

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CITIZENS IN CHARGE, INC.,	:	Case No.
	:	
OHIOANS FOR WORKPLACE FREEDOM,	:	
	:	Judge
CHRISTOPHER LITTLETON	:	
	:	
and	:	VERIFIED COMPLAINT
	:	
CINCINNATI FOR PENSION REFORM,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Hon. JON A. HUSTED	:	
Ohio Secretary of State	:	
180 E. Broad Street, Floor 16	:	
Columbus, OH 43215	:	
	:	
Defendant.	:	

Now come Plaintiffs, CITIZENS IN CHARGE, INC., OHIOANS FOR WORKPLACE FREEDOM, CINCINNATI FOR PENSION REFORM, and CHRISTOPHER LITTLETON (collectively, the "Plaintiffs"), and for their Complaint against OHIO SECRETARY OF STATE JON A. HUSTED ("defendant") allege as follows:

INTRODUCTION

1. Political “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.”¹ And the First Amendment affords the broadest protection to such political expression in order “to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”² Although First Amendment protections are not confined to “the exposition of ideas,”³ “there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. . . .”⁴

2. This action challenges the constitutionality of Ohio Rev. Code § 3503.06(C)(1)(a) which prohibits any person from circulating any petition in the State of Ohio, other than a nominating petition for presidential electors, unless such person is, *inter alia*, a resident of the State of Ohio.

3. The foregoing prohibition in Ohio Rev. Code § 3503.06(C)(1)(a) impermissibly and unconstitutionally infringes upon the core First Amendment rights of free speech and freedom of association of the Plaintiffs and their members, as well as others not presently before the Court.

4. This action further challenges the constitutionality of R.C. 3519.16(F), which prohibits petition circulation by certain Ohioans at certain critical times in the election process.

5. This is an action for declaratory judgment, preliminary and permanent injunction, and nominal damages under 42 U.S.C. §1983 arising from the unconstitutional policies above and below.

6. As a result of the enforcement policies of the Defendant, Plaintiffs have suffered and will continue to suffer irreparable harm unless the Defendant is immediately enjoined from restricting their protected speech in this manner.

PARTIES

7. Each Plaintiff is an organization comprised of individuals who has recently, is currently, or has concrete plans in the near future to operate initiative petition efforts to place ballot issues before Ohio voters.

¹ *Citizens United v. FEC*, 130 S.Ct. at 898 (citing *Buckley*, 424 U.S. at 14–15, 96 S.Ct. 612 (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.”)).

² *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308 (1957).

³ *Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 667 (1948).

⁴ *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437 (1966).

8. Plaintiff Citizens in Charge is a 501(c)(4) advocacy organization with a mission of "expanding the initiative and referendum process," and diminishing "relentless legislative attacks on petition rights," and "open[ing] up the initiative, referendum and recall process for greater use by citizens."⁵ To do so, "[t]he organization works with activists, legislators, media, opinion leaders and voters to protect the initiative and referendum process where it exists in 26 states," including Ohio.⁶

9. Citizens in Charge maintains concrete plans to pursue a statewide initiative to improve Ohio's initiative process, much as the organization has done in Washington state, where it spearheaded and contributed over \$200,000 to Initiative 517, the "Protect the Initiative Act," which will appear on the November 2013 ballot.

10. Plaintiff Cincinnati for Pension Reform ("CPR") is an Ohio non-profit corporation registered as a ballot issue political action committee under Chapter 3517 of the Ohio Revised Code.

11. CPR is the sponsor of an initiative petition effort proposing an amendment to the Charter of the City of Cincinnati concerning the City's retirement system that will be submitted to Cincinnati voters for their approval or rejection at the upcoming general election on November 5, 2013.

12. To gather the signatures necessary to qualify its pension reform issue for the ballot, CPR was required to undertake additional expenses to comply with Ohio's prohibition on non-resident initiative petition circulations.

13. Plaintiff Ohioans for Workplace Freedom, Inc., ("OWF") is an Ohio non-profit corporation registered as a ballot issue political action committee under Chapter 3517 of the Ohio Revised Code. OWF is in the process of collecting signatures on a petition for a proposed amendment to the Ohio Constitution known as the Ohio Workplace Freedom Amendment. This Amendment would guarantee the freedom of Ohioans to choose whether to participate in a labor organization as a condition of employment.

14. Plaintiff Ohioans for Workplace Freedom is currently circulating initiative petitions to place the Ohio Workplace Freedom Amendment on the November 2014 ballot.

⁵ See <http://www.citizensincharge.org/about-us/cic>. Last checked September 9, 2013.

⁶ Id.

15. OWF has already collected well in excess of 100,000 signatures, desires to collect as many signatures as possible, and intends to use non-resident petition circulators.
16. Non-residents have circulated OWF petitions, collecting signatures in the process, and OWF desires to submit those petitions and signatures to the Ohio Secretary of State in July of 2014.
17. In the process of gathering signatures OWF desires to effectively advocate for the passage of the initiative itself and discuss the initiative with their fellow citizens.
18. Both OWF and CPR have been either injured or are presently threatened with injury caused by R.C. 3503.06.
19. Plaintiff Christopher Littleton is a member of OWF as well as the committee representing the Ohio Workplace Freedom petition and a campaign consultant for CPR.
20. Mr. Littleton has initiated ballot issues in the past, including the Ohio Health Care Freedom Amendment, and intends to initiate ballot issues in the future. In doing so, he desires, as he has done in the past, to associate with Arno Petition Consultants, or another out-of-state petition circulation firm.
21. Defendant Ohio Secretary of State Jon Husted, sued in his individual and official capacities, is Ohio's chief elections official, and has been at all times relevant to the facts at issue in this case.
22. The Secretary of State enforces Ohio's election laws, oversees the elections process, and appoints the members of boards of elections in each of Ohio's 88 counties. The Secretary of State supervises the administration of election laws; reviews statewide initiative and referendum petitions; investigates election fraud and irregularities; and trains election officials.
23. The Secretary of State has the prerogative, if not the duty, to abstain from enforcing elections regulations that violate the state and/or federal constitution.
24. In 2009, after the Sixth Circuit Court of Appeals declared unconstitutional Ohio's prohibition on petition circulation (also known as "signature gathering") by residents of other states, at least as to presidential nominating petitions, then-Secretary of State Jennifer Brunner issued a directive culminating with the statements "I conclude that the residency requirement for circulators of initiative and referendum petitions in R.C. 3503.06(B)(1)

is unenforceable," and "no Ohio board of elections may invalidate a candidate or issue petition for the sole reason that the circulator of the petition is not an Ohio elector or an Ohio resident."⁷

25. Defendant Husted has adopted particular enforcement policies regarding Senate Bill 47 as part of his official duties and responsibilities.

26. All actions by the Defendant described herein were undertaken under color of state law which caused the deprivation of Plaintiffs' rights protected by the United States and Ohio Constitutions.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that 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), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure preliminary and injunctive relief and damages; and under 42 U.S.C. § 1988, to award attorneys fees.

28. This Court maintains supplemental jurisdiction over the claim in Count II, to the extent that it is a claim made under the Ohio Constitution.

29. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as (i) the Defendants are situated within this judicial district and division; and (ii) all of the claims asserted by Plaintiffs arose within this judicial district and division.

FACTUAL ALLEGATIONS

Defendant's Political Speech and Association Policies: Prohibiting Initiative Petition Circulation

30. Ohio Senate Bill 47 became effective just months ago (June 21, 2013). That Bill amends R.C. 3503 to enact R.C. 3503.06(C)(1)(a), which now states as follows: "Except for a nominating petition for presidential

⁷ See attached Exhibit A, May 18, 2009 Advisory 2009-04, issued by then Secretary of State Jennifer Brunner, at p. 2.

electors, no person shall be entitled to circulate any petition unless the person is a resident of this state and is at least eighteen years of age."

31. Through S.B. 47, the prohibition contained in Ohio Rev. Code § 3503.06(B)(1) that precluded any non-resident of the state from circulating any initiative or referendum was modified and re-designated as Ohio Rev. Code § 3503.06(C)(1)(a).

32. On July 12, 2013, Plaintiffs' counsel inquired of Secretary of State Husted whether he would be enforcing this new prohibition, writing as follows:

Ms. Schuster:

We are writing to obtain the Ohio Secretary of State's enforcement position on Ohio Senate Bill 47, which became effective just several weeks ago (June 21, 2013). That Bill amends R.C. 3503.06(C)(1)(a) to state as follows: "Except for a nominating petition for presidential electors, no person shall be entitled to circulate any petition unless the person is a resident of this state and is at least eighteen years of age."

We represent three separate citizen organizations that are currently circulating initiative petitions within Ohio. Two are circulating statewide issues, and one is seeking to amend a city charter. Two face somewhat imminent filing deadlines (as soon as August), and another will submit signatures to initiate a statewide constitutional amendment in July of 2014. Each has now indicated the need to utilize out-of-state professional signature gatherers to qualify their respective issues for the ballot.

* * *

Accordingly, please clarify the following:

(1) Do individual circulators need to be Ohio residents, or is it instead sufficient if the firm employing the circulator (which is required to be disclosed on the petition pursuant to R.C. 3519.05) is domiciled in Ohio?

(2) R.C. 3501.39 permits both the Ohio Secretary of State and county boards of elections to, upon challenge, reject the filing of a petition where "the petition violates any requirement established by law." Will the Ohio Secretary of State, whether upon protest, subsequent to county board of elections action, or on its own, be rejecting petitions where the circulator is domiciled in a state other than Ohio? (R.C. 3501.38(E)(1) requires that circulators' addresses be listed in the circulator statement at the end of the petition).

(3) We have contacted several county board of elections. They have indicated that they look to Secretary of State directives for guidelines on whether to invalidate signatures and/or petitions. Will the Secretary of State be providing any directives or taking any other action to clarify the enforceability of the residency requirement?⁸

⁸ See attached Exhibit B, July 12, 2013 Letter of Maurice A. Thompson to Betsy Schuster, Chief Elections Counsel for Ohio Secretary of State Jon Husted.

33. On July 19, 2013, the Ohio Secretary of State responded to Plaintiffs, indicating "[T]his office and county board of election will implement this law like any other until such time as the legislature acts to make a statutory change or a court directs otherwise."⁹ The SOS copied all Ohio county boards of elections on this letter, thereby signaling enforcement policy to those local boards.¹⁰

34. Plaintiffs believe this to be the only written communication to enforcement agents regarding the non-resident petition circulation restriction contained in R.C. 3503.06(C)(1)(a).

Plaintiffs' Speech

35. CPR has placed before City of Cincinnati voters an issue to amend the City of Cincinnati charter to reform Cincinnati's pension system, and was required to undertake additional expenses to comply with Ohio's prohibition on non-resident initiative petition circulations.

36. Prior to the Ohio Secretary of State's indication that he would fully enforce the residency prohibition, CPR had chosen to associate with a California petition firm (Arno Petition Consultants), who had previously demonstrated to members of CPR a history of unparalleled reliability.

37. To use their petition circulators' of choice, who could be relied upon to deliver their message as they sought for it to be delivered, CPR was required to pay Arno Petition Consultants \$69,529, or \$8.38 per valid signature. This unusually high fee resulted from approximately \$15,000 to \$20,000 in extra costs associated with hiring Ohio residents to join and/or shadow non-resident Arno circulators as witnesses, in order to comply with Senate Bill 47's newly revised R.C. 3503.06(C)(1)(a).

38. As a consequence of Defendant's threat of enforcement, CPR has less available campaign funds, with which to broadcast its political message, than it may otherwise have.

39. Further, CPR, recognizing that the issue of pension reform requires long-term education, has less available funds with which to educate voters and residents on public policy.

40. On February 9, 2012 the Ohio Ballot Board approved language for a ballot measure, thus clearing the way for signatures to be gathered for a proposed amendment to the Ohio Constitution "[t]o guarantee the

⁹ See attached Exhibit C, July 19, 2013 Letter from Secretary of State Jon Husted to Maurice A. Thompson.
¹⁰ Id.

freedom of Ohioans to choose whether to participate in a labor organization as a condition of employment.” (“Ohio Workplace Freedom Amendment”). On February 13, 2012 backers of this petition finalized it and made it available for download and circulation.

41. OWF is gathering signatures to place this initiative on the ballot, and in the process, to advocate for the passage of the initiative itself and discuss the initiative with their fellow citizens. To qualify the Ohio Workplace Freedom Amendment for inclusion on the November 2014 ballot, over 385,000 valid signatures must be submitted on petitions no later than July of 2014 (120 days prior to the November 2014 elections). Accordingly, at the time of this filing, there are less than ten months left to gather over 385,000 valid signatures of registered Ohio voters.¹¹

42. In addition, the principal officers of OWF have raised funds, and are raising additional funds, to hire Arno Petition Consultants to circulate Ohio Workplace Freedom Amendment petitions, and wish to contract with Arno. However, Arno is a California firm who uses non-Ohioans to gather signatures and spread OWF's political message.

43. The principals of OWF have traditionally used Arno to ensure ballot access, with considerable success. With the use of Arno in 2011, the principals of OWF, then the principals of Ohioans for Health Care Freedom, achieved success in attaining ballot access for the Ohio Health Care Freedom Amendment, which eventually passed in November 2011, amending Ohio's Bill of Rights.

44. OWF trusts Arno petitioners to gather sufficient signatures and appropriately frame their political message. OWF further fears that there is insufficient supply of experienced Ohio circulators to enable ballot access for the Workplace Freedom Amendment, as well as for future efforts.

45. Moreover, due to the reduced supply, and the experience of CPR, OWF anticipates that the costs of hiring Ohio residents will exceed its available funds for petition circulation, thereby defeating its ballot access, or depleting resources that could otherwise be used to convey its political message during its 2014 campaign.

¹¹ It should be observed that that well over the required 385,000 signatures will have to be gathered because all petition drives have significant numbers of ineligible signatures. A recent example is the successful Ohio Health Care Freedom Amendment passed in November 2011. Supporters of that initiative submitted 546,074 signatures to the Ohio Secretary of State in order to place it on the ballot. Of those, 426,998 were verified as valid.

46. Given the looming July 2014 deadline, the uncertainty regarding the validity of non-resident petitions and the inability to use non-resident circulators over the next ten months is exacerbated. Ohio's policy (1) reduces the number of signatures that OWF can gather and/or have validated; (2) prevents OWF from associating with those that will effectively communicate its message through petition circulation; and (3) ultimately imperils the likelihood of the Ohio Workplace Freedom Amendment appearing on the November 2014 ballot.

47. Given this deadline for the petition, on each occasion when Plaintiffs are unlawfully and unconstitutionally prevented from collecting signatures and advocating for the passage of the initiative, not only does a violation of their constitutional rights take place, but the likelihood that the Ohio Workplace Freedom Amendment will be on the November 2014 ballot is reduced.

48. Plaintiffs wish to engage in further political speech and association related to initiative petitions beyond Cincinnati pension reform and the Ohio Workplace Freedom Amendment, and desire to do so unencumbered by Senate Bill 47's limitations.

49. Limiting petition gathering and advocacy to the voices of Ohio residents substantially burdens the Plaintiffs' First Amendment and Ohio Constitutional rights and significantly restricts the number of signatures that may be gathered and/or increases the costs of gathering the same number of signatures.

50. Such limitations also dramatically reduce the number of voices permitted to speak, through petition circulation, on ballot issues.

DECLARATORY JUDGMENT AND INJUNCTION
(28 U.S.C. § 2201, *et seq.*)

51. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

52. An actual controversy has arisen and now exists between Plaintiffs and Defendant concerning Plaintiffs' rights under the United States and Ohio Constitutions. A judicial declaration is necessary and appropriate at this time.

53. Plaintiffs desire a judicial determination of their rights against Defendant as they pertain to Plaintiffs' right to speak, associate, and gather signatures on petitions through use of non-resident circulators,

regulations which are unreasonably indirect, not content neutral, not narrowly tailored to serve a substantial government interest, and do not leave open ample alternative channels of communication.

54. In order to prevent further violation of Plaintiffs' constitutional rights by Defendant, it is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57, declaring unconstitutional the state's policies articulated herein and the Secretary of State's enforcement thereof.

55. Furthermore, pursuant to 28 U.S.C. § 2202 and FED. R. CIV. P. 65, it is appropriate and hereby requested that this Court issue preliminary and permanent injunctions prohibiting the Defendant from enforcing the restrictions on Plaintiffs' expressive and associational activities to the extent they are unconstitutional, in order to prevent the ongoing violation of Plaintiffs' constitutional rights.

COUNT I
VIOLATION OF RIGHT TO FREE SPEECH AND ASSOCIATION UNDER
THE FIRST AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION
(42 U.S.C. § 1983)

56. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

57. Section 1, Article II of the Ohio Constitution vests Ohioans with the right to circulate initiative petitions to effectuate a constitutional amendment, city charter amendment, the initiation of a statute, or a referendum vote on an enacted statute. That Section further articulates the processes for complying with this procedure. Meanwhile, Ohioans can circulate initiation petitions to effectuate multiple other forms of governmental change. The Ohio Constitution and Ohio statutes provide that upon gathering a set number of valid signatures, alongside meeting other procedural requirements, Ohioans may directly interface with public policy by voting on these initiatives.

58. By enforcing unconstitutional policies that restrict and prohibit initiative petition circulation and its attendant speech and association, Defendant has impeded and will continue to unconstitutionally impede Plaintiffs in their efforts to collect signatures for petitions for a state ballot initiative and advocate for its passage. Such expressive activity is a core concern of the First Amendment.

59. At all times relevant to the allegations in this Complaint, each and all of the acts alleged herein were attributed to Defendant, acting under the color, authority, and pretense of state law.

60. Threatened deprivation of constitutional rights that chills speech is a First Amendment harm.¹²

61. Soliciting and gathering signatures on a petition is core political speech protected by the First and Fourteenth Amendments to the Constitution. *Meyer v. Grant*, 486 U.S. 414, 422 n.5, 425 (1988).

62. “[W]here the people reserve the initiative or referendum power, the exercise of that power is protected by the First Amendment.” *State ex rel. Oster v. Lorain Cty. Bd. of Elections*, 2001-Ohio-1605, 93 Ohio St.3d 480, 487, 756 N.E.2d 649 (2001)(quoting *Stone v. Prescott* 173 F.3d 1172, 1175 (9th Cir. 1999)).

63. Restrictions on speech and association related to initiative petition circulation must be narrowly tailored, must provide ample alternative outlets for speech, and must not be overly-broad.

64. An absolute prohibition on Ohioans' association with non-resident initiative petition circulators violates Ohioans core constitutional rights, is not narrowly-tailored, is overly-broad, and is not content or speaker neutral.

65. Defendant threatens to, has, and continues to violate Plaintiffs' constitutional right to engage in political speech and association with and through trusted political speakers and allies who are not residents of the State of Ohio.

66. As a proximate result of Defendant's actions, Plaintiffs face irreparable injury, in that they have been and will be deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

67. As a legal consequence of the Defendant's violation of Plaintiffs' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to injunctive relief and recovery of damages.

¹² *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738 (6th Cir. 2004).

COUNT II
VIOLATION OF RIGHT TO FREE SPEECH UNDER
THE FIRST AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION AND SECTION 1G, ARTICLE II OF THE OHIO
CONSTITUTION
(42 U.S.C. § 1983)

68. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

69. “[W]here the people reserve the initiative or referendum power, the exercise of that power is protected by the First Amendment.” *State ex rel. Oster v. Lorain Cty. Bd. of Elections*, 2001-Ohio-1605, 93 Ohio St.3d 480, 487, 756 N.E.2d 649 (2001)(quoting *Stone v. Prescott* 173 F.3d 1172, 1175 (9th Cir. 1999)).

70. Section 1g, Article II of the Ohio Constitution provides that constitutional provisions granting the rights of initiative and referendum "shall be self-executing, except as herein provided. Laws may be passed to facilitate their operation but in no way limiting or restricting either such provisions or the powers herein reserved."

71. Senate Bill 47 amended R.C. 3519.16(F), which now states as follows: "If the petition is found insufficient because of an insufficient number of valid signatures, the committee shall be allowed ten additional days after the notification by the secretary of state for the collection and filing of additional signatures to the petition. When the secretary of state makes that notification, the secretary of state simultaneously shall provide the chairperson with both a paper copy and an electronic copy of the unique petition form described in division (D) of section 3519.05 of the Revised Code. At that time, the secretary of state also shall make the form available to the public on the secretary of state's official web site and shall transmit the form electronically to the boards of elections. Upon request, a board of elections shall provide a paper or electronic copy of the form to any person. * * * No additional signatures shall be collected or submitted to the secretary of state by the committee interested in the petition, or by any person acting on behalf of the committee, during the period beginning on the date that the petition is initially submitted to the secretary of state and ending on the date that the secretary of state notifies the chairperson of the committee that the petition has an insufficient number of valid signatures. If the committee, or any person acting on behalf of the committee, submits additional signatures, the signatures must be on the form

provided by the secretary of state under this division and only signatures that were signed and collected during the ten-day period to collect and submit additional signatures may be submitted."

72. Prior to Senate Bill 47's revisions to R.C. 3519.16(F), Ohioans routinely continued gathering signatures for an initiative while the Secretary of State and county boards of election tabulating petitions and signatures.

73. Section 1a, Article II of the Ohio Constitution mandates that petitions for a constitutional amendment be submitted 125 days prior the "regular or general election" where the issue would appear on the ballot.

74. Section 1g, Article II of the Ohio Constitution mandates that "[t]he Secretary of State shall determine the sufficiency of the signatures not later than one hundred five days before the election."

75. Reading Sections 1a and 1g of Article II together, the Ohio Constitution permits the Ohio Secretary of State as much as 20 days to tabulate petitions and signatures submitted to place before voters an issue to amend the Ohio Constitution.

76. R.C. 3519.16(F) (F) arbitrarily reduce the amount of time Ohioans may circulate petitions by as much as 20 days.

77. Plaintiff Ohioans for Workplace Freedom must plan for the number of days it will have to gather signatures to place its effort on the November 2014 ballot; and believes that it has a constitutional right to continue gathering signatures while submitted signatures are tabulated.

78. Further, the 20 prohibition in petition circulation places a severe burden on Plaintiffs because nonresident petition circulators will not remain in the state for 20 days without work, will leave, and thus will not be available to circulate during the 10 day grace period.

79. Further, is not neutral with respect to the identity of the speaker: it only places a prohibition on "the committee or any person acting on behalf of the committee," rather than "any person."

80. The revised R.C. 3519.16(F) violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and Section 1g, Article II of the Ohio Constitution, insofar as it violates the plain

language of the latter, abridges Plaintiffs' constitutionally-allotted time to circulate petitions, and neither serves any significant state interest nor is tailored to achieve any such interest.

Causation

81. As a direct and proximate result of Secretary of State Husted's July 19, 2013 threat to enforce R.C. newly-revised 3503.06(C)(1)(a), CPR was required to hire Ohio residents, who would not otherwise have been hired, to accompany expert non-resident petition circulators, and witness signatures.

82. CPR's constitutional right to use non-resident petition circulators was clearly established at the time that Defendant Husted conveyed an intention enforce the prohibition on nonresident petition circulators.

83. Upon review of the Sixth Circuit's decision in *Nader v. Blackwell*, a reasonable person in Defendant Husted's position would have known that the threat to enforce the residency prohibition was unlawful.¹³

84. As a direct and proximate result of the same, Defendant has chilled plaintiffs' speech and association, as OWF has abstained for entering into an agreement with non-resident petition circulators, or any other contract for circulation of its petitions, and is experiencing difficulty in planning for its campaign.

85. As a direct and proximate result of Secretary of State Husted's July 19, 2013 threat to enforce R.C. newly-revised 3503.06(C)(1)(a), Plaintiffs' constitutional rights have been violated and Plaintiffs have suffered injury and damages, including monetary damages.

86. As a direct and proximate result of new R.C. 3519.16(F) limitations on petition circulation while signatures and petitions are being tabulated, OWF will be unable to gather as many signatures as it desires to gather.

PRAYER FOR RELIEF

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

- (1) Declare that the prohibition on non-resident initiative petition circulation is unconstitutional on its face and as applied to Plaintiffs because it violates the rights to freedom of speech and association

¹³ *Bletz v. Gribble*, 641 F.3d 743, 750 (6th Cir. 2011) (citation omitted).

guaranteed under the First Amendments to the United States Constitution and Section 11, Article I of the Ohio Constitution;

- (2) Declare that the prohibition on petition circulation while the Ohio Secretary of State and/or county boards of election tabulate petitions and signatures violates the plain language of Section 1g, Article II of the Ohio Constitution and the right to freedom of speech and association under the First Amendments to the United States Constitution and Section 11, Article I of the Ohio Constitution, and is therefore unconstitutional on its face and as-applied to Plaintiffs;
- (3) Issue a preliminary and permanent injunction prohibiting the Ohio Secretary of State and county boards of election from enforcing R.C. 3503.06(C)(1)(a), insofar as it provides that "no person shall be entitled to circulate any petition unless the person is a resident of this state";
- (4) Issue a permanent injunction against the revised R.C. 3519.16(F), insofar as it forbids petition circulation by certain Ohioans while petitions and signatures are being tabulated.
- (5) Assess against Defendant Husted, and award to Plaintiff CPR, damages as compensation for extra petition circulation charges incurred as a result of Defendant's threat to enforce R.C. 3503.06(C)(1)(a).
- (6) Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs, damages, and expenses incurred in bringing this action, including their reasonable attorneys' fees; and
- (7) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ Maurice A. Thompson

Maurice A. Thompson (0078548)

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Christopher Littleton, declare the following:

1. I have personal knowledge of the matters alleged in the Complaint.
2. The allegations contained herein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of September, 2013.

/s/ Chris Littleton
Christopher Littleton
Committee Chair, Ohioans for Workplace Freedom
Campaign Consultant, Cincinnati for Pension Reform