No. 08-

In the Supreme Court of the United States

STATE OF OHIO,

Petitioner,

v.

CITIZENS FOR TAX REFORM, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the balancing test set forth in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), does a State's interest in preventing fraud in the electoral petition process justify a reasonable, nondiscriminatory business regulation that prohibits paying electoral petition circulators on a per-signature basis?

PARTIES TO THE PROCEEDING BELOW

The Petitioner is the State of Ohio. The Respondents are Citizens for Tax Reform and its treasurer.

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The opinion below is *Citizens for Tax Reform v. Deters*, 518 F.3d 375 (6th Cir. 2008).

BASIS FOR JURISDICTION

The Sixth Circuit entered judgment in this case on March 5, 2008. The State of Ohio did not seek rehearing before the Sixth Circuit, but instead sought a sixty-day extension from this Court, which the Court granted on May 27, 2008.

Plaintiffs Citizens for Tax Reform and its treasurer filed their First Amendment claim under 42 U.S.C. §1983, so this Court has jurisdiction over the case by virtue of 28 U.S.C. § 1331's provision of federal-question jurisdiction.

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

The First Amendment to the United States Constitution provides, "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Section One of the Fourteenth Amendment to the United States Constitution provides, "No state shall . . . deprive any person of life, liberty, or property, without due process of law."

Ohio Revised Code § 3599.111 provides:

> (A) As used in this section, "registering a voter" or "registering voters" includes any effort, for compensation, to provide

voter registration forms or to assist persons in completing or returning those forms.

(B) No person shall receive compensation on a fee per signature or fee per volume basis for circulating any declaration of candidacy, nominating petition, initiative petition, referendum petition, recall petition, or any other election-related petition that is filed with or transmitted to a board of elections, the office of the secretary of state, or other appropriate public office.

(C) No person shall receive compensation on a fee per registration or fee per volume basis for registering a voter.

(D) No person shall pay any other person for collecting signatures on election-related petitions or for registering voters except on the basis of time worked.

(E)(1) Whoever violates division (B) of this section is guilty of receiving improper compensation for circulating a petition, a felony of the fifth degree.

(2) Whoever violates division (C) of this section is guilty of receiving improper compensation for registering a voter, a felony of the fifth degree.

> (3) Whoever violates division (D) of this section is guilty of paying improper compensation for circulating a petition for registering a voter, a felony of the fifth degree.

INTRODUCTION

Ohio asks the Court to resolve lower-court confusion over the application of *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), to state laws regulating the petition process. In considering Ohio Revised Code § 3599.111, the U.S. Court of Appeals for the Sixth Circuit misapplied *Timmons* to Ohio's business regulation prohibiting circulators of any election-related petition from being compensated by the signature. The Court should grant the petition and review this case for three reasons.

First, the three other circuits that have considered measures similar to Ohio's law have held that statutes that regulate the method of payment—but do not prohibit the use of paid circulators—comply with the First Amendment. See *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141 (2nd Cir. 2006); *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001). In each case, the court determined that these statutes did not impose a severe burden on speech and were reasonable, nondiscriminatory restrictions that serve important state interests. By deviating from this correct analysis, the Sixth Circuit created a division of authorities among the courts of appeal.

Second, States have a vital interest in protecting their electoral processes, including the process by which a candidate or an initiative gets onto the ballot. The Sixth Circuit's decision convolutes what States may do to protect their electoral systems, and this confusion will affect not only lower-court analysis but also States' responses to petition fraud. See, e.g., David Lieb, *Senate pulls pay-per-signature ban from measure*, The Columbia Tribune, May 13, 2008 (citing the Sixth Circuit decision as reason for Missouri legislators stripping pay-per-signature ban from election reform bill).

Third, under *Timmons* balancing, the Sixth Circuit should have compared the strong state interest in protecting ballot integrity with the minimal burden on Citizens for Tax Reform ("CTR"). Instead, the Sixth Circuit required too much of the State and too little of the plaintiff. Allocating the evidentiary burden in this way will make it easy for plaintiffs to challenge—and difficult for States to defend—regulations in the future.

STATEMENT OF THE CASE

A. Petition circulators paid per signature have engaged in petition fraud in Ohio.

Ohio has suffered numerous instances of petition fraud. For example, in connection with the 2004 presidential election, Ohio discovered that a large number of invalid and fraudulent signatures were submitted by Ralph Nader in his attempt to get onto the ballot. Nader supporters submitted a nominating petition purporting to contain 14,473 valid signatures. (R. 9; Memo. in Opp'n to TRO, Ex. 3, Nader Findings of Fact at 1; Joint Appendix to

Sixth Circuit case no. 07-3031 ("J.A.") at 46). After review by the county boards of elections, the Secretary of State determined that only 6,464 signatures were valid. (*Id.* at 1-2; J.A. at 46-47). Protesters then contested a large number of these signatures as obtained in violation of Ohio election law and/or fraudulently. After a multiple-day hearing, a hearing officer for the Secretary of State invalidated an additional 2,756 signatures based on detailed evidence of election fraud and forgery. (*Id.* at 30-31; J.A. at 75).

During the Nader hearing, the evidence established that petition circulators (who were paid by the signature) falsely identified themselves as residents of the State of Ohio and forged signatures. At least one circulator lied and told signers that they were signing a petition opposing same-sex marriage. (R. 9; Memo. in Opp'n to TRO, Ex. 3, Nader Findings of Fact and Concl. of Law; J.A. at 48-72; R. 9; Memo. in Opp'n to TRO, Ex. 4, Nader Tr. 17-198; portions at J.A. 79-127); see also *Blankenship v. Blackwell*, 341 F. Supp. 2d 911, 914-15 (S.D. Ohio 2004) (discussing evidence of fraud related to the Nader petitions).

No one disputes that the perpetrators of this fraud were paid by the signature. Gregory Reese, who falsely signed circulator statements, testified that circulators were paid $4 per signature after reaching a certain quota. (R. 9; Memo. in Opp'n to TRO, Ex. 4, Nader Tr. 266-67; J.A. at 139-40). Theresa Amato, the national campaign manager for Nader, testified that the campaign was paying a company called JSM $1.50 per signature to gather signatures. (R. 9; Memo. in Opp'n to TRO, Ex. 7, Nader Tr. 868-70; J.A. at 149-51).

Ohio's experience with the Nader petition is just one instance of fraud and other irregularities owing to circulators who received per-signature payment. Director Bryan Williams of the Summit County Board of Elections denied hundreds of invalid petitions submitted by Wilbert Moore in 2004, who was paid by the signature. (R. 35; Williams Aff.; J.A. at 600-01). Moore's petitions were riddled with signatures designated as "not genuine." (See, e.g., R. 35; Williams Aff., Exs. A; J.A. at 692, 695, 700, 703, 704).

Criminal indictments also show examples of fraud committed by signature gatherers. For example, Kevin Dooley was indicted for False Election Registration and False Election Signatures for forging a signature in 2004 "as part of the ACORN and Project Vote voter registration project where he had been hired and was paid both an hourly rate and a fee per each new voter registered beyond a goal." (R. 37; Certified Copy of Indictment; J.A. at 746-49). Dooley ultimately pleaded guilty to one of the charges, received a suspended sentence, and was placed on probation. See http://fcdcfcjs.co.franklin.oh.us/CaseInformationOnline/case, Search for Case No. 04 CR 5764 (last accessed on 7/30/08).

B. To protect the petition circulation process from fraud, the State enacted Ohio Revised Code § 3599.111.

In response to the documented instances of fraud and other issues that arose during the 2004 general election, the Governor of Ohio called a special session of the General Assembly to consider the reform of certain election statutes. As a result of

that special session, the General Assembly enacted H.B. 1, which the Governor signed on December 30, 2004. The statute—codified as Ohio Revised Code § 3599.111—took effect on March 31, 2005. During the course of this litigation, the statute was amended to its present form. The statute provides that "no person shall receive compensation on a fee per signature or fee per volume basis for circulating any . . . initiative petition" and that "compensation for collecting signatures on election-related petitions and for registering voters shall be paid solely on the basis of time worked." Ohio Rev. Code § 3599.111(B), (D).

C. CTR challenged Ohio Revised Code § 3599.111 under the First and Fourteenth Amendments.

CTR filed this case seeking injunctive and declaratory relief. It averred that Ohio Revised Code § 3599.111 severely burdens CTR's rights under the First and Fourteenth Amendments, as well and impairs an existing contract with a consultant to oversee the circulation of CTR's petitions. (R. 1; Compl. ¶ 1; J.A. at 9-10). At the time, CTR was circulating a petition proposing an amendment to the Ohio Constitution for inclusion on the ballot at the 2006 general election. (R. 1; Compl. ¶ 15; J.A. at 13-14).[1]

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[1] On May 22, 2006, CTR formally withdrew its petition. However, CTR's current treasurer and former treasurer averred that the organization will circulate other petitions in the future. (R. 29; CTR's Mot. for Summ. J., Ex. 3, Mead Decl.; J.A. at 270-73; *id.* Ex. 4; Ledbetter Decl.; J.A. at 274-78).

Plaintiffs asserted that their costs to obtain signatures will increase substantially if their contractor cannot pay by the signature, but instead must pay its circulators by the hour. (R. 29; CTR's Mot. for Summary Judgment at 11-15; J.A. at 176-80). CTR asserts that its evidence demonstrates that the cost to qualify an issue will rise substantially and that professional petition circulators will be less likely to travel to Ohio to circulate petitions if Ohio's law is allowed to take effect.

D. The district court granted summary judgment in favor of CTR, and the Sixth Circuit affirmed.

The district court found that Ohio's statute would severely burden Plaintiffs' rights. *Citizens for Tax Reform v. Deters*, 462 F. Supp. 2d 827, 832 (S.D. Ohio 2006). The district court also concluded that Ohio had to prove that the fraud that occurred in Ohio would not have occurred but for the fact that the circulators in question were paid by the signature. *Id.* The court applied strict scrutiny and enjoined Ohio's statute. *Id.* at 832, 838.

On appeal, the Sixth Circuit first looked at the effects of Ohio's statute and determined that the primary burden is financial. Based on its review of the record, the court concluded that there was not a genuine issue of material fact because: (1) Ohio's per-time-only requirement would make proposing and qualifying initiatives more expensive; and (2) professional coordinators and circulators would likely not work under a per-time-only system. *Citizens for Tax Reform*, 518 F.3d at 385. At the same time, however, the court noted that "CTR has not pointed to any evidence showing that, outside a

relatively small number of professional circulators, there exists a substantial number of people or a demonstrable percentage of Ohio's population who would participate under a per-signature system but not under a per-time-only system." *Id.* at 383. Further, the court found, "[a]t best, CTR has raised a question of fact whether validity rates are lower under a per-time-only scheme." *Id.* at 385.

Nevertheless, the Sixth Circuit, applying strict scrutiny, held that the statute was not narrowly tailored to achieve the State's compelling interest. *Id.* at 387-88. The Sixth Circuit concluded that statutes that provide for the punishment of election fraud are "'adequate' to deter improper conduct with regard to petition circulation, 'especially since the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.'" *Id.* at 388 (quoting *Meyer v. Grant*, 486 U.S. 414, 427 (1988)).

The Sixth Circuit also distinguished cases from other circuits upholding similar payment-by-signature bans on grounds that the Ohio statute purportedly imposes harsher sanctions and is more restrictive than the other provisions in regulating methods of payment. *Id.* at 385.

E. Ohio has continued to experience fraud during the petition circulation process.

While Ohio Revised Code § 3599.111 has been enjoined, Ohio has continued to experience fraud.[2]

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[2] Ohio moved for permission to supplement the record in response to reports of fraud in 2006; the district court denied the motion. (R. 57; Mot. to Supplement; J.A. at 872-74; Docket Sheet of the District Court; J.A. at 7). Because the decision to

During the 2006 election cycle, media outlets reported instances of petition fraud committed by paid circulators. News reports detailed voter registrations being completed by the deceased in Cuyahoga and Franklin Counties, as well as forged signatures on petitions in support of a ballot issue in Bellefontaine, Ohio. (R. 57; Mot. to Supplement; J.A. at 872-74).

Yet again, in 2007, media reports detailed questionable signatures submitted by signature gatherers working on a referendum effort to repeal Senate Bill 16, which regulates adult entertainment establishments. Several Ohio county boards of elections noted validity rates of only 26%-33% on petitions. See Alan Johnson, Mark Niquette, and Jim Siegel, *Strip-club law might miss ballot; Most petition signatures invalid; some fraudulent*, Columbus Dispatch, Sept. 21, 2007, at A1. Directors of the Boards of Elections for the counties containing Toledo, Cleveland, and Cincinnati all noted that some of the signatures appeared to be fraudulent. *Id.* In fact, in Lucas County, an assistant prosecutor was quoted as saying that the petitions obviously contained fraudulent signatures, and that in 10 years on the job, "[i]t's probably the worst I've seen." *Id.* In Ashland County, a deceased judge's name appeared on a petition form, along with other deceased individuals. *Id.*

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extend discovery is one that is within the trial court's discretion, Ohio did not pursue an appeal from the denial of this motion. While not part of the record in this case, these reports of additional instances of fraud are certainly relevant to the question of whether this Court should hear this case and the importance of the State's interests.

Thus, each election cycle since the close of evidence in this case has yielded additional evidence of fraud committed by paid petition circulators.

ARGUMENT

A. The Sixth Circuit's decision created a conflict in authority among the lower courts.

The decision below created a division in authority among the circuit courts. Before the Sixth Circuit's decision, the Second, Eighth, and Ninth Circuits each had concluded that substantively identical provisions pose no First Amendment problems. See *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141 (2d Cir. 2006); *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006); *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) ["*IRI*"]. Rather than follow these well-reasoned precedents, the Sixth Circuit read Ohio's statute in an unjustifiably broad fashion in an attempt to distinguish it from these other States' indistinguishable provisions. The Sixth Circuit compounded this error by ignoring the canon of constitutional avoidance and thus reading an arguably ambiguous provision in a manner that *creates*, rather than avoids, a constitutional problem. The appeals court should have applied the avoidance canon to reach the same result as the Second, Eighth, and Ninth Circuits on the constitutionality of pay-per-signature regulations.

1. The Second, Eighth, and Ninth Circuits have upheld laws substantively identical to Ohio's.

Contrary to the Sixth Circuit's purported distinctions, the laws at issue in *Person*, *Prete*, and *IRI* are substantively indistinguishable from Ohio's law. Ohio Revised Code § 3599.111 prohibits pay-per-signature for signature gatherers. The provision states, "No person shall pay any other person for collecting signatures on election-related petitions or for registering voters except on the basis of time worked." Ohio Rev. Code § 3599.111(D). Echoing Ohio's law, the Oregon constitutional provision at issue in *Prete* prohibits paying circulators "based on the number of signatures obtained on an initiative or referendum petition," and allows only payment methods that are "not based, either directly or indirectly, on the number of signatures obtained." Or. Const. art. IV, § 1b. The New York and North Dakota laws under review in *Person*, 467 F.3d 141, and in *IRI*, 241 F.3d 614, are also substantively identical to Ohio's. New York's statute makes it a misdemeanor to compensate signature-gatherers "upon the basis of the number of names to such petition procured by such person, or at a fixed amount per name." N.Y. Elec. Law § 17-122(4). North Dakota's law, in turn, prohibits payment "'on a basis related to the number of signatures obtained.'" *IRI*, 241 F.3d at 616 (quoting N.D. Cent. Code § 16.1-01-12(11) (1997)).

The *Prete*, *Person*, and *IRI* courts—unlike the Sixth Circuit below—upheld these statutes against First Amendment challenges. Applying the balancing test set forth in *Timmons*, 520 U.S. 351,

these courts properly held that pay-per-signature bans do not impose a severe burden on speech, and that the State's important interest in combating election fraud justifies any minor burdens. See *Person*, 467 F.3d at 143; *Prete*, 438 F.3d at 963-68; *IRI*, 241 F.3d at 617-18.

2. The Sixth Circuit's attempt to distinguish Ohio's statute from those at issue in *Person*, *Prete*, and *IRI* is unconvincing and legally unsound.

Rather than following this clear precedent, the Sixth Circuit manufactured two artificial distinctions between the Ohio statute and those at issue in *Person*, *Prete*, and *IRI*. First, the appeals court said that the Ohio law provides for more severe punishments than the other laws. Second, the Sixth Circuit said that the Ohio statute makes circulating petitions comparatively more expensive than do other States' provisions, and thus imposes a greater burden on speech. Neither distinction withstands analysis.

The Ohio statute's penalties are nearly indistinguishable from those imposed under the other laws. The only ascertainable difference between the Ohio statute and those of the other States is that Ohio's law styles a violation as a felony, while the others classify violations as misdemeanors. But whether they are called "felonies" or "misdemeanors," violations are punished similarly in Ohio, New York, Oregon, and North Dakota.

The maximum jail sentence under Ohio's statute is identical to the maximum sentences under

New York's and North Dakota's. Under Ohio Revised Code § 3599.111(E), a violation of § 3599.111(D) is a fifth-degree felony. Accordingly, anyone convicted of violating § 3599.111(D) is subject to six to twelve months of incarceration, plus up to $2500 in fines. See Ohio Rev. Code §§ 2929.14(A)(5), 2929.18(A)(3)(e). The financial sanction, however, is not mandatory. Ohio Rev. Code § 2929.18(A). Like Ohio, both New York and North Dakota subject violators of the pay-per-signature ban to up to a year in prison, in addition to fines. *Citizens for Tax Reform*, 518 F.3d at 386 (citing N.Y. Elec. L. § 17-166 and N.D. Cent. Code § 12.1-32-01(5)).

Nor do Ohio's fines significantly differ from the others. Ohio's statute makes financial sanctions optional, while Oregon's imposes a mandatory fine. Ohio's fines are also less severe than Oregon's. Oregon imposes a mandatory fine of at least $100 for each individual signature sheet containing signatures collected on a pay-per-signature basis, Or. Admin. R. 165-014-0260, and unlike Ohio, Oregon imposes no upper limit on the amount of fines, *id.* Moreover, although the maximum fine under Ohio's statute is greater than the maximum fine under New York's or North Dakota's, it is only slightly so. While North Dakota sets the maximum fine at $2000, Ohio set it at $2500. Such a small difference is hardly sufficient to create a meaningful distinction.

Moreover, Ohio's statute is not significantly broader than the provisions at issue in *Prete* and *IRI*. As noted above, Oregon's constitution prohibits basing circulators' pay "*directly or indirectly*, on the number of signatures obtained." Or. Const. art. IV, § 1b (emphasis added). Similarly, North Dakota's

statute prohibits payment "on a basis *related to* the number of signatures obtained," N.D. Cent. Code § 16-1-01-12(11) (emphasis added), and New York's bans payment "upon the basis of the number of names to such petition procured by such person." N.Y. Elec. Law § 17-122(4). These provisions are just as broad as Ohio's requirement that signature gatherers be paid "on the basis of time worked." Ohio Rev. Code § 3599.111(D).

The Sixth Circuit attempted to distinguish Ohio's statute from other States' laws by reading the Ohio provision as prohibiting practices that the other statutes permit. Specifically, Oregon's ban on payment methods based "directly or indirectly on the number of signatures obtained" still permits:

> paying an hourly wage or salary, establishing either express or implied minimum signature requirements for circulators, terminating circulators who do not meet the productivity requirements, adjusting salaries prospectively relative to a circulator's productivity, and paying discretionary bonuses based on reliability, longevity and productivity, provided no payments are made on a per signature basis.

Prete, 438 F.3d at 952 n.1 (quoting Or. Admin. R. 165-014-0260). The Sixth Circuit used this passage to distinguish Ohio's provision from Oregon's. But with the possible exception of the discretionary bonus (which would not be based on hours worked), Ohio's statute permits each payment method listed by the Ninth Circuit, because each of these methods can be tied to the number of hours worked. Under

Ohio's statute, a petition-circulating firm could give prospective hourly raises to highly productive signature-gatherers. Similarly, a firm could dismiss signature-gatherers whose performance was poor. Nevertheless, the Sixth Circuit concluded that under the statute, "[a]rguably, CTR could not terminate a circulator who consistently did not collect enough signatures." *Citizens for Tax Reform*, 518 F.3d at 386.

The Sixth Circuit's interpretation is not supported by the text of the statute, which prohibits nothing of the kind. Moreover, as will be discussed in the next section, the strength of the State's interest underlying the statute and the limited burden the provision imposes on CTR's speech suggest that even the Sixth Circuit's overly broad reading of the statute should be upheld. But if the Sixth Circuit was concerned that a broad reading of the statute would lead to constitutional infirmity, its duty under the canon of constitutional avoidance would be to construe the statute to avoid constitutional difficulties—not to interpret the provision in a way that creates a constitutional problem.

"Under the avoidance canon, 'when "a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."'" *Gonzalez v. United States*, 128 S. Ct. 1765, 1771 (2008) (quoting *Harris v. United States*, 536 U.S. 545, 555 (2002), in turn quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408, (1909)). The avoidance canon applies in First Amendment

cases. *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69, 78 (1994); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 397 (1988).

Beyond ignoring the avoidance canon, this analysis also runs afoul of this Court's recent admonition not to "speculate about 'hypothetical' or 'imaginary' cases" when undertaking constitutional analysis. *Wash. State Grange v. Wash. State Republican Party*, 128 S. Ct. 1184, 1190 (2008). The Sixth Circuit's opinion below therefore creates not only a conflict among the circuits in the conclusion reached, but also a conflict between it and the required method of constitutional analysis established by this Court.

B. The state interests at issue in this case—protecting the integrity of the ballot and preventing fraud and the appearance of fraud in the electoral process—are of paramount importance.

The Sixth Circuit's creation of a division of authority among the circuits especially warrants this Court's review because the appeals court diminished the State's vital electoral interests. Ohio's prohibition on pay-per-signature applies to election-related petitions, including petitions to establish candidacy, to recall an official, to place a referendum or initiated statute on the ballot, or to amend the Ohio Constitution. See Ohio Rev. Code § 3599.111(B). As such, the Ohio statute protects the integrity of the ballot and Ohio's constitutional rights of initiative and referendum by ensuring that only those candidates and measures receiving the

support required by Ohio law appear on the ballot. Equally important, Ohio Revised Code § 3599.111(B) combats fraud in the circulation process. These interests, protecting the integrity of the ballot and preventing fraud in the electoral process, are vital to all States and are undermined by the Sixth Circuit's decision here.

1. Ohio's statute protects the integrity of the Ohio ballot.

"As a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974)). And indeed, the *Timmons* standard of review accommodates both the essential interests of the States in regulating elections as well as the First Amendment rights of those who associate for the purpose of advancing common political goals. See *Timmons*, 520 U.S. at 357-58; see also *Burdick,* 504 U.S. at 433-34. This Court has recognized that the States' interests include "protecting the integrity, fairness, and efficiency of their ballots and election processes." *Timmons*, 520 U.S. at 364; see also *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 788-89 (1978) (observing that state regulatory interests, including "[p]reserving the integrity of the electoral process . . . are interests of the highest importance").

Ohio's statute protects the integrity of the ballot by helping to ensure that the candidates and issues on the ballot have the support mandated by Ohio law. See *Anderson v. Celebrezze*, 460 U.S. 780, 788

n.9 (1983) ("The State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot . . . ."). And signatures play a critical part in the Ohio Constitution's rights of referendum and initiative. First, in order to amend the Ohio Constitution, a proponent must submit petitions containing signatures totaling 10% of the votes cast in the previous gubernatorial election (the "required total"). Ohio Const. art. II, §§ 1a, 1g. Second, in order to subject a statute to a referendum vote, a proponent must submit petitions containing signatures totaling 6% of the required total. *Id.* at art. II, §§ 1c, 1g. Finally, in order to place an initiated statute on the ballot, a proponent must first submit to the General Assembly a petition containing signatures totaling 3% of the required total, and then submit a supplemental petition containing an additional 3%. *Id.* at art. II, §§ 1b, 1g. Further, proponents of each type of ballot issue must satisfy a county distribution requirement and obtain signatures totaling a specified percentage from at least 44 of Ohio's 88 counties. *Id.* at art. II, §1g. Thus, the interest Ohio seeks to protect is more than simply the State's right to enact statutes regulating elections; it seeks to protect the process that the people have mandated in the Ohio Constitution.

The State's interests in protecting the integrity of its ballot are the same regardless of whether the statute regulates candidates or issue proponents. In *Buckley v. American Constitutional Law Foundation*, the Court recognized a similarity between initiative-petition circulators and candidate petition circulators because "both seek ballot access." 525 U.S. 182, 191 (1999). Thus, "States allowing ballot initiatives have

considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally." *Id.*

Furthermore, the differences between ballot issues and the selection of candidates have blurred as of late. Political parties have discovered that ballot issues can be used to increase turnout among different segments of voters, and ballot issues are now sometimes used at least in part for their effect on other races. K. K. DuVivier, *Perspectives: Ballot Initiatives and Referenda: Out of the Bottle: The Genie of Direct Democracy*, 70 Alb. L. Rev. 1045, 1047-50 (2007).

In the end, Ohio's constitutional prerequisites to the exercise of the rights of initiative and referendum are meaningless if Ohio is not permitted to enforce them. Issues must meet these standards to be placed on the ballot, and thus the signature requirements are the equivalent of the statutes that prescribe the steps that a candidate must take to appear on the ballot. By not giving this interest due weight, as discussed below, and by hampering the State's efforts to regulate nothing more than a business practice, the Sixth Circuit's decision has ramifications for the other States that currently have similar statutes, as well as for all States that require signatures to place an initiative or candidate on the ballot.

2. Ohio's statute prevents election fraud.

The State also has important interests in preventing fraud and the appearance of fraud in the electoral process. "Preserving the integrity of the electoral process, preventing corruption, and

'[sustaining] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance." *Bellotti*, 435 U.S. at 788-89 (citations omitted). By striking a statute that strives to prevent fraud before it occurs, the Sixth Circuit would limit Ohio to after-the-fact attempts to find, locate, and prosecute those who forge signatures or lie to obtain them.

a. The money flowing into States related to recent ballot issues has increased the risk of fraud.

Since this Court last addressed a state statute regulating an initiative process in 1999, there has been both an increase in the amount of money expended on ballot issues and numerous reported instances of fraud in the petition circulation process.

Expenditures on ballot issues have been increasing dramatically. In the 1997-98 election cycle, spending for and against statewide initiatives totaled $257,053,852; in 2004, more than $398,000,000 was spent on statewide initiatives. Robin E. Perkins, *A State Guide to Regulating Ballot Initiatives: Reevaluating Constitutional Analysis Eight Years After* Buckley v. American Constitutional Law Foundation, 2007 Mich. St. L. Rev. 723, 730. The year 2006 ranked as the third-largest year ever for ballot initiatives, with more than 200 measures on ballots in thirty-seven states. *Id.* at 724. Estimated expenditures on those issues that made the ballot in 2006 were near 400 million dollars. *Id.*

This money goes to professional firms specializing in the rapid collection of signatures, such as Arno Political Consultants, the firm used by CTR here. Professional firms now make millions in the months before elections. *Id.* at 730-31. "Gathering signatures has increasingly become a business, and like any other business it is run for profit." Richard J. Ellis, *Symposium Article: Signature Gathering in the Initiative Process: How Democratic is it?*, 64 Mont. L. Rev. 35, 37 (2003). The amount of money now flowing into the initiative process has led scholars to conclude that "[m]oney may also play at least as corrosive a role in initiative campaigns as it does in representative elections." DuVivier, *supra* p. 20, at 1048; see also *id.* at 1048 n.15 (citing other commentators).

Not surprisingly, given the influx of money into the process, States continue to experience petition fraud, including fraud committed by paid petition circulators. And significantly, payment-by-signature has been cited as a direct cause of this increase in fraud. See Richard B. Collins and Dale Oesterle, *Governing by Initiative: Structuring the Ballot Initiative: Procedures That Do and Don't Work*, 66 U. Colo. L. Rev. 47, 75 (Winter 1995) ("The use of circulators paid on a commission basis by signature . . . is one reason for the trend."). In 2006, for example, Oregon and Montana invalidated four different ballot issues after determining that fraud had been committed during the circulation process. See *In re Initiative Petition No. 379*, 155 P.3d 32 (Ok. 2006); *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759 (Mont. 2006). Also in 2006, the Michigan Civil Rights Initiative (MCRI) was plagued with allegations of fraud on the part of paid

circulators, although the Michigan Supreme Court did not remove the issue from the ballot. Perkins, *supra*, at 733-34; see also Jocelyn Freidrichs Benson, *Election Fraud and the Initiative Process: A Study of the 2006 Michigan Civil Rights Initiative*, 34 Fordham Urb. L.J. 889 (Apr. 2007).

b. The States, including Ohio, seek to prohibit a business practice that directly rewards circulators for forging or fraudulently obtaining signatures.

Ohio's statute combats fraud and the appearance of fraud by removing a direct incentive to unlawfully pad the number of signatures obtained. Rather than rely solely on the ability to discover and successfully prosecute those who violate Ohio's laws prohibiting election fraud, Ohio seeks to eliminate the motivation to commit the fraud. Thus, Ohio seeks to regulate not speech, but a specific troublesome business practice.

Ohio is not the first State to enact a statute prohibiting circulators from being paid by the signature in an attempt to deter fraud. Seven states currently have per-signature payment bans in effect. See Or. Const. Art IV, § 1b; Wyo. Stat. § 22-24-125 (2008); S.D. Codified Laws § 12-13-28 (2008); Mont. Code Ann. § 13-27-102 (2007); N.D. Cent. Code § 16.1-01-12 (11) (2008); N.Y. Elec. Law § 17-122 (2008); 2008 Neb. Laws 39. Four other States (Idaho. Maine, Mississippi, and Washington) enacted such bans, but had them stricken by district courts in cases in which, unlike here, the States presented "no evidence to support their assertions that a per-signature ban was necessary to promote the state

interest in preventing fraud and forgery in the initiative process." See *Prete*, 438 F.3d at 970 n.29 (citing cases).

Given the fraud that has occurred during the petition circulation process, this Court should take this case and vindicate the States' interest in preventing fraud and the appearance of fraud during that process.

C. The Sixth Circuit misapplied *Timmons* balancing.

The Court should also review the decision below, because the Sixth Circuit misapplied the Court's governing precedent of *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). See *Citizens for Tax Reform*, 518 F.3d at 380, 387 (applying *Timmons* and concluding that Ohio's law violates CTR's First Amendment rights). *Timmons* requires a court to weigh the character and magnitude of the burden the State's rule imposes on constitutional rights against the interests the State contends justify that burden. *Timmons*, 520 U.S. at 358-59. Under *Timmons*, strict scrutiny applies only when a statute has a "severe burden" on speech. *Id.* at 358; see also *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1624 (2008) (Scalia, J., concurring) ("'[S]trict scrutiny is appropriate only if the burden is severe.'") (quoting *Clingman v. Beaver*, 544 U.S. 581, 592 (2005))). A lesser burden triggers less-exacting review, and a State's important regulatory interests usually justify reasonable, nondiscriminatory restrictions. *Timmons*, 520 U.S. at 358.

In applying *Timmons*, however, the Sixth Circuit wrongly analyzed both the "severe burden" and "state interest" prongs. First, the court failed to require CTR to show that the law severely burdens CTR's constitutional rights. Second, the Sixth Circuit unjustifiably (and inconsistently with this Court's recent precedent) minimized Ohio's interest in preventing election-related fraud. As this Court recently recognized in *Crawford v. Marion County Election Board*, a State's interest in preventing election fraud is paramount. The Sixth Circuit thus should have recognized Ohio's interest and required CTR to demonstrate how Ohio's regulation severely burdens its rights.

1. CTR failed to show that Ohio's law severely burdens First Amendment rights.

While CTR argues that Ohio's ban on per-signature payment would significantly burden its First Amendment rights, its allegations do not support that legal conclusion. First, the law regulates only payment methodology; it prohibits no speech and curtails no message. Second, CTR's allegations show that any incidental burden on CTR's rights is minimal. Indeed, CTR shows only that the law burdens its vendor's preferred business model, and that in turn affects the economic relationship between CTR and the vendor. But that does not impair CTR's ability to communicate with voters, and it does not impair CTR's ability to achieve ballot access for its issues. Consequently, Ohio's law does not violate CTR's First Amendment rights.

a. Ohio's law does not burden core political speech.

Timmons requires the reviewing court to consider whether the law at issue burdens a *constitutional* right. See *Timmons*, 520 U.S. at 358. Here, Ohio's law does not directly burden core political speech; the law regulates only payment methodology, not the communicative aspect of signature-gathering. At most, CTR alleges an indirect effect on the number of voices it can buy to carry its message. But CTR's allegations do not rise to the level of a constitutional concern. The two U.S. Supreme Court decisions invalidating petitioner regulations—*Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation,* 525 U.S. 182 (1999)—involved core First Amendment speech, not business regulations.

The statute in *Meyer* completely banned the use of paid circulators, which dramatically limited the number of voices to just volunteers. While the Court did not specifically quantify the loss of voices, the appeals court had found that the restriction "necessarily reduce[d] the quantity of expression." *Meyer*, 486 U.S. at 419 (internal citations omitted). The statute also barred proponents from using their money to amplify their speech. Not surprisingly, the Court compared that aspect of the ban to the invalidity of limits on independent political expenditures under *Buckley v. Valeo*, 424 U.S. 1 (1976). See *Meyer v. Grant*, 486 U.S. at 419 ("Thus, the effect of the statute's absolute ban on compensation of solicitors is clear [and is] like the campaign expenditure limitations struck down in *Buckley* [*v. Valeo*].") (internal quotations omitted).

Similarly, in *Buckley v. American Constitutional Law Foundation*, the Court found that requiring circulators to be registered voters significantly reduced the number of available voices. Only 65% of the voting-age population was registered to vote, so eliminating 35% of the population caused a direct "speech diminution of the very kind produced by the ban of paid circulators at issue in *Meyer*." *Buckley*, 525 U.S. at 193 n.15, 194.

Ohio's regulation, in contrast, affects merely the business arrangement between a petition circulator and a vendor. The ban on per-signature payment does not bar a single voice. Nor does Ohio's law prevent a citizen from using money to amplify her message. Compare *Meyer*, 486 U.S. at 419. Ohio's law affects only petition circulators who insist on being paid by a particular method. CTR can still use both volunteers and paid circulators, and can still use its money to amplify its message. Even the Sixth Circuit concluded that, unlike the regulation in *Buckley*, "there is little in the record to suggest" that Ohio's business regulation would dissuade "a substantial number of people in Ohio . . . from participating in the petition process." *Citizens for Tax Reform*, 518 F.3d at 385.

Accordingly, because Ohio's law regulates only a business relationship and not speech, Ohio's business regulation does not violate the First Amendment.

b. Banning pay-per-signature fee arrangements does not severely burden CTR's constitutional rights.

Even if the Court concludes that Ohio's law affects constitutionally protected speech, CTR must still show that Ohio's law severely burdens CTR's First Amendment rights. At the summary judgment stage, CTR, however, offered only irrelevant and speculative assertions, while Ohio offered evidence contradicting those assertions.

i. CTR offered only speculative and irrelevant evidence to support its claim.

CTR's relevant constitutional right is the right to spread its message to try to get issues on the ballot. But CTR's "factual" assertions do not lead to the conclusion that Ohio's law threatens that right. Rather, CTR's assertions are all either speculative or, if true, irrelevant to the issue that matters. Indeed the Sixth Circuit even concluded that some of CTR's evidence was "limited" and "inconclusive." *Citizens for Tax Reform*, 518 F.3d at 384.

First, CTR claims that some circulators will refuse to work in Ohio if the per-signature payment ban goes into effect, but that claim is unsubstantiated. CTR's vendor, Arno, made only nonspecific assertions about his view of what "professional circulators" prefer. (See R. 29; CTR's Mot. for Summ. J., Ex. 5, Arno Decl. ¶ 28; J.A. at 303). Only one actual circulator, Gena Ranger, said she would not want to work in Ohio. (R. 43; Ranger's Decl. ¶ 8; J.A. at 842). But that is Ranger's choice,

not a legal restriction. And it very well may be that other circulators would rather be paid by the hour than by the signature.

Second, just as CTR's allegation of a diminished pool of circulators reduces to nothing, so, too, does any claim that the companies in the business will abandon Ohio wholesale. Arno continues to operate in Oregon, and his claim regarding Ohio is not that his company will leave, but that his company will have to renegotiate its contracts. (R. 29; Arno Decl. ¶ 30; J.A. at 303-04).

Third, CTR's allegations of increased costs are speculative. Originally, CTR offered Arno's estimate that CTR's costs would increase from the original fixed contract price of $765,000 ($1.70 per signature for 450,000 signatures) to $1,069,000. (R. 29; Arno Decl. ¶ 21; J.A. at 301). But later, he changed that estimate to $1,500,000. (R. 29; Arno Decl. ¶ 25; J.A. at 302). He offered no data or other details to support the newer, larger figure. He also admitted that he offered no documentation regarding the real costs of any of his three Oregon projects under the hourly payment system, nor did he compare any such data to the signatures collected to compare what those Oregon projects would have cost under a per-signature system. (R. 29; CTR's Mot. for Summ. J., Ex. 6, Arno Depo. at 44; J.A. at 359). In sum, Arno had no factual foundation underlying his increased-costs claim.

Taken as a whole, CTR's evidence of burden is strongly similar to the lack of evidence the plaintiffs proffered in *Crawford*. The *Crawford* plaintiffs attacked Indiana's law with depositions and affidavits of individuals who encountered difficulties

obtaining the required identification cards. *Crawford*, 128 S. Ct. at 1622. The Court concluded, however, that such testimonials did not provide "concrete evidence" that the regulation imposed an "'excessively burdensome requirements'" on voters. *Id.* at 1622-23 (quoting *Storer v. Brown*, 415 U.S. 724, 738 (1974)). Here, too, CTR's evidence is not concrete and does not show an excessive burden.

ii. The Oregon experience contradicts CTR's assertions that it is severely burdened.

Ohio cannot definitively show what would happen in Ohio with the law in place because it has been enjoined from the start, preventing it from building that record. But Oregon's similar law did go into effect, so that is the best available evidence of what occurs when these statutes are implemented. The Oregon experience shows that ballot access did not decrease significantly.

Oregon saw just one fewer ballot initiative qualify for the ballot in 2004, after the new law, compared to 2002, before the law. (See R. 38; Certified Copy of Oregon Sec. of State's 2002-2004 Final Measure Log; J.A. at 750-54). And the overall validity rate for qualifying measures rose from 69.63% to 72.35%. (*Id.*). Notably, the number of initiatives that were filed, but failed to qualify, went down, from four in 2002 to just one in 2004. (*Id.*). If the law created barriers to signature collection, the number of tried-but-failed issues should have gone up. The decrease, and the concomitant increase in signature validity rates, shows that Oregon was able to remove an incentive to fraud without significantly burdening speech or reducing ballot access.

2. The Sixth Circuit minimized Ohio's interest in preventing election fraud and discounted the evidence Ohio produced.

No one disputes that pay-per-signature fee arrangements induce petition circulators to engage in fraud. Ohio passed Revised Code § 3599.111 to prohibit a payment system that encourages fraud and to protect a key part of the electoral process—the gathering of signatures to place an initiative (or candidate) on the ballot. States may enact such reasonable regulations, as long as those regulations do not impede core political speech or severely burden the ability of those seeking political change to communicate with voters. See *Timmons*, 520 U.S. at 358. And in this case, Ohio's law is amply supported by the legal conclusion that paying circulators by the signature is an incentive to commit two types of fraud: (1) submitting false signatures and (2) misrepresenting the contents of a petition to induce citizens to sign.

a. States are not required to show empirical evidence of fraud.

States need not show "empirical verification" to justify regulations to prevent fraud. *Timmons*, 520 U.S. at 364. In *Timmons*, the Court considered Minnesota's law prohibiting a candidate from appearing on the ballot as the candidate for more than one party. *Id.* at 353. The *Timmons* plaintiffs argued that such a prohibition violated their First Amendment rights, but the Court held that Minnesota's interests in "ballot integrity and political stability," *id.* at 369-70, justified any burden the plaintiffs alleged. Specifically, the State asserted

that the law was supported by the State's interest in preventing voter confusion, promoting candidate competition, preventing electoral distortions, and discouraging party splintering. *Id.* at 364. The Court did not require more of the State than this assertion.

In *Crawford*, the Court followed *Timmons* and did not require "empirical verification" of the State's interest. Indiana justified its voter-identification law as a fraud-prevention regulation even though the record contained "no evidence of any such fraud actually occurring in Indiana in any time in its history." *Crawford*, 128 S. Ct. at 1619. Despite this lack of evidence, the Court upheld the regulation. *Id.* at 1624.

Here however, the Sixth Circuit demanded far more than either *Timmons* or *Crawford* required. Contrary to the Court's precedent, the Sixth Circuit: (1) required Ohio to offer evidence of actual fraud and (2) required Ohio to demonstrate a causal connection between the regulated activity and election fraud.

i. States do not need to suffer the adverse effects of petition fraud before legislating to protect the electoral process.

The *Timmons* approach, not requiring an empirical showing of fraud, makes good sense. Requiring States to prove actual fraud before legislating would mean that States would have to allow their electoral systems to suffer harm before taking corrective action. See *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986). Accordingly, as

the court in *Munro* explained, States may "respond to potential deficiencies in the electoral process with foresight" and need not wait for harm before legislating. *Id.* at 195.

The Sixth Circuit's approach, however, requires States to suffer harm before legislating. See *Citizens for Tax Reform*, 518 F.3d at 387 (requiring Ohio to demonstrate that "circulators who were paid by signature engaged in fraud in the past"). For example, the court took "judicial notice" of the incentive to inflate the number of signatures when a petition circulator's pay is paid per signature but concluded that whether someone would act on that incentive is an "empirical question" that must be supported by an evidentiary record. *Id.* at 387.[3] To meet the Sixth Circuit's high standards, Ohio must have at least one fraudulently placed candidate or initiative on the ballot to create a suitable record of actual fraud. Moreover, requiring such empirical evidence would lead to "endless court battles" over the evidence a State offers to support its law. *Munro*, 479 U.S. at 195.

The better approach, as *Timmons*, *Munro*, and *Crawford* have recognized, is to permit States to protect their electoral processes ex ante, rather than to force States to pick up the pieces after fraud undermines the fair workings of the political process.

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[3] Although the Sixth Circuit required "empirical verification" for the common sense notion that pay-per-signature fee arrangements induce fraud, the court allowed CTR to rely on "basic economic theory" to argue that employees paid per hour are less efficient. See *Citizens for Tax Reform*, 518 F.3d at 384.

ii. *Timmons* does not require a State to demonstrate a causal connection between the regulated activity and fraud.

Not only did the Sixth Circuit require empirical evidence of fraud, but it also demanded Ohio to demonstrate a causal connection between election fraud and pay-per-signature fee arrangements. For example, the court recognized instances of fraud relating to the Nader petitions, but concluded that Ohio's evidence of such fraud was insufficient. According to the court, Ohio had to prove a causal connection between the fraud and the petition circulators' receipt of payment per-signature. Because, in the court's opinion, the evidence did not prove that the per-signature feature caused the fraud but instead showed only a correlation, the evidence did not justify Ohio's regulation. *Citizens for Tax Reform*, 518 F.3d at 388.

Contrary to the Sixth Circuit's high evidentiary standards, the State is entitled to reasonable inferences from the evidence presented, and here, the State showed that people paid per signature submitted many false signatures. No more is required. And as a practical matter, it is hard to envision what stronger evidence CTR would have the State supply to firm up the obvious connection between incentive and result.

b. Even though no empirical evidence is required, Ohio put forth evidence documenting fraud.

Even though *Timmons* does not require "empirical verification," Ohio more than showed its need to curtail petition fraud induced by pay-per-signature business arrangements. But the Sixth Circuit ignored or discounted the evidence Ohio offered.

For example, Ohio offered the testimony of a director of an Ohio county board of elections. The director testified that his board referred to the Sheriff's office for investigation a petition circulator who was paid per signature in a 2004 initiative petition drive. (R. 35; Williams Aff. ¶¶ 1-3; J.A. at 600). The circulator's petitions were riddled with signatures designated as "not genuine." (See R. 35; Williams Aff., Exs.; J.A. at 692, 695, 700, 703, 704). Ohio also showed that voter-registration drives in Ohio—which involved payment per signature—had led to criminal investigations. For example, Kevin Dooley, a petition circulator who was paid per-registrant, pleaded guilty for forging a signature. (R. 37; Certified Copy of Indictment; J.A. at 746-49; see http://fcdcfcjs.co.franklin.oh.us/CaseInformationOnline/caseSearch for Case No. 04 CR 5764 (last accessed on 7/30/08).

Ohio also offered as evidence the experiences of other States—Oregon, North Dakota, and Montana—with pay-per-signature payments and fraud. Those States' experiences are relevant for the common-sense reason that States' judgments are informed by a national perspective. See *Crawford*,

128 S. Ct. at 1619 (permitting Indiana to rely on examples of fraud in other parts of the country to justify Indiana's voter-identification regulation); cf. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 296-97 (2000) (permitting City of Erie to rely upon other localities' experience with nude dancing to conclude that nude dancing in Erie would produce harmful "secondary effects").

Finally, and quite tellingly, protests were filed against CTR and its circulators, alleging fraud of several types. The protests asserted that CTR's petitions listed inaccurate and false employer information, that forms included inflated totals of the number of signatures, and that circulators' compensation statements were omitted, false, altered, or interlineated. (R. 44; Reply, Exs.; J.A. at 856-68). These protests were never resolved, because CTR withdrew its petition. But the possibility of fraud shown by those protests—and the attendant public perception of a problem in the process—more than demonstrates why Ohio acted to prevent further abuse. Cf. *Crawford*, 128 S. Ct. at 1620 (recognizing that "public confidence in the integrity of the electoral process" justifies reasonable regulations).

3. Ohio's law is constitutional under the *Timmons* balancing test.

Under the *Timmons* balancing test, the Sixth Circuit should have compared the strong state interests outlined above to the minimal burden on CTR. The Ohio law more than satisfies the test and survives First Amendment challenge. As the Court explained, "States allowing ballot initiatives have considerable leeway to protect the integrity and

reliability of the initiative process," *Buckley*, 525 U.S. at 191, and a "State's 'important regulatory interests' will usually be enough to justify 'reasonable non-discriminatory restrictions.'" *Timmons*, 520 U.S. at 358 (quoting *Burdick*, 504 U.S. at 434).

Here, preventing fraud and ensuring the integrity of the ballot-initiative process are fundamental state regulatory interests. Ohio's law is a reasonable, measured response to in-state fraud that does not significantly burden CTR or similar groups, as CTR remains able to communicate with voters and qualify issues for the ballot. All that Ohio has done is alter the business model that governs the relationship between CTR and its vendors, not CTR's communications with voters.

CONCLUSION

For all of the above reasons, the Court should grant Ohio's Petition for Certiorari.

Respectfully submitted,

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