

**IN THE SUPREME COURT OF OHIO**

<b>STATE OF OHIO ex rel.</b>	)	
<b>ONE PERSON ONE VOTE et al.,</b>	)	
<b>Petitioners</b>	)	<b>Case No. 2023-0630</b>
	)	
<b>v.</b>	)	<b>Original Action Pursuant to</b>
	)	<b>Ohio Const., Art. XVI § 1</b>
<b>SECRETARY OF STATE</b>	)	
<b>FRANK LAROSE,</b>	)	<b>Expedited Elections Case</b>
<b>Respondent</b>	)	
	)	
	)	
	)	

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**BRIEF OF AMICUS CURIAE OHIO CITIZEN ACTION  
IN SUPPORT OF RELATORS**

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## I. STATEMENT OF INTEREST OF AMICUS CURIAE

*Amicus Curiae*, Ohio Citizen Action is the premier grassroots organizing and mobilizing team in the Midwest, with a large and active membership of nearly 32,000 Ohioans. With headquarters at 1511 Brookpark Rd, Cleveland, OH 44109, and a statewide reach, the organization has a long history of advocating for fair and inclusive public processes of all kinds. Ohio Citizen Action organizes and mobilizes people to advocate for public interests. In person, by phone, and online, we engage people in actions that protect public health, improve environmental quality, and benefit consumers. Our campaigns connect Ohioans and build a movement to protect democracy and create a sustainable future. Ohio Citizen Action understands that informed and engaged citizens are the best possible hedge against abuses of government and corporate power.

This case raises issues of significant concern to Ohio Citizen Action, and its important work to advocate for Ohioans. Because of the unwarranted abuse that will be inflicted upon Ohioans attempting to use their Constitutional right to access the ballot with the passage of the Amendment at the heart of this case and the unlawful August election poses direct threats to the organization and the people we serve. The size and engagement of our membership is attributed to our professional field (door-to-door) and phone canvass staff. Ohio Citizen Action canvassers have been knocking on doors in Ohio since 1979 and engaging our members via phone calls since 1983 to educate and mobilize for good-government and citizen protection. Yet, with this Amendment, Ohio Citizen Action will be forced to expend considerable human and financial resources to educate Ohio voters. This impact on Ohio Citizen Action, the General Assembly's unlawful push to put this Amendment on the ballot in an August Special Election in, now, less than 90 days increases those costs dramatically. Increased costs in organizing and outreach means fewer citizens educated on issues and fewer Ohioans engaged in the democratic process.

## II. STATEMENT OF THE FACTS AND CASE

Amicus Curiae hereby adopts and incorporates by reference the Statement of the Facts and Case delineated by Relators One Person One Vote, et. al.

## III. ARGUMENT AND LAW

### A. Introduction

In our state's governing document, democracy is secured, but fragile. In the Ohio Constitution's Bill of Rights, political power is inherent in the people of this state. Ohio Const. Article I Section 2. Our Democracy is protected in that very same section, which states that government is instituted for the people's "equal protection and benefit," and the people "have the right to alter, reform, or abolish the same, whenever they may deem it necessary." *Id.* And while legislative power of the state is vested in the general assembly, that power is derived, fundamentally, from the people, who "reserve to themselves the power to propose to the general assembly laws and amendments to the constitution." Ohio Const. Article II, Section 1. Thus, since 1912, Ohioans from across the political spectrum have utilized the right to amend our Constitution via the power of citizen-led constitutional amendments, initiated statutes, and referenda; tools of direct democracy that equip each Ohio voter with the freedom to check the power of our state government.

However, under the guise of good-government reform, Respondent Ohio Secretary of State Frank LaRose and members of Ohio General Assembly championed a ballot measure designed to *reduce* Ohioans' century-old rights to direct democracy. Breaking from long standing law that has spelled out the daunting yet reasonable petition process for citizens to access the ballot, Amended Substitute Senate Joint Resolution 2 ("SJR2" or "the Amendment") increases the threshold to pass

citizen-led Constitutional Amendments on the ballot from a simple majority (50% plus one) to a super majority (60%). SJR2, too, creates further hurdles to Ohioans' right to ballot access, doubling the counties necessary to collect signatures from 44 to all 88 counties, and eliminates the 10-day "cure period" for petitioners to make up deficits in any counties where the number of valid signatures might fall short. These changes pose increased roadblocks and future risks to the citizen initiative process.

To fully effectuate this reduction in the rights of citizens to petition for Constitutional amendment, SJR2 will need to be presented to those very voters, and (ironically) must pass with a simple majority. Thus, the SJR2 scheme seems implausible that voters will vote to diminish their own right to access the ballot and to amend the Constitution. Understanding this, supporters of SJR2 included the calling of a special statewide election on August 8, 2023, for Ohioans to vote on this Amendment. August elections have notoriously low voter turnout, with the August 2022 turnout resulting in a modern-era low of an 8% turnout. Tobias, Andrew J., "Ohio's August primary breaks modern state record for low voter participation," Cleveland.com (Aug. 3, 2022). Equating to a \$20 million cost to Ohio taxpayers for 600,000 people to cast ballots. The turnout is so low and the costs so high, that even Respondent Frank LaRose explained his own opposition. Upon bipartisan Ohio House's passage of HB 458, legislation to eliminate August special elections, in December of 2021, Respondent Frank LaRose released a press statement (still on the Secretary of State's website):

*"August special elections generate chronically low turnout because voters aren't expecting an election to occur. This is bad news for the civic health of our state. Interest groups often manipulatively put issues on the ballot in August because they know fewer Ohioans are paying attention. As a result, the side that wins is typically the one that has a vested interest in the passage of the issue. Voters are just as capable of voting on these important issues during the standard primary and general elections."*

Office of the Ohio Sec. of State, Press Release: LaRose Statement on Passage of House Legislation Eliminating August Special Elections, (Dec 9, 2021), <https://www.ohiosos.gov/media-center/press-releases/2021/2021-12-09/>. The vested interest here are those in the Ohio General Assembly who wish to thwart a potential citizens initiative that otherwise would be approved by a majority of Ohio voters.

The right to access the ballot to hold the government to account, and the right to a fair democracy, are fundamental values of all who call Ohio home, and the bedrock of how our government functions. It is imperative that this Court put a stop to this attempt to diminish the rights of Ohio voters.

## **B. The Current Citizen Initiative Process is Not Easy**

For over a century, Ohioans have enjoyed direct access to the peoples' governing document using the Ohio Constitution's direct petition process to access the ballot and seek change. In those years, citizens have expanded voting and increased the minimum wage, but more importantly, they have become more invested in the legislative process and became their own advocates for a better Ohio. Even when the citizen initiative process doesn't succeed, it has moved the legislature to act on important issues, from payday lending reform to medical marijuana to curbing political gerrymandering.

First, it is important to explain the inherent difficulties that citizens face under current initiative process, and refuting the claim that it is too easy to change the Constitution. The current process to get a citizen-led Constitutional Amendment on the ballot (let alone enacted) is far from easy. First citizen ballot committees need to obtain valid voter signatures equal to 10% of the total gubernatorial vote. After this year's robust turnout, that number is more than 431,840 valid

voters. What is more, those signatures must come from at least 44 of the 88 Ohio Counties. The difficulty of this effort can be shown by the number of Citizen Initiatives that begin, but never make it to the ballot. Eighty-eight petitions for amendments have been filed with the Attorney General since 2006 - with only ten making the ballot. In 2018, alone, five ballot initiatives failed to collect the necessary signatures to make it onto the November ballot.

Even if a petition makes its way onto the ballot, no amendment is made to the Ohio Constitution unless approved by more than 50 percent of the voters voting on the proposed amendment. This task, too, is far from easy, as the electors of the state of Ohio have been quite finicky about the citizen-led amendments they approve. Between 1913 and 2018 Ohio voters have voted on 72 citizen-initiated amendments to the constitution, approving 19 (or about 26%). During the same 105 years, the legislature has amended the constitution through ballot measures 107 times in 155 attempts (69%). With the process as difficult as it is, we feel that this legislature should not be making it harder for everyday citizens to access the ballot.

We agree with the sponsors of the SJR2 that Ohio's founding document should not be "for sale" to special interest groups—sometimes from outside of Ohio—who wish to promote their own interests through the constitutional amendment process. However, this Resolution falls short on protecting Ohioans or our Constitution. In fact, the obstacles SJR2 puts between the people and their Constitution will mean that only big monied interests will have the resources to mount a "Citizen" Constitutional Initiative.

### **C. The Revised Code prohibits holding a statewide special election in August.**

A Special Election in Ohio is just that, special. A Special Election in *August* is even more special since the passage of amendments to Ohio special election laws a mere five months ago. Ohio Revised Code Sections 3501.01, 3501.022, and 3501.02 establish the criteria for calling

special elections to approve or reject constitutional amendments proposed by the General Assembly. First, Section 3501.01(D) provides that “[a] special election may be held only on the first Tuesday after the first Monday in May or November, on the first Tuesday after the first Monday in August in accordance with section 3501.022 of the Revised Code,” or in accordance with “a particular municipal or county charter,” except in presidential years when it may be held in March instead of May.

Then, Revised Code Section 3501.022 further provides that only “a political subdivision or taxing authority may hold a special election on the first Tuesday after the first Monday in August,” and then only if the political subdivision is “under a fiscal emergency” or the taxing authority “is a school district” and is “under a fiscal emergency.” Nowhere in Section 3501.022 does it authorize a statewide August special election such as the one proposed by SJR2. Such elections may be called on three dates: (i) the date of the November general election; (ii) the date of the May primary in a non-presidential year; or (iii) the date of the March primary in a presidential year. The restrictions on August elections in Sections 3501.01(D) and 3501.022 were enacted less than five months ago, in December 2022 in Substitute House Bill 458.

Substitute House Bill 458 of the 134th General Assembly, which took effect on April 7, 2023, placed restrictions on August Special Elections. Respondent Secretary LaRose supported Substitute House Bill 458 on the grounds that August special elections “aren’t good for taxpayers, election officials, voters or the civic health of our state.” While we understand that perspectives can change, even with legislation that was just passed mere months ago, such a legislative change of heart cannot occur through the mechanism of a Joint Resolution. The use of a joint resolution to overturn a duly enacted statute is against Ohio Law. Going back over 125 years, this Court has held that a state statute “can neither be repealed nor amended by a joint resolution of the general



assembly.” *State ex rel Attorney General v. Kinney*, 56 Ohio St. 721, 724, 47 N.E. 569 (1897). Nearly six decades ago, this Court allowed the General Assembly to call a special election by joint resolution without statutory authorization. *State ex rel. Foreman v. Brown*, 10 Ohio St.2d 139, 142, 226 N.E.2d 116 (1967). However, it did so under a statutory scheme that is different from the one we have today, and a statutory scheme that did not conflict with the language of the joint resolution. As the *Foreman* Court said, “[i]f action... authorizing a special election on a certain day, does conflict with an unrepealed existing statute, the action so taken pursuant to specific constitutional authority would require a holding that the statute was unconstitutional so far as it conflicted with such action.” *Id.* at 143. The ink is barely dry on the statute prohibiting the very type of August Special election that this resolution is looking to force upon the state. It is a patent conflict with the current system, it patently bypasses presentment to the Governor for signature, and patently violates longstanding Ohio law and this Court’s rulings.

**D. Holding a statewide special election in the next 90 days greatly diminishes Ohio voters’ right to direct democracy.**

Yet, even with its legal failings, which alone require this Court to invalidate the Amendment, SJR2 has real life implications on Ohio voters, organizations like OCA, and the people who live in communities we serve. If ratified, the Amendment would immediately make three changes to Ohio’s constitutional processes governing future citizen-led amendments. First, the Amendment would increase the threshold for ratification of future amendments by the people of Ohio from a simple majority to sixty percent. Second, the Amendment would increase the number of counties from which signatures must be collected upon a constitutional amendment initiative petition from one-half of the state’s counties to all counties. Third, the Amendment would eliminate amendment initiative petitioners’ opportunity to cure a petition found insufficient by

filing additional signatures. To justify these changes to century-old law, supporters of this resolution assert that our Constitution should be protected from the whims of those who want to change it for their own benefit and gain. Adding an unprecedented, arbitrary, and unsupported super-majority vote of electors, however, does not achieve that goal. Whether electing a Governor, state legislator, mayor, or park levy, all elections in Ohio are won by a simple majority (at least 50% plus 1 vote). However, SJR2 proposes to increase the required approval to 60% of electors only for citizen initiated Constitutional Amendments. This places an additional burden on citizen-initiated ballot measures that do not exist for any other type of race, levy or ballot issue in Ohio law.

Similarly, it has been repeatedly suggested that this Resolution is necessary to put a stop to the influence of special interest groups to “disturb” the Ohio Constitution. Making the ballot initiative signature-gathering process even harder for citizen groups to access will have the opposite of this stated desired effect. It will make it almost impossible for anyone except special interests with deep pockets to successfully pass a ballot initiative in Ohio.

SJR2 runs directly counter to the consumer-driven, good government mission of our organization, and will negatively impact our work. OCA has built its foundation on amplifying the voice of the people of Ohio and helping them to hold lawmakers accountable for their decisions or lack of action. By making it nearly impossible for citizen-led groups, like OCA, to place an issue on the ballot and secure successful passage, SJR 2 silences the voice of Ohio voters who want to propose their own amendments and offer a check on the Ohio General Assembly. Under this measure, that right will be reserved only for deep-pocketed special interests.

Candidates and corporations spend millions of dollars on television, radio, and digital advertisements to attempt to influence voters and the general public. Yet, after nearly 50 years, we

have found that to truly educate and organize for authentic change, nothing beats meeting community members at their door or on their phone. While highly effective and long-lasting, canvassing is time consuming and resource intensive. To truly ensure the results of our good-government campaigns, we must make multiple attempts at the doors and on the phones to make the necessary connections. Thus, to fully and effectively educate Ohioans on the issues that impact their pocketbooks, their environment, and their rights, OCA hires a team of canvassers to talk directly to Ohioans.

Mobilizing a canvassing effort to educate Ohioans on how to protect their communities and protect their rights, has always been resource intensive. As with many things, the past three years have added more stressors to success. On the heels of the pandemic when OCA door knocking was stopped for over 15 months, we saw the impacts of the subsequent tough labor market where we barely have had enough time to get our teams close to where we were pre-COVID. Our summer season hiring – our largest season, in which we often triple or quadruple the size of our door-knocking staff – literally starts the fall *before* when many college students are looking to put together a paid job and/or a paid internship with Ohio Citizen Action. Because this issue was not yet introduced in the legislature, Ohio Citizen Action had no indication that we would be spending our entire summer working on this issue instead of any of the plans we already had. In short, this August election has changed everything about our business and our plans leading up to Aug 8. If it were in the general election, or a subsequent election, we would at least have the knowledge it was possible and thereby have an even more robust hiring pipeline. If you want more specifics on this, I could try and flesh it out. But this summer model of hiring, and starting it in October for the following summer, is one that Ohio Citizen Action has used successfully for more than two decades.

#### IV. CONCLUSION

Cloaked as a “protection for our constitution,” SJR2, in word and spirit, is a power grab that makes it harder for citizens to employ a check on the state legislature. Tools of democracy, like Ohio’s citizen-led Constitutional Amendment process, have never been more precious nor their defense more important. We see no justifiable reason, after over 100 years, to suddenly make this already challenging process even harder. Therefore, we ask the Ohio Supreme Court to rule in favor of the Relators by finding the SJR2 as contrary to Ohio law and granting the requested relief including directing Respondent Ohio Secretary of State Frank LaRose to (i) remove the Amendment proposed in S.J.R. 2 from the August 8, 2023, ballot, and (ii) instruct the 88 county election officials under his supervision not to proceed with the special election on that Amendment.

Respectfully submitted,

May 18, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Brief of Amicus Curiae Ohio Citizen Action in Support of Relators* was served upon the following parties of record via electronic transmission this May 18, 2023.

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