



Plaintiffs, Ohioans for Raising the Wage, Anthony A. Caldwell, James E. Hayes, David G. Latanick, and Pierrette M. Talley, for their Complaint against the Ohio Secretary of State Frank LaRose, allege as follows:

**PARTIES**

1. Plaintiff Ohioans for Raising the Wage (“OFRW”) is the ballot issue committee assisting and funding a petition effort and will be advocating for the passage of a citizen-initiated constitutional amendment titled Raise the Wage Ohio (“the Petition”). The text of the proposed amendment is attached hereto as Exhibit A.
2. Plaintiff Anthony A. Caldwell is a member of the Committee to represent the petitioners supporting the Petition.
3. Plaintiff James E. Hayes is a member of the Committee to represent the petitioners supporting the Petition.
4. Plaintiff David G. Latanick is a member of the Committee to represent the petitioners supporting the Petition.
5. Plaintiff Pierrette M. Talley is a member of the Committee to represent the petitioners supporting the Petition.
6. Defendant Ohio Secretary of State Frank LaRose is responsible for administering Ohio’s election laws including those laws pertaining to initiated constitutional amendments.

**JURISDICTION AND VENUE**

7. This court has jurisdiction over the subject matter of this action.
8. Venue is proper in this court because three of the four individual plaintiffs reside in Franklin County, Ohioans for Raising the Wage’s principal place of business in Franklin County, Defendant Ohio Secretary of State’s principal place of business in Franklin

County, and a substantial part of the real and immediate harm faced by Plaintiffs is in Franklin County.

### **FACTS AND BACKGROUND**

#### **Plaintiffs satisfied Many Important Statutory Hurdles Prior to the State Imposing Restrictions on Mass Gatherings and Recommendations on Social Distancing**

9. On October 12, 2019 Plaintiffs began circulating the petition containing a summary and full text of the Raise the Wage Ohio constitutional amendment to be submitted to the Ohio Attorney General pursuant to R.C. § 3519.01. The proposed amendment would raise the state's minimum wage to \$13.00 per hour in annual increases from January 1, 2021 to January 1, 2025.
10. On January 17, 2020, Plaintiffs filed the Summary Petition with the Ohio Attorney General's Office pursuant to R.C. § 3519.01, signed by approximately 1,898 Ohio electors.
11. On January 27, 2020, the Ohio Attorney General certified that the summary included with the Summary Petition contained a fair and truthful summary of the proposed amendment to the Ohio Constitution.
12. On February 5, 2020, the Ohio Ballot Board certified that the Petition contained a single-subject pursuant to Ohio Revised Code § 3505.062.
13. On February 17, 2020 Plaintiff OFRW entered into a contract with FieldWorks, LLC ("FieldWorks"), a nationally recognized petition circulation firm. The contract engages FieldWorks to assist in circulating the Petition to be able to place the proposed constitutional amendment on the November 3, 2020 general election ballot and constitutes a significant financial obligation for Plaintiff OFRW.
14. Under its contract with Plaintiff OFRW, FieldWorks has recruited, vetted, and trained approximately 1,087 professional petition circulators. FieldWorks has opened six regional

offices in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo for the purpose of circulating the Petition and managing data flow. FieldWorks also employs 38 individuals conducting quality control for the Petition.

15. On February 28, 2020 Plaintiffs began circulating the final version of the Petition which contains the Ohio Attorney General's certification.

16. In addition to the work performed by FieldWorks, Plaintiff OFRW also trained and organized a volunteer effort to collect signatures on the Petition.

17. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D ("March 9<sup>th</sup> order") in response to the outbreak of COVID-19 disease, also known as the coronavirus, which urged all Ohio residents to "heed the advice of the [Ohio] Department of Health and other emergency officials regarding this public health emergency in order to protect their health and safety."

18. On March 12, 2020, Ohio Department of Health Director Dr. Amy Acton (the "Health Director") issued an "Order to Limit And/Or Prohibit Mass Gatherings in the State of Ohio" ("March 12<sup>th</sup> Order"), which prohibited "mass gatherings" in the State of Ohio, which are defined for the purposes of the March 12<sup>th</sup> Order as "any event or convening that brings together one hundred (100) or more in a single room or single space at the same time" to include any "auditorium, stadium, arena, large conference room, meeting hall, theater or any other confined indoor or outdoor space. This would also include parades, fairs and festivals."

19. On March 15, 2020, the Health Director issued an Order ("March 15<sup>th</sup> Order") restricting all bars and restaurants in Ohio to carry-out and delivery only, prohibiting all on-site consumption of food and alcohol, and also providing that "[l]ines for carry-out in these

establishments must have an environment where patrons and staff maintain social distancing (six feet away from other people).”

20. On March 16, 2020, the Health Director issued an Order (“March 16<sup>th</sup> Order”) closing polling locations for the March 17, 2020 election, citing the need to “avoid the imminent threat with a high probability of widespread exposure to COVID-19.”
21. On March 16, 2020, the Health Director announced an amendment to the March 12<sup>th</sup> Order, which prohibited gatherings of 50 or more individuals, which was signed the next day (“March 17<sup>th</sup> Order”). The March 17<sup>th</sup> Order expanded the categories of social and recreational facilities which constitute mass gatherings and are therefore prohibited from operating to include “bowling alleys,” “health clubs/fitness centers/workout facilities/gyms/yoga studios,” and “movie theaters and all performance theaters.”
22. The March 17<sup>th</sup> Order remains in effect “until the State of Emergency declared by the Governor no longer exists, or the Director of the Ohio Department of Health” rescinds or modifies the March 17<sup>th</sup> Order.
23. The March 17<sup>th</sup> Order states, in part, “While not mandatory, it is strongly recommended that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people in accordance with President Trump’s coronavirus guidelines issued March 16, 2020.”
24. On March 22<sup>nd</sup>, 2020 the Health Director issued “Director’s Order to Stay at Home (“March 22<sup>nd</sup> Order”).
25. Under the March 22<sup>nd</sup> Order, all Ohio residents are directed to remain inside their residences, all business and other operations are ordered to be closed, except as specifically allowed by the March 22<sup>nd</sup> Order.

26. Numerous businesses, libraries, colleges and universities, courts and government offices, and other institutions which are both covered and not covered by the March 9<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 22<sup>nd</sup> Orders have closed or otherwise restricted public access in response to the encouragements from Governor DeWine and the Health Director to engage in “social distancing” behavior and to limit or eliminate mass gatherings to reduce the risk of COVID-19.

### **Ohio Law Requirements for Statewide Constitutional Initiative Petitions**

27. Numerous Ohio legal requirements for statewide ballot issues do not contemplate a health crisis of the magnitude of COVID-19 and the necessary Orders issued by the Health Director, but rather contemplate petition circulators being able to exercise their free speech rights and to assemble and move freely among a large number of Ohio electors to discuss proposals and obtain signatures on petitions.

28. In order to qualify for the statewide ballot, an initiated constitutional amendment must be signed by Ohio electors equal to at least 10% of the number of votes cast for Governor at the previous general election. [Ohio Constitution, Art. II, Sec. 1a.]

29. According to the Ohio Secretary of State, based on the votes cast for governor in the 2018 General Election, the number of valid signatures required to place an initiated constitutional amendment on the ballot in 2020 is 442,958.

30. The signature requirement also includes a requirement to collect signatures from electors in at least half of Ohio counties equal to 5% of the votes cast for governor in those counties in the previous general election. [Ohio Constitution, Art. II, Sec. 1g.]

31. Ohio Revised Code § 3519.14 states that “The secretary of state shall not accept for filing any initiative or referendum petition which does not purport to contain at least the

minimum number of signatures required for the submission of the amendment, proposed law, or law to be submitted under the initiative or referendum power.”

32. In order to qualify to appear on a general election ballot, a citizen-initiated constitutional amendment must be submitted no later than 125 days before the date of the General Election. [Ohio Constitution, Art. II, Sec. 1a.] For the November 3, 2020 general election, this deadline is July 1, 2020.
33. Each citizen-initiated constitutional amendment must be filed with the Secretary of State along with a searchable electronic copy of the entire petition. [R.C. § 3519.16(B)(1)]. The effect of this requirement is that all signatures to be submitted to the Secretary of State must be collected at least five days before the petition is submitted in order to ensure sufficient time to prepare to scan every single page of the petition for submission as an electronic copy.
34. The Ohio Constitution provides that “[i]f the petitions or signatures [on a statewide ballot issue] are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition.” [Ohio Constitution Art. II, Sec. 1g (emphasis added).] However, per state statute “[i]f 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.” [R.C. 3519.16(F) (emphasis added).]
35. Any person who is compensated and any person who pays compensation for “supervising, managing, or otherwise organizing any effort to obtain signatures” for a statewide ballot measure must file Form 15 with the Ohio Secretary of State prior to the circulation of the

ballot measure or prior to any engagement to circulate the ballot measure. [R.C. § 3501.381.]

36. Plaintiff OFRW and FieldWorks, as well as individuals who they are compensating, to date have completed and filed approximately 610 Form 15s with the Ohio Secretary of State pursuant to R.C. § 3501.381.

37. All signatures on an initiative petition must be signed in ink and witnessed by the person who circulates the petition and each part-petition must contain a certification by the circulator under penalty of election falsification that the circulator witnessed each signature on the part-petition. [Ohio Constitution, Art. II, Sec. 1g; R.C. § 3501.38 and § R.C. 3519.051.]

**Plaintiffs Have Been Foreclosed by the COVID-19 Public Health Crisis From Being Able to Qualify for the 2020 General Election Ballot Under the Existing Statutory and Constitutional Requirements for the Petition**

38. The burdens of the state law requirements in conjunction with the COVID-19 virus effectively makes it an impossibility for citizens to obtain the necessary signatures to qualify a statewide issue for the 2020 General Election ballot.

39. In order to collect the large number of signatures which are required to qualify for the ballot in Ohio in the limited timeframe allowed by law, petition circulators rely on circulating petitions at events which attract a large number of individuals, such as indoor and outdoor concerts and performances, parades, festivals, fairs and sporting events, and outside of venues with significant foot traffic, including libraries, college and universities, and busy government offices, including courthouses and county office complexes.

40. Collecting petition signatures on Election Day is a particularly valuable means of obtaining signatures on a petition, as voting attracts a larger ratio of registered electors compared to

other large events. Plaintiffs had planned to gather approximately 47,280 signatures circulating the Petition outside polling locations on March 17, 2020 primary election.

41. Door-to-door petition circulation and other methods which do not involve large gatherings of people are not, even under normal circumstances, viable methods of obtaining the large number of signatures required for a citizen-initiated constitutional amendment. Such methods would be even less effectual under the March 22<sup>nd</sup> Order and previous Orders.
42. Prior to the March 12, 2020 Order of the Health Director, Plaintiffs had collected approximately 73,968 signatures on the Petition.
43. Plaintiffs attempted to continue circulating the Petition after March 12 for three days but saw a significant reduction in the number of signatures able to be collected due to the effects of the public health crisis. Unable to continue to collect any meaningful number of signatures, and to protect the health of the public and Petition circulators, Plaintiffs suspended circulation of the Petition effective March 16<sup>th</sup>.
44. The public health crisis caused by the COVID-19 pandemic corresponds with the most important period for collecting signatures on a 2020 ballot initiative. However, this crisis will eventually pass and, with the injunctive relief sought from the Court, Plaintiffs will be able to circulate the Petition and qualify the proposed amendment for the 2020 General Election ballot.

### **CLAIM**

**Ohio's statewide petition requirements are unduly burdensome on Plaintiffs' constitutional rights in light of the COVID-19 health crisis and must be enjoined to preserve Plaintiffs right to propose their Minimum Wage Increase Constitutional Amendment to voters at the 2020 General Election**

45. Plaintiffs incorporate paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Due to the COVID-19 health crisis and the necessary restrictions imposed by the March 9<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 22<sup>nd</sup> Orders, the strict Ohio law requirements to place an issue on the statewide ballot create an undue burden on Plaintiffs' free speech and association rights to place a statewide initiative on the 2020 General Election ballot and therefore must be enjoined.
47. Article I, Section 3 of the Ohio Constitution protects the right of Ohioans "to assemble together, in a peaceable manner, to consult for their common good[.]"
48. Article I, Section 11, of the Ohio Constitution protects the right of Ohioans to free speech.
49. Article II, Section 1a, of the Ohio Constitution grants Ohioans the right to propose amendments to the Ohio Constitution and to have those proposed amendments placed on the ballot if they satisfy the minimum procedural requirements.
50. The exercise of the right to propose amendments to the Ohio Constitution directly implicates the rights to political speech and association which are protected by the Ohio Constitution and the First Amendment to the United States Constitution.
51. Ohio Constitution, Article II, Section 1g provides that "Laws may be passed to facilitate [the rights of initiative ballot access] but in no way limiting or restricting either such provisions or the powers herein reserved."
52. The Health Director's Orders, culminating in the March 22<sup>nd</sup> Order, necessarily prohibit precisely the type of social gatherings in which Plaintiffs would exercise their Speech and Association Rights in the absence of the COVID-19 public health crisis.
53. The effect of the COVID-19 public health crisis is to foreclose any possibility that Plaintiffs will be able to qualify the citizen-proposed constitutional amendment for the 2020 General

Election ballot under the existing statutory and constitutional requirements for initiative ballot access.

54. Ohio Constitution, Art II, Sec. 1a's requirement to obtain valid signatures equal to 10% of the number of votes for Governor during the previous gubernatorial election is unduly burdensome on Plaintiffs' speech, association, and ballot access rights in light of the current public health crisis and must be enjoined or reduced for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
55. Ohio Constitution, Art. II, Sec. 1g's requirement to collect signatures from electors in at least half of the Ohio counties equal to 5% of the number of votes cast for governor in the last gubernatorial election is unduly burdensome on Plaintiffs' speech, association, and ballot access rights in light of the current public health crisis and must be enjoined for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
56. Ohio Revised Code § 3519.14's requirement that "The secretary of state shall not accept for filing any initiative or referendum petition which does not purport to contain at least the minimum number of signatures required for the submission of the amendment, proposed law, or law to be submitted under the initiative or referendum power" is unduly burdensome on Plaintiffs' speech, association, and ballot access rights in light of the current public health crisis and must be enjoined for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
57. Ohio Constitution, Art. II, Section 1a's requirement to file the statewide initiative petition no later than 125 days before the date of the General Election in order for the issue to appear on the 2020 General Election is unduly burdensome on Plaintiffs' speech, association, and ballot access rights in light of the current public health crisis and must be

enjoined and extended for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.

58. Ohio Revised Code § 3519.16(B)(1)'s requirement to file an electronic copy of the entire petition along with the petition is unduly burdensome on Plaintiffs' speech, association, and ballot access rights and violates Ohio Constitution Art. II, Sec. 1g's prohibition on laws which restrict initiative ballot access in light of the current public health crisis and must be enjoined for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
59. Ohio Revised Code § 3519.16(F)'s restriction limiting collection of signatures on a supplementary petition to the ten-day period for filing a supplementary petition is unduly burdensome on Plaintiffs' speech, association, and ballot access rights and violates Ohio Constitution Art. II, Sec. 1g's prohibition on laws which restrict initiative ballot access in light of the pending health crisis and must be enjoined for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
60. Ohio Constitution, Art. II, Sec. 1g, Revised Code § 3501.38 and § 3519.051's requirements that all signatures on initiative petitions must be signed in ink and witnessed by the person who circulates the petition are unduly burdensome on Plaintiffs' speech, association, and ballot access rights in light of the current public health crisis and must be enjoined for the 2020 General Election to preserve Plaintiffs' constitutional right to the initiative.
61. If the injunctive relief requested by Plaintiffs is granted Plaintiffs will be able to qualify their proposed constitutional amendment for submission to the voters at the November 3, 2020 general election.

62. If the injunctive relief requested by Plaintiffs is not granted Plaintiffs will suffer irreparable injury to their protected constitutional rights to speech, association, and ballot access for which they lack any adequate remedy at law.

**PRAYER FOR RELIEF**

Plaintiffs request the following relief:

- a. Issuing a Declaratory Judgment that, as applied to Plaintiffs and the Petition proposing the “Raise the Wage Ohio Amendment,” Plaintiffs’ rights to political speech and association guaranteed by Article I, Sections 3 and 11 of the Ohio Constitution, and to propose by initiative petition an amendment to the state Constitution to be submitted to the electors of Ohio at the November 3, 2020 general election under Article II, Section 1a of the Ohio Constitution are unduly burdened and foreclosed by statutory and constitutional requirements for statewide initiated petitions in light of the current public health crisis involving the coronavirus; and that appropriate relief is necessary to ameliorate the infringement of those rights:
- b. Issuing preliminary and permanent injunctions enjoining the following with respect to the Petition:
  - i. 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;
  - ii. 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, currently 265,774, and is timely filed for the proposed Amendment to be submitted to the voters at the November 3, 2020 general election;

iii. 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 constitutional amendment to be submitted to the voters at the November 2, 2020 general election;

iv. 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 if the Petition is timely filed for the proposed constitutional amendment to be submitted to the voters at the November 2, 2020 general election; and

v. 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 Plaintiffs file a supplementary petition in connection with the submission of the proposed amendment for the November 3, 2020 general election.

c. In the alternative to paragraph b above, issue preliminary and permanent injunctions enjoining requirements that signatures on the petition must be written by signers in ink and witnessed by circulators, if Plaintiffs timely file the Petition

for the November 3, 2020 general election with sufficient signatures obtained electronically or a sufficient combination of such signatures and handwritten signatures witnessed by circulators;

- d. Issue preliminary and permanent injunctions enjoining 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 November 3, 2020 general election.

Respectfully submitted,

/s/ Ben F.C. Wallace  
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