

Case No. 20-3526

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Chad Thompson, et al.,	:	
	:	
Plaintiffs-Appellees	:	On Appeal from the
	:	United States District Court for
v.	:	the Southern District of Ohio
	:	
Governor of Ohio, Mike	:	Case No. 2:20-c-2129
DeWine, et al.,	:	
	:	
Defendants-Appellants	:	
	:	
Ohioans for Secure and Fair	:	
Elections, et al.,	:	
	:	
Intervenors-Appellees	:	

**MOTION FOR LEAVE TO FILE MERIT BRIEF OF AMICI CURIAE,
OHIO MANUFACTURERS' ASSOCIATION; OHIO CHAMBER OF
COMMERCE; NATIONAL FEDERATION OF INDEPENDENT BUSINESS
IN OHIO; OHIO FARM BUREAU FEDERATION; OHIO COUNCIL OF
RETAIL MERCHANTS; AND OHIO BUSINESS ROUNDTABLE,
IN SUPPORT OF APPELLANTS**

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Amici curiae, Ohio Manufacturers' Association, Ohio Chamber of Commerce, National Federation of Independent Businesses in Ohio, Ohio Farm Bureau Federation, Ohio Council of Retail Merchants, and Ohio Business Roundtable, move for leave to file the attached brief of amici curiae in support of Appellants.

Amici curiae sought consent of all parties prior to filing this motion and received consent from Benjamin M. Flowers and Mark R. Brown on behalf of their respective clients. All other parties, by and through their counsel, declined to give consent. The nonconsenting parties did not indicate any intent to abandon participation in this case.

STATEMENT OF INTEREST OF AMICI CURIAE

A. Identities of Amici Curiae

The Ohio Manufacturers' Association ("OMA") is a statewide nonprofit trade association whose membership consists of over 1,400 manufacturing companies. The OMA aims to enhance the competitiveness of manufacturers and improve living standards of Ohioans by shaping a legislative and regulatory environment conducive to economic growth in Ohio.

The Ohio Chamber of Commerce ("Chamber") is Ohio's largest and most diverse business-advocacy organization. The Chamber represents members of virtually every industry throughout Ohio, including retail, transportation,

manufacturing, healthcare, and others. The Chamber works to promote and protect the interests of its more than 8,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate.

The National Federation of Independent Business in Ohio (“NFIB”) is an association with more than 22,000 members, making it the State’s largest association dedicated exclusively to serving the interests of small and independent business owners. NFIB members typically employ fewer than 25 people and record annual revenue of \$1 million or less.

The Ohio Farm Bureau Federation (“OFBF”) is Ohio’s largest general farm organization, representing members in all of Ohio’s 88 counties. The Farm Bureau’s grassroots structure places its members at the helm of developing policy to advance agriculture and strengthen communities at the local, state and national level. The Farm Bureau members run the gamut from large to small businesses, from crop production to energy development, from livestock production to food processing, and everything in between. The Farm Bureau advocates for these members to ensure a strong economy and better future for all of Ohio.

The Ohio Council of Retail Merchants (“Council”), founded in 1922, is a statewide trade association that includes over 7,000 member companies, ranging from large department stores, supermarkets, and drug store chains, to independently

owned retail businesses. The Council promotes and supports legislation and initiatives that pave a positive path for Ohio's retail community.

The Ohio Business Roundtable ("OBRT") was founded for one sole purpose: to improve Ohio's business climate. Since its inception, the OBRT has worked with Ohio's governors and legislative leaders to make Ohio more business-friendly and more competitive both nationally and internationally. OBRT members — the Chief Executive Officers of many of Ohio's largest, most successful businesses — have helped bring about momentous change to Ohio's economic landscape. It is the belief of OBRT members that any changes to laws regulating the mechanics of the petition and initiative process belong to the Ohio General Assembly and the citizens of Ohio.

B. Interest of Amici Curiae and Relevance of Their Brief

Amici curiae represent a direct-democracy interest not now present in the case. The State defendants represent Ohio's Constitution and statutes. Appellees — backers of two initiatives to amend the Ohio Constitution and municipal initiatives to enact local ordinances — represent the interests of those who would enact or amend laws. However, direct democracy encompasses other legitimate interests as well. Those other interests include the interests of those who would oppose measures getting to the ballot where questionable tactics to obtain signatures have been used

and of those who would oppose changes to the law. The interests of both sides of direct democracy matter and should be protected.

In the past, some amici have opposed initiatives backed by interloping out-of-state interests. Interlopers or not, some initiative supporters fail to follow the law. In those cases, groups like amici seek to ensure compliance with Ohio law to protect the integrity of the ballot-initiative process. *See, e.g., Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, 149 Ohio St.3d 250, 2016-Ohio-5377, 74 N.E.3d 99; *Ohio Renal Assn. v. Kidney Dialysis Patient Protection Amendment Commt.*, 154 Ohio St.3d 86, 2018-Ohio-3220, 111 N.E.3d 1139.

The District Court's order here not only fails to vindicate Ohio law but also rewrites it. Perhaps most troublingly, the order rewrites Ohio's Constitution. In that rewriting, it sidelines any direct-democracy participants who have a constitutional right to challenge the initiatives. Specifically, the order rewrites the signature deadlines for initiative backers. However, the District Court overlooked the chain of related deadlines that follow from the signature deadlines. Effectively, the order writes out of the Ohio Constitution the ability to challenge the signature-gathering process. In essence, any initiative supported by sufficient signatures — regardless of how fatally flawed in their collection — will appear on the ballot. Amici's interest in this case follows from appellate courts' perennial concern about the next case and the case after. An appellate court almost never resolves only the case before it.

Instead, cases like this result in precedent that will determine initiatives for years to come. Given the pandemic's current trajectory and the popularity of initiative petitions in Ohio, the decision here won't lie dormant for 100 years. Thus, there is little reason to think that next year's initiatives will go unaffected, never mind what analogous emergency might crop up in coming years. Should the District Court's decision stand — with its foray into legislating an untested, untried, and unsecure electronic-signature process — direct democracy will stumble.

In short, amici's perspective — the other side of the direct-democracy equation — is lacking in the parties now before this Court. For that reason, amici's views are worth hearing, and this Court should grant leave for amici to file their merit brief in support of Appellants.

Respectfully submitted,

/s/ Anne Marie Sferra

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Council of Retail Merchants; and Ohio
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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this *Motion* complies with the type-volume requirements and contains 976 words. *See* Fed. R. App. P. 27(d)(2)(A).

/s/ Anne Marie Sferra

Anne Marie Sferra (0030855)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Motion for Leave to File Merit Brief of Amici Curiae, Ohio Manufacturers' Association; Ohio Chamber of Commerce; National Federation of Independent Business in Ohio; Ohio Farm Bureau Federation; Ohio Council of Retail Merchants; and Ohio Business Roundtable, in Support of Appellants** was filed with the Clerk of Courts using the ECF system, which will send notification of such filing to all attorneys of record on July 24, 2020:

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