this limited grant of authority, the Ohio General Assembly has enacted legislation (purportedly) to facilitate the statewide referendum process. The legislation is codified in Chapter 3519 of the Ohio Revised Code. The General Assembly has also enacted several general petition requirements in Chapter 3501 that apply to a statewide referendum petition.

28. Although certain statutes in these Chapters facilitate the reserved power of referendum, other such statutes restrict it on their face. Indeed, at the heart of this lawsuit are several of those statutes, discussed below.

Summary Scheme

29. Section 3519.01(B) requires proponents of a referendum petition, *before they begin circulating their referendum petition*, first to submit a preliminary petition containing at

least 1,000 signatures of Ohio electors and a proposed “summary” of the law sought to be referred by referendum to the Secretary and Attorney General.

30. This “Summary” Statute provides:

(B) (1) Whoever seeks to file a referendum petition against any law ... shall, by a written petition signed by one thousand qualified electors, submit the measure to be referred and a summary of it to the secretary of state and, on the same day or within one business day before or after that day, submit a copy of the petition, measure, and summary to the attorney general.

(2) Not later than ten business days after receiving the petition, measure, and summary, the secretary of state shall do both of the following:

(a) Have the validity of the signatures on the petition verified;

(b) After comparing the text of the measure to be referred with the copy of the enrolled act on file in the secretary of state’s office containing the law, section, or item of law, determine whether the text is correct and, if it is, so certify.

(3) Not later than ten business days after receiving a copy of the petition, measure, and summary, the attorney general shall examine the summary and, if in the attorney general’s opinion, the summary is a fair and truthful statement of the measure to be referred, so certify.

31. Other sections of Chapter 3519 give effect to the Summary Statute in terms of a referendum proponent’s eligibility to qualify a referendum petition for the ballot. Section 3519.05 requires that the Attorney General’s certification appear on the referendum petition, and Section 3519.06 states that a referendum petition is not properly verified if it does not contain, *inter alia*, the summary and certification required by Sections 3519.01(B) and 3519.05. Finally, Section 3519.15 provides that the signatures on part-petitions that are not properly verified are not to be counted by the Secretary. (These statutes, along with the Summary Statute, are referred to as the “Summary Scheme.”)

32. The Ohio Constitution does not require a referendum petition to include a summary certified by the Attorney General, nor does it require the petition to be certified by the Secretary. To the contrary, Article II, Section 1c of the Ohio Constitution states:

When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law ... be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law ... at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. (Emphasis added.)

33. Despite this clear language, the Secretary refuses to accept referendum petitions for filing unless they contain both the Secretary's and the Attorney General's certification, neither of which are required by the Ohio Constitution.

Compensation Statement Requirement

34. An additional burden the General Assembly has imposed on the right of referendum is found in Section 3501.381 of the Revised Code. This statute provides:

(A) (1) Any person who will receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a ... statewide referendum petition shall file a statement to that effect with the office of the secretary of state before any signatures are obtained for the petition or before the person is engaged to supervise, manage, or otherwise organize the effort to obtain signatures for the petition, whichever is later.

(2) Any person who will compensate a person for supervising, managing, or otherwise organizing any effort to obtain signatures for a ... statewide referendum petition shall file a statement to that effect with the office of the secretary of state before any signatures are obtained for the petition or before the person engages a person to supervise, manage, or otherwise organize the effort to obtain signatures for the petition, whichever is later.

(B) The secretary of state shall prescribe the form and content of the statements required under division (A) of this section.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree, and the petition for which a person was compensated for supervising, managing, or otherwise organizing the effort to obtain signatures shall be deemed invalid.

35. According to the Ohio Attorney General's Office, this statute "is part of Ohio's 'arsenal' to 'police lawbreakers among petitions circulators.' It allows the State to identify those who will be responsible for supervising or organizing signature gathering efforts, and thereby hold them accountable for any fraudulent practices ..."³

36. The statute was enacted as part of Am. Sub. H.B. 1. According to the Ohio Attorney General's Office, the statute "works hand-in-hand" with Section 3599.111, which was also enacted as part of H.B. 1. This section prohibits any person from paying petition circulators on a "per signature" or "per volume" basis and mandates that paid circulators be paid only on the basis of time worked.⁴

37. This same section, however, was struck down by this Court in *Citizens for Tax Reform v. Deters*, in which the Court held that the section imposes a severe burden on the political rights of petition proponents, a burden neither justified by a compelling state interest nor narrowly tailored to achieve any such interest. The Court declared the statute unconstitutional and enjoined the State from enforcing it.⁵ That decision has recently been upheld by the Sixth Circuit Court of Appeals.⁶

38. As required by the statute, the Secretary has prescribed a form—identified by the Secretary as "Form 15"—to facilitate compliance with the statute.⁷

³ Ohio Attorney General Opinion No. 2006-004, at 4 (available at <http://www.ag.state.oh.us/legal/opinions/2006/2006-004.pdf>) (last checked on October 23, 2008).

⁴ Ohio AG Op. 2006-004, at 3.

⁵ 462 F. Supp.2d 827 (S.D. Ohio 2006).

⁶ 518 F.3d 375 (6th Cir. 2008). The State's Petition for Writ of *Certiorari* is pending before the United States Supreme Court.

⁷ Form 15 is available on the Secretary's website at <http://www.sos.state.oh.us/sos/upload/elections/forms/15.pdf>

The Committee's Referendum Effort

39. As noted above, H.B. 545 was signed by the governor on June 2, 2008. Thus, under Section 1c of Article II, in order for H.B. 545 in its entirety to be submitted to the electors for approval or rejection at the general election in 2008, the Committee needed to file with the Secretary, by no later than September 1, 2008, a referendum petition containing the valid signatures of at least 241,366 Ohio electors.

40. Based on the average validity rates for signatures on statewide initiative and referendum petitions over the past few years, the Committee estimated that they would need to collect at least 566,000 raw signatures of (purported) Ohio electors to qualify the referendum for the ballot.

The Committee's Efforts to Comply with the Summary Statute

41. Before H.B. 545 was signed and filed by the Governor on June 2, the Committee had already engaged a political consulting firm that specializes in statewide petition efforts. On or about June 3, 2008, the Committee began collecting the 1,000 signatures for their summary petition.

42. On June 9, the Committee submitted the summary petition to the Secretary of State. On the same day, the Committee submitted a copy of the summary petition to the Attorney General, as required by the Summary Statute. (As of this date, the Committee had already lost 6 of the constitutionally-allotted 90 days in which they had to collect 241,366 valid signatures.)

43. On June 19, the Secretary notified the Committee by letter that the first summary petition contained 1,000 valid signatures of Ohio electors and that the copy of H.B. 545 attached to the first summary petition was identical to the law on file with her office.

44. Also on June 19, the Attorney General notified the Committee by letter that she was refusing to certify their proposed summary because it was too short. The Attorney General

had taken nine (of the ten) business days allowed by the Statute to notify Plaintiffs of the rejection.

45. As a result of the Attorney General's denial, the Committee had to start the summary petition process all over again, and had, therefore, to begin collecting another 1,000 signatures. As of June 19, Plaintiffs had only 73 days to collect 241,366 valid signatures.

46. On June 25 and June 27, respectively, the Committee submitted two additional summary petitions, each of which contained the requisite 1,000 signatures of Ohio electors, to the Secretary and Attorney General.

47. Consistent with the Committee's desire to order the submission of H.B. 545 in its entirety, the Committee attempted in its second summary petition to satisfy the Attorney General's concern about the first summary: that it wasn't as comprehensive as it needed to be (in the AG's discretion) to be fair and truthful statement of the measure.

48. However, the Committee, anxious to get *something* approved, submitted with its second summary petition a *third* petition, which proposed only to repeal Section 3 of H.B. 545.

49. Section 3 is very short, and, accordingly, the Committee contemplated that the Attorney General, in exercising her unbridled discretion to approve or reject a proposed summary, would have fewer bases upon which to reject the summary of a very short section of H.B. 545.

50. On July 2, the Committee hand-delivered a letter to the Attorney General requesting that her office notify the Committee of the approval or rejection of the second and third proposed summaries immediately. The same day, the Attorney General responded in writing, indicating that she would likely take the full ten business days to issue her decision.⁸

⁸ On July 7, the Committee filed a lawsuit in the Franklin County Court of Common Pleas, challenging the Summary Scheme, both on its face and as applied, under the Ohio constitution. The Committee moved for a temporary restraining order and preliminary injunction. The trial court heard argument (off-the-record) on the TRO motion and issued a one-page opinion denying both the TRO motion and the preliminary injunction motion. On

51. On July 10, the Attorney General notified the Committee that she had rejected the second summary petition, this time because the proposed summary was too long. On the same day, the Secretary notified the Committee that the second summary petition contained 1,000 valid signatures of Ohio electors and that the copy of H.B. 545 attached to the second summary petition was identical to the law on file with her office.

52. On July 10, the Attorney General notified the Committee that she had approved the third summary petition. On July 11, the Secretary notified the Committee that the third summary petition contained 1,000 valid signatures of Ohio electors and that the copy of Section 3 of H.B. 545 attached to the third summary petition was identical to that section of the law on file with her office.

53. Thus, it was not until July 11 that the that the Attorney General finally gave the Committee permission to begin circulating its back-up referendum petition, which, instead of addressing the entire law as the Committee desired, was limited to Section 3 of H.B. 545.

54. As reflected in the following table, by the time the Attorney General and Secretary finally approved one of the Committee's three proposed summaries, the Committee had only 51 days, out of 90, to collect nearly 250,000 valid signatures of Ohio electors.

Summary Petition Timeline

<i>Date</i>	<i>Action</i>	<i>Days remaining</i>
June 2	Governor signed H.B. 545 and filed with Secretary	90
June 3	Committee begins collecting signatures for first summary petition	89
June 9	Committee submits first summary petition to Secretary and Attorney General	83
June 19	Attorney General notifies Committee that first summary is too short	73

appeal, the Tenth District Court of Appeals affirmed the trial court's denial of the Committee's motion for preliminary injunction. See *Schaller v. Rogers*, 2008-Ohio-4464, 2008 Ohio App. LEXIS 3774 (10th App. Dist. Sept. 4, 2008).

June 25	Committee submits second summary petition to Secretary and Attorney General	67
June 27	Committee submits third summary petition to Secretary and Attorney General	65
July 2	Committee sends letter to Attorney General asking for expedited decision on second and third summary petitions	60
July 10	Attorney General notifies Committee that second summary is too long, but that third summary is "fair and truthful"	52
July 11	Secretary of State notifies Committee that third summary petition had sufficient number of signatures	51

55. On August 31, 2008, the Committee submitted its back-up referendum petition to the Secretary. This petition purported to contain the signatures of approximately 400,000 Ohio electors.

56. The cost to collect that number of signatures in 51 days was more substantially greater than what it would have cost if the Committee had the full 90 days as guaranteed by the Ohio Constitution.

57. On September 23, 2008, the Secretary notified the Committee that it had submitted 185,729 valid signatures, and that it had 10 days to submit supplemental signatures.

58. On October 1, 2008, the Committee submitted a supplemental referendum petition purporting to contain the signatures of approximately 220,000 Ohio electors.

59. On October 23, 2008, the Committee was notified that its referendum has been certified to the ballot, with a total of 279,174 valid signatures.

The Committee's Efforts to Comply with the Compensation Statement Requirement

60. In early June, the Committee began filing its Form 15s with the Secretary.

61. All total, the Committee filed approximately 1,000 Form 15s.

62. On September 8, a group opposing the referendum filed a protest with the Secretary alleging that one of the petition firms that the Committee had hired had failed to file a Form 15.

63. Because that firm had been compensated by the Committee, and had compensated others, for supervising, managing, or otherwise organizing the referendum effort, the firm was required to file Form 15.

64. The Committee's agreement with the firm specified that the firm was required to file all necessary forms with the Secretary, including Form 15.

65. Nonetheless, the firm did not file Form 15 with the Secretary.

66. In her ruling on the protest, the Secretary invalidated nearly 13,000 signatures due to the failure of the firm to file Form 15. Moreover, the Committee lost an additional 85,000 unverified signatures that had been collected by circulators supervised by the firm but had not yet been submitted by the time the protest was adjudicated.

COUNT ONE
(CHALLENGE TO SUMMARY SCHEME
UNDER 42 U.S.C. § 1983)

67. Plaintiffs restate the allegations in Paragraphs 1 through 66, as if fully rewritten herein.

68. As alleged above, the Statutes that comprise the Summary Scheme require referendum proponents, before they may begin collecting signatures for that petition, but after the constitutionally-prescribed time period for submission of a referendum petition has already begun, to obtain approval of a "summary" of the measure to be referred from the Ohio Attorney General.

LEGAL ALLEGATIONS FOR COUNT ONE

69. All alleged acts of the Secretary, by and through her respective officers, agents, servants, employees, and persons acting at her behest, were performed and continue to be performed under the color and pretense of state law.

70. As alleged in greater detail below, the Summary Scheme, both on its face and as applied, violates Plaintiffs' federal constitutional rights, including their fundamental right to vote, as well as their fundamental rights to freedom of speech and association, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

71. As a direct result of the Secretary's violation of Plaintiffs' federal constitutional rights, alleged below, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

COUNT ONE:
FIRST CLAIM FOR RELIEF

*On Its Face, the Summary Scheme Violates Plaintiff Voters'
Fundamental Right to Vote, as Guaranteed by the Fourteenth Amendment*

72. Plaintiffs restate the allegations in Paragraphs 1 through 71, as if fully rewritten herein.

73. The Summary Scheme imposes a severe burden on the Plaintiff voters' fundamental right to vote. Indeed, on its face, the Summary Scheme reduces the constitutionally-mandated 90-day period for signature gathering by a minimum of 15 days, from 90 to 75.

74. If the Attorney General rejects a proposed summary, the 90-day signature-collection period is further reduced by an additional 15 to 20 days.

75. Between 1929 and 1912 when the Ohio Constitution was amended to include the right of referendum, nine referendum petitions qualified for the ballot. However, since 1929, when a summary requirement first was imposed, only *two* referendum petitions have qualified

for the ballot. In other words, in the 17 years before the requirement was imposed, at least one referendum petition qualified for the ballot every other year. By way of contrast, in the nearly 80 years since the General Assembly imposed this requirement, petitioners have only been able to qualify two.⁹

76. The Summary Scheme imposes a severe and unjustified burden on Plaintiffs' fundamental right to vote as guaranteed by the Due Process Clause of the Fourteenth Amendment.

COUNT ONE:
SECOND CLAIM FOR RELIEF

*As Applied, the Summary Scheme Violates Plaintiff Voters'
Fundamental Right to Vote, as Guaranteed by the Fourteenth Amendment*

77. Plaintiffs restate the allegations in Paragraphs 1 through 76, as if fully rewritten herein.

78. As applied, the Summary Scheme imposes a severe burden on Plaintiff voters' fundamental right to vote. Indeed, here, the Attorney General rejected the Committee's first *two* proposed summaries, thereby reducing the number of days for gathering signatures to 51, and effectively eliminating the Committee's ability to qualify a referendum petition on H.B. in its entirety.

79. As a direct result of the Attorney General's application of the Summary Statute to the Committee's proposed referendum effort, the Plaintiff voters have been denied the right to vote on H.B. 545 in its entirety.

80. Thus, as applied, the Summary Scheme imposes a severe and unjustified burden on Plaintiffs' fundamental right to vote as guaranteed by the Due Process Clause of the Fourteenth Amendment.

⁹ Despite these statistics, in 2006, the legislature increased the signature requirement for summary petitions from 100 to 1,000.

COUNT ONE:
THIRD CLAIM FOR RELIEF

*On Its Face, the Summary Scheme Violates Plaintiffs' Rights to the
Freedom of Speech and Association, as Guaranteed by the First Amendment*

81. Plaintiffs restate the allegations in Paragraphs 1 through 80, as if set forth fully herein.

82. On its face, the Summary Scheme imposes unreasonable and severe burdens on Plaintiffs' core political speech and association rights by:

(a) dramatically reducing the number of days that referendum proponents can convey their message and attempt to persuade voters to favor political change;

(b) significantly increasing the cost of the referendum petition effort;

(c) rendering it less likely that referendum proponents will garner the number of signatures necessary to qualify a referendum effort for the ballot; and thus,

(d) limiting referendum proponents' ability to make a referendum effort the focus of statewide discussion.

83. The imposition of these burdens on Plaintiffs' First Amendment freedom of speech and freedom of association rights is unjustified.

84. The Summary Scheme, to the extent that it: (i) requires referendum proponents to obtain the Attorney General's certification of the content of a "summary" of the bill *before* they are permitted to exercise their constitutional right to referendum; (ii) affords the Attorney General unfettered discretion in deciding whether to certify the proposed "summary;" and, (iii) does not include appropriate procedural protections, constitutes a prior restraint on Plaintiffs' freedom of speech in violation of the First and Fourteenth Amendments.

85. Accordingly, the Summary Scheme on its face violates Plaintiffs' rights to freedom of speech and freedom of association under the First and Fourteenth Amendments to the United States Constitution.

COUNT ONE:
FOURTH CLAIM FOR RELIEF

*As Applied, the Summary Scheme Violates the Committee's Rights to
the Freedom of Speech and Association, as Guaranteed by the First Amendment*

86. Plaintiffs restate the allegations in Paragraphs 1 through 85, as if set forth fully herein.

87. As applied, the Summary Scheme imposes unreasonable and severe burdens on Plaintiffs' core political speech and association rights by:

(a) taking from the Committee nearly one half of the constitutionally-provided days in which it could convey its message and attempt to persuade voters in favor of political change on H.B. 545;

(b) significantly increasing the cost of the alternative referendum petition effort (on Section 3 only);

(c) eliminating the Committee's ability to garner the number of signatures it needed to qualify its referendum effort on H.B. 545 for the ballot; and thus,

(d) eliminating the Committee's ability to make the referendum effort on H.B. 545 the focus of statewide discussion for the 2008 general election.

88. The imposition of these burdens on the Committee's First Amendment rights to the freedom of speech and freedom of association was unjustified.

89. The Summary Scheme, to the extent that it: (i) required the Committee to obtain the Attorney General's certification of the content of a "summary" of the bill *before* they were permitted to exercise their constitutional right to referendum; (ii) afforded the Attorney General

unfettered discretion to use up additional time and ultimately reject two of the proposed “summaries;” and, (iii) did not include appropriate procedural protections against such abuses, constituted a prior restraint on Plaintiffs’ freedom of speech in violation of the First and Fourteenth Amendments.

90. Accordingly, as applied, the Summary Scheme violated Plaintiffs’ rights to the freedom of speech and freedom of association under the First and Fourteenth Amendments to the United States Constitution.

COUNT TWO
(CHALLENGE TO COUNTY DISTRIBUTION RULE
UNDER 42 U.S.C. § 1983)

91. Plaintiffs restate the allegations in Paragraphs 1 through 90, as if fully rewritten herein.

92. As previously alleged, Article II, Section 1g of the Ohio Constitution requires Plaintiffs to gain the support of electors equal to three percent of the total number of qualified electors who voted in the 2006 gubernatorial election in at least one half of Ohio’s eighty-eight counties. (This requirement is hereinafter referred to as the “county distribution rule.”)

93. According to the Ohio Department of Development’s 2007 Population estimate (the “ODD estimate”), there are approximately 11,466,917 people who live in Ohio.

94. According to the Secretary, as of October 6, 2008, there are 8,162,815 registered voters in Ohio.

95. Ohio’s population is unevenly distributed throughout its 88 counties.

96. Indeed, according to the ODD estimate, 38% of Ohio’s population lives in just its six largest counties; 51% lives in just the largest ten.

97. In the 2006 Ohio gubernatorial election, 4,184,072 Ohio electors voted.

98. Based on that number, for a referendum petition to qualify for the ballot, it must contain the signatures of 241,366 Ohio electors. In addition it must obtain the “vote” of 44 of Ohio’s 88 counties.

99. For example, 373,258 electors in Franklin County voted in the 2006 election; therefore, in order for the “vote” of those electors who signed the Committee’s referendum petition to count for purposes of satisfying the county distribution rule, 11,198 electors from that county must have signed the petition.

100. But in Noble County, where only 5,071 votes were cast in 2006, the “vote” of the electors who signed the Committee’s referendum petition will count toward satisfaction of the county distribution rule if only 152 electors signed the petition.

LEGAL ALLEGATIONS FOR COUNT TWO

101. All alleged acts of the Secretary, by and through her respective officers, agents, servants, employees, and persons acting at her behest, were done and continue to be done under the color and pretense of state law.

102. As alleged in greater detail below, the county distribution rule violates Plaintiffs’ federal constitutional rights.

103. As a direct result of the Secretary’s violation of Plaintiffs’ federal constitutional rights, as alleged below, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

COUNT TWO:
CLAIM FOR RELIEF

*The County Distribution Rule Violates Plaintiffs' Rights to the
Equal Protection of the Laws, as Guaranteed by the Fourteenth Amendment*

104. Plaintiffs restate the allegations in Paragraphs 1 through 103, as if fully rewritten herein.

105. The county distribution rule, by assigning unevenly weighted participatory value in the referendum process in inverse relation to the population of the county in which the voter happens to reside, affords preferential treatment to residents of sparsely populated counties.

106. This disparate treatment of voters, based solely on their county of residence, dilutes the vote of electors in more densely populated counties, including Plaintiffs Trang and Silko, which dilution violates the "one-man, one-vote" requirement of the Equal Protection Clause of the Fourteenth Amendment.

107. The county distribution rule is not narrowly tailored to further a compelling government interest.

COUNT THREE
(CHALLENGE TO COMPENSATION STATEMENT
UNDER 42 U.S.C. § 1983)

108. Plaintiffs restate the allegations in Paragraphs 1 through 106, as if fully rewritten herein.

109. As noted above, O.R.C. § 3501.381 requires that any person who will compensate another person, or who will receive compensation, for supervising, managing, or otherwise organizing an effort to gather signatures for a statewide referendum petition, must file a statement to that effect either before any signatures are collected for the petition, or before the person is engaged.

LEGAL ALLEGATIONS FOR COUNT THREE

110. All alleged acts of the Secretary, by and through her respective officers, agents, servants, employees, and persons acting at her behest, were done and continue to be done under the color and pretense of state law.

111. As alleged in greater detail below, the Form 15 requirement violates Plaintiffs' federal constitutional rights, including the fundamental right to vote, the fundamental rights to freedom of speech and association, and the right to due process of law, all of which guaranteed by the First and Fourteenth Amendments to the United States Constitution.

112. As a direct result of the Secretary's violation of Plaintiffs' federal constitutional rights, as alleged below, Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

COUNT THREE:
FIRST CLAIM FOR RELIEF

*On Its Face, the Compensation Statement Statute Violates Plaintiffs' Rights to
Due Process of Law, as Guaranteed by the Fourteenth Amendment*

113. Plaintiffs restate the allegations in Paragraphs 1 through 112, as if fully rewritten herein.

114. The Compensation Statement statute is unconstitutionally vague and, for this reason, violates Plaintiffs' First and Fourteenth Amendment rights to due process. The statute's vagueness stems from its failure: (i) to define sufficiently the terms and standards for a valid compensation statement or the penalty for violation of the statute, and (ii) to protect against arbitrary and discriminatory enforcement by the Secretary.

115. The statute is arbitrary and devoid of objective standards, and it affords unbridled discretion to the Secretary to decide whether to grant or deny a statewide referendum petition

access to the ballot, thereby allowing the Secretary to selectively deny ballot access for politically-motivated or other illegitimate reasons in violation of Plaintiffs' rights to due process.

116. The Compensation Statement statute is not narrowly tailored to achieve a compelling government interest.

COUNT THREE:
SECOND CLAIM FOR RELIEF

On Its Face, the Compensation Statement Statute Violates Plaintiffs' Fundamental Right to Vote, as Guaranteed by the Fourteenth Amendment

117. Plaintiffs restate the allegations in Paragraphs 1 through 116, as if fully rewritten herein.

118. The Compensation Statement statute, to the extent it may be interpreted to require invalidation of an entire referendum petition for noncompliance, violates Plaintiffs' right to refer laws to the voters by referendum and the voters' right to vote on such laws, in violation of Plaintiffs' fundamental right to vote as guaranteed by the Fourteenth Amendment.

119. The penalty for violation of the Compensation Statement statute is not narrowly tailored to achieve a compelling government interest.

COUNT THREE:
THIRD CLAIM FOR RELIEF

On Its Face, the Compensation Statement Statute Violates Plaintiffs' Rights to the Freedom of Speech and Association, as Guaranteed by the First Amendment

120. Plaintiffs restate the allegations in Paragraphs 1 through 119, as if fully rewritten herein.

121. The Compensation Statement statute requires a person who will compensate or be compensated for supervising, managing, or otherwise organizing an initiative or referendum petition effort to file a statement before petitions are circulated. By doing so, the statute imposes

a severe and unjustified burden on the core political speech and association rights of initiative and referendum proponents, in violation of the First Amendment.

122. The statute, to the extent it prescribes criminal penalties for noncompliance, has a chilling effect and imposes a severe and unjustified burden upon the core political speech and association rights of initiative and referendum proponents, in violation of the First Amendment.

123. The Compensation Statement statute is not narrowly tailored to achieve a compelling government interest.

WHEREFORE, Plaintiffs pray for judgment against Defendant and ask that this Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Declare, pursuant to 28 U.S.C. § 2201, on Count One of Plaintiffs' Complaint, that the Statutes comprising the Summary Scheme, both on their face and as applied to Plaintiffs, violate the First and Fourteenth Amendments to the United States Constitution;
- C. Declare, pursuant to 28 U.S.C. § 2201, on Count Two of Plaintiffs' Complaint, that the county distribution rule in Article II, Section 1g of the Ohio Constitution violate the Fourteenth Amendment to the United States Constitution;
- D. Declare, pursuant to 28 U.S.C. § 2201, on Count Three of Plaintiffs' Complaint, that the Compensation Statement Statute, on its face, violates the First and Fourteenth Amendments to the United States Constitution;
- E. Preliminarily and permanently enjoin the Secretary, pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. 1983, on Count One of Plaintiffs' Complaint,

from enforcing the Summary Scheme against Plaintiffs, and order her to extend the deadline by which Plaintiffs must submit a referendum petition on H.B. 545 in its entirety to 90 days from the date of final judgment on Count One;

- F. Preliminarily and permanently enjoin the Secretary, pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. 1983, on Count Two of Plaintiffs' Complaint, from enforcing the county distribution rule in Article II, Section 1g of the Ohio Constitution against Plaintiffs;
- G. Preliminarily and permanently enjoin the Secretary, pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. 1983, on Count Three of Plaintiffs' Complaint, from enforcing the Compensation Statement statute against Plaintiffs;
- H. Award Plaintiffs, pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d) and other applicable laws, their reasonable attorneys' fees and costs; and
- I. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ William M. Todd

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