

IN THE SUPREME COURT OF OHIO

FirstEnergy Solutions Corp., et al.,	:	
	:	Case No.
Relators,	:	
	:	Original Action for Petition Challenge
vs.	:	Under Article II, Section 1g of
	:	Ohio Constitution and for
Ohioans Against Corporate	:	Writ of Mandamus
Bailouts, et al.,	:	
	:	
Respondents.	:	

RELATORS' MOTION FOR EXPEDITED CASE SCHEDULE

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RELATORS' MOTION
FOR EXPEDITED CASE SCHEDULE

Pursuant to S.Ct.Prac.R. 14.01(E) and 12.05, Relators FirstEnergy Solutions Corp., Ed Klco, and Larry Tscherne (collectively, “Relators”) move the Court to issue an expedited case schedule that facilitates an efficient and timely ruling on Relators’ Petition Challenge filed pursuant to Article II, Section 1g of the Ohio Constitution and its petition for an alternative writ of mandamus in the event a peremptory writ is not issued in the first instance.

This action presents the most fundamental of petition challenges: Relators request this Court to invalidate the illegal Referendum Petition of Respondents Ohioans Against Corporate Bailouts and its three committee members (collectively, the “Committee”) that is presently being circulated to Ohio electors in an effort to invalidate the recently enacted Amended Substitute House Bill Number 6 (“H.B. 6”).

The Ohio Constitution is clear:

“Laws providing for tax levies ... shall go into immediate effect.... The laws mentioned in this section *shall not be subject to the referendum.*”

Ohio Constitution, Article II, Section 1d
(emphasis added)

H.B. 6 was enacted by the Ohio General Assembly and signed into law by Governor DeWine on July 23, 2019. H.B. 6 is exempt from a referendum under Article II, Section 1d because it clearly provides for a tax levy. H.B. 6 levies a tax (called a monthly “charge”) on all Ohio retail electric customers in the aggregate amount of \$170 million annually for roughly a seven-year time period. H.B. 6 requires 88.25% of the collected taxes to be deposited into a newly created nuclear generation fund (the “Nuclear Generation Tax Funds”) and the remaining 11.75% of the collected taxes to be deposited into the newly created renewable generation fund –

both of which are held in the custody of the State Treasurer. Under H.B. 6, newly enacted R.C. 3706.55 mandates the State Treasurer to distribute the Nuclear Generation Tax Funds to owners and operators of “qualifying nuclear resources” based on credits earned from producing electricity.

As detailed in Relators’ Petition Challenge, even the opponents of H.B. 6 acknowledged that H.B. 6 is a “tax.”

Yet, despite the fact that H.B. 6 is a tax levy that is constitutionally exempt from a referendum, the Respondent Committee seeks a statewide referendum asking electors to invalidate H.B. 6 in direct contravention of the Ohio Constitution.

Time is of the essence in this case because the Respondent Committee, within the last few days, has started undertaking a misleading and ultimately futile solicitation of voter support and signatures for the Committee’s illegal referendum effort. It is inherently misleading and confusing to Ohio voters for the Respondent Committee and its circulators and other agents to circulate and file a Referendum Petition that states, implies or otherwise suggests that H.B. 6 is subject to a referendum when that is not true.

The Respondent Committee’s Referendum Petition on H.B. 6 is a nullity and should not be circulated to Ohio electors for signature, accepted for filing by Respondent Secretary of State, determined to be legally sufficient, or placed on the ballot, because H.B. 6 is expressly exempted from a referendum by the Ohio Constitution. The sooner the Court invalidates the Referendum Petition, the fewer the number of Ohio electors who will be misled by the Committee’s illegal referendum effort and the less public resources that will be wasted in determining the sufficiency of signatures and other legal requirements relating to the futile Referendum Petition.

For these reasons, Relators request the Court to issue an expedited case schedule as follows:

Respondents' Answer to Petition Challenge/Complaint:	5 calendar days after service
Relators' Merits Brief (and any supporting evidence):	15 calendar days after Respondents' Answer
Respondents' Merits Brief (and any supporting evidence):	15 calendar days after Relators' Brief
Relators' Reply Brief (and any rebuttal evidence):	10 calendar days after Respondents' Brief
Oral Argument/Hearing (if the Court deems it necessary):	[At the earliest opportunity consistent with the Court's calendar]

Respondents will not be prejudiced by this proposed case schedule, inasmuch as little discovery, if any, is necessary in order to resolve the constitutional issue on which Relators' Petition Challenge is premised.

Alternatively, if the Court determines that a more expedited case schedule is appropriate to facilitate a timely ruling on Relators' Petition Challenge in accordance with S.Ct.Prac.R. 14.01(E), Relators ask for, and will comply with, a more expedited schedule established by the Court.

Respectfully submitted,

/s/ John W. Zeiger

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CERTIFICATE OF SERVICE

I hereby certify that, consistent with S.Ct.Prac.R. 14.01(F), a copy of the foregoing motion is being served either via personal service or via email (as designated below) on this 4th day of September, 2019, upon each of the following Respondents:

Via Electronic Mail:

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/s/ Stuart G. Parsell

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