September 28, 2011

The Honorable Jon Husted
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

SYLLABUS: 2011-035

1. The repeal of R.C. 3503.20 in Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011) has no effect if Am. Sub. H.B. 194, 129th Gen. A. (2011) (eff. Sept. 30, 2011) is subject to a stay.

2. Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011), repeals R.C. 3509.031.

3. Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011) controls as to the statutes amended therein, provided that, if Am. Sub. H.B. 194, 129th Gen. A. (2011) (eff. Sept. 30, 2011) is subject to a stay, language previously added by Am. Sub. H.B. 194 to the statutes amended in Am. Sub. H.B. 224 is deleted and language previously deleted by Am. Sub. H.B. 194 from the statutes amended in Am. Sub. H.B. 224 is reinserted. Uncodified section 3 of Am. Sub. H.B. 224 does not alter this conclusion.

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September 28, 2011

OPINION NO. 2011-035

The Honorable Jon Husted
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary of State Husted:

You have requested an opinion on several questions about the effect of a potential referendum on Am. Sub. H.B. 194, 129th Gen. A. (2011) (eff. Sept. 30, 2011) on the provisions of Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011). Specifically, you have asked the following questions:

1. How would a stay of Am. Sub. H.B. 194 affect the provisions of Am. Sub. H.B. 224 that were incorporated from Am. Sub. H.B. 194 into Am. Sub. H.B. 224?

2. Which versions of the statutes control after the effective date of Am. Sub. H.B. 224 if Am. Sub. H.B. 194 is subject to a stay?

3. Is Section 3 of Am. Sub. H.B. 224 relevant to the analysis of questions 1 and 2?

Background

Am. Sub. H.B. 194

Am. Sub. H.B. 194 and Am. Sub. H.B. 224 make numerous changes to Ohio's elections laws. The 129th General Assembly passed Am. Sub. H.B. 194 on June 23, 2011, and the Governor signed this bill on July 1, 2011. Am. Sub. H.B. 194's effective date is September 30, 2011.

Am. Sub. H.B. 194 amends more than 100 Revised Code sections, enacts 13 sections, and repeals several more. Many of these statutory provisions address provisional and absentee voting. The bill also requires a person who uses a Social Security number as identification to provide the full nine-digit number instead of the last four digits, as under prior law.

Am. Sub. H.B. 224

Three weeks after the passage of Am. Sub. H.B. 194, on July 13, 2011, the General Assembly passed Am. Sub. H.B. 224. The Governor signed Am. Sub. H.B. 224 on July 27, 2011. Certain provisions of Am. Sub. H.B. 224, pursuant to an emergency clause in uncodified section 4, took effect immediately on July 27, 2011.[1] Other provisions of Am. Sub. H.B. 224 are effective October 26, 2011.

Initially, Am. Sub. H.B. 224 focused on changes pertaining to military and overseas voting. *See* Ohio Legislative Service Comm'n Analysis, H.B. 224 (as introduced). The final bill, however, addresses not only military and overseas voting, but also statutes on other subjects that were enacted or amended by Am. Sub. H.B. 194, including statutes related to provisional and absentee voting and use of an elector's Social Security number. *See* Ohio Legislative Service Comm'n Analysis, Am. Sub. H.B. 224 (as passed by the General Assembly).

According to your letter, "[t]he Legislative Service Commission drafted H.B. 224 based on the language contained in Am. Sub. H.B. 194, which had already been enacted" by the General Assembly. The statutory enactments and amendments made in Am. Sub. H.B. 194 were included in Am. Sub. H.B. 224 along with additional amendments and repeals. For example, your letter references the statutes amended in Am. Sub. H.B. 194 that govern the eligibility to cast, verify, and count provisional ballots, including R.C. 3505.181 and R.C. 3505.183. Those statutes, as amended by Am. Sub. H.B. 194, were incorporated and further amended in Am. Sub. H.B. 224.

Referendum on Am. Sub. H.B. 194

Article II, § 1 of the Ohio Constitution vests the legislative power of the state in the General Assembly, but reserves to the people of the state the power to adopt or reject, by referendum vote, laws or sections of laws passed by the General Assembly. Ohio Const. art. II, §§ 1c, 1d, 1g. The procedure for filing a referendum petition is set forth in R.C. 3519.01(B).

Petitioners have filed the initial signatures necessary to begin the referendum process with respect to Am. Sub. H.B. 194. R.C. 3519.01(B)(1). Thereafter, if the petitioners file a petition by September 29, 2011, with enough valid signatures, then the question whether to approve or reject Am. Sub. H.B. 194 in its entirety will be submitted to Ohio electors for consideration at the November 2012 general election. Ohio Const. art II, § 1c. Am. Sub. H.B. 194 will not go into effect pending that election. *Id.* If the electors vote to reject Am. Sub. H.B. 194, its provisions will not go into effect. *Id.*

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[1] The provisions of Am. Sub. H.B. 224 that went into effect on July 27, 2011, are those that "refer to an elector providing the elector's Social Security Number on any document under the Election Law." *See* Am. Sub. H.B. 224 (uncodified sections 3 and 4). Pursuant to uncodified section 3 of Am. Sub. H.B. 224, an elector is only required to provide the last four digits of the elector's Social Security number.

Overview: Drafting Legislation

In order to answer your questions, we must understand how the General Assembly drafts and enacts a bill and the rules the General Assembly follows in that process. The Ohio Constitution prescribes certain requirements for passing a bill. Ohio Const. art II, § 15. Additionally, pursuant to R.C. 101.53, the Legislative Service Commission has adopted rules directing how the addition of new matter and the omission of older matter is designated in new bills. 2 Ohio Admin. Code 103-5-01; *see also* Drafting Manual of the Ohio Legislative Service Commission (5th ed. 1993) (hereinafter "LSC Drafting Manual"). The constitutional requirements and the administrative rules for drafting legislation are discussed in more detail below.

"Enacting" Language

There are two different types of enactments that the General Assembly may use in a bill. The General Assembly may add a new section to the Revised Code or it may replace an existing section of the Revised Code with a new section.

If the General Assembly intends to add a new section to the Revised Code, the bill must "enact" a "section" of the Revised Code. LSC Drafting Manual, at III-10 to III-11 and III-31 to III-32. The bill title must read, for example, "To *enact section* 306.11," and the enacting clause must state "That *section* 306.11 of the Revised Code *be enacted* to read as follows." *See id.* at III-11 and III-32 to III-33 (emphasis added). Additionally, new language in a bill is indicated by "presenting the section, underlined, in the same form as it is to appear in the resulting law."[2] Rule 103-5-01(C).

In other instances, the General Assembly may wish to add a section to the Revised Code that replaces an existing section. This is accomplished by a repeal and reenactment. LSC Drafting Manual, at III-31 to III-33. In order to effect a repeal and reenactment, the bill must "enact" a "*new* section." *Id.* The new matter is indicated by underlining the new language. Rule 103-5-01(C). To replace an existing section with a new section, the bill also must repeal the existing section. The bill title must state, for example, "*To enact new sections* 306.09 and 306.10, and *to repeal sections* 306.09 and 306.10 of the Revised Code." *See* LSC Drafting Manual, at III-32 to III-33 (emphasis added). The bill must also contain an enactment clause, *e.g.*, "Section 1. That *new sections* 306.09 and 306.10 *be enacted* to read as follows," and a repeal clause, *e.g.*, "Section 2. That sections 306.09 and 306.10 of the Revised Code are hereby repealed." *See id.*

To distinguish the enactment of a new section from a repeal and reenactment, we must scrutinize the precise language used in the bill. The enactment of a new section of the Revised Code

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[2] A former version of R.C. 101.53 required that new language in a bill be capitalized. R.C. 101.53, however, has been amended and no longer specifies how new material in a bill is to be indicated. The current version of R.C. 101.53 instructs the Legislative Service Commission to adopt rules for indicating new matter in, and omitting old matter from, a bill. According to the current rules, new material in a bill must be underlined. Rule 103-5-01(A), (C).

is indicated in a bill by language that "enacts" a "section," and the bill will not simultaneously repeal that section. A repeal and reenactment is indicated in a bill by language that "enacts" a "*new* section" and by language that simultaneously repeals the section then existing.

"Amending" Language

Next, we address the procedure the General Assembly must follow when it intends to amend an existing Revised Code section. Article II, § 15(D) of the Ohio Constitution declares that "no law shall be … amended unless the new act contains the entire … section or sections amended, and the section or sections amended shall be repealed." In practice, this means that each bill must reprint the entire version of each Revised Code section being amended. New language is underlined, and deleted or replaced language is stricken through. Rule 103-5-01; *U.A.W. v. Brunner*, 182 Ohio App. 3d 1, 2009-Ohio-1750, 911 N.E.2d 327, at ¶29 (Franklin County). A statute's language that remains unchanged appears as ordinary text. *U.A.W. v. Brunner*, 182 Ohio App. 3d 1, at ¶29; *see also* rule 103-5-01. The bill title will state, for example, "To amend section 5739.22," and the amending clause will similarly state "That section 5739.22 of the Revised Code be amended to read as follows." LSC Drafting Manual, at III-9 to III-11.

When the General Assembly amends an existing Revised Code section, Article II, § 15(D) of the Ohio Constitution also requires that the bill repeal the sections that are being amended. This type of repeal is known as an "existing" repeal, because only the existing section that is being amended is repealed. *Id.* at III-13. "A 'new' version of the section, as will result from the amendment, is retained in the law." *Id.* The repealing clause in the bill will state, for example, "That *existing sections* 4141.01 and 4141.02 of the Revised Code are hereby repealed." *See id.* at III-14 (emphasis added). Although both an amendment and a repeal and reenactment require a repeal, they are distinguished by the particular language used by the General Assembly in the bill. A repeal and reenactment must "enact" a "new section" and repeal a "section" of the Revised Code. An amendment must "amend" a "section" and repeal an "*existing* section" of the Revised Code.

"Repealing" Language

Finally, the General Assembly may intend to repeal a Revised Code section without retaining an amended version or a new section to replace the repealed section. This is known as an "outright repeal." LSC Drafting Manual, at III-13 to III-14. An outright repeal "completely removes a section from the law." *Id.* at III-13. An outright repeal means that sections are "repealed without qualification and no version of the section[s] will be retained in amended form." *Id.* The repealing clause for an outright repeal will state, for example, "That *sections* 4141.025 and 4141.026 of the Revised Code are hereby repealed." *See id.* at III-14 (emphasis added).

<u>Effect of a Stay of Am. Sub. H.B. 194</u>

Your first two questions ask what effect a stay of Am. Sub. H.B. 194 will have on the statutory provisions in Am. Sub. H.B. 224 that were incorporated from Am. Sub. H.B. 194 and which

versions of the statutes thus incorporated control after the effective date of Am. Sub. H.B. 224. Because these questions are related, we will address them together.[3]

If petitioners are successful in timely filing a petition with enough valid signatures, then Am. Sub. H.B. 194 will be stayed pending the November 2012 general election. Ohio Const. art II, § 1c. To determine the effect a stay of Am. Sub. H.B. 194 will have on Am. Sub. H.B 224, we must turn to the rules of statutory construction. The "preeminent consideration" in construing a statute is legislative intent. *Gutmann v. Feldman*, 97 Ohio St. 3d 473, 2002-Ohio-6721, 780 N.E.2d 562, at ¶14.

> The essential goal of statutory construction is to give effect to the intent of the General Assembly. The intent may be inferred from the particular wording the General Assembly has chosen to set forth the substantive terms of a statute. Intent may also be revealed in the procedural passage of the legislative act under consideration, when that body passes legislation that enacts, amends, or repeals a statute.

Stevens v. Ackman, 91 Ohio St. 3d 182, 193, 2001-Ohio-249, 742 N.E.2d 901 (citations omitted). Accordingly, we must determine and give effect to the intent of the General Assembly when it passed Am. Sub. H.B. 224. *See id*.

To determine the General Assembly's intent when it passed Am. Sub. H.B. 224, and thereby determine what legislation will be in effect if Am. Sub. H.B. 194 is stayed, we must consider two factors. First, we must consider the specific language used in Am. Sub. H.B. 224. Second, we must consider the stylistic requirements for drafting a bill that the General Assembly followed. *See Stevens v. Ackman*, 91 Ohio St. 3d at 193; *In re Hesse*, 93 Ohio St. 230, 235, 112 N.E. 511 (1915) (determining intent of General Assembly by considering the way the statute at issue was amended); *State ex rel. Durr v. Spiegel*, 91 Ohio St. 13, 22, 109 N.E. 523 (1914) (same as prior parenthetical).

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[3] Your request asks about the effect of a stay of Am. Sub. H.B. 194 on the statutory provisions in Am. Sub. H.B. 224 that were incorporated from Am. Sub. H.B. 194. You do not ask about the effect a stay on Am. Sub. H.B. 194 will have on the statutory provisions in Am. Sub. H.B. 224 that were not incorporated from Am. Sub. H.B. 194. R.C. 3503.191, R.C. 3509.021, R.C. 3509.10, R.C. 3511.021, R.C. 3511.01, R.C. 3511.15, and R.C. 3511.16, each of which are addressed in Am. Sub. H.B. 224, were not amended or enacted by Am. Sub. H.B. 194. Accordingly, the versions of R.C. 3503.191, R.C. 3509.021, R.C. 3509.10, R.C. 3511.021, R.C. 3511.01, R.C. 3511.15, and R.C. 3511.16 set forth in Am. Sub. H.B. 224 will take effect as provided in Am. Sub. H.B. 224.

Similarly, several Revised Code sections were amended by Am. Sub. H.B. 194 but were not incorporated in Am. Sub. H.B. 224. For example, R.C. 3505.182 was amended in Am. Sub. H.B. 194 but is not amended, enacted, or repealed in Am. Sub. H.B. 224. Therefore, this statute, and any other statutory provisions amended in Am. Sub. H.B. 194 that were not incorporated in Am. Sub. H.B. 224, will not go into effect if Am. Sub. H.B. 194 is subject to a stay. *See* Ohio Const. art II, § 1c.

Effect of a Stay of Am. Sub. H.B. 194 on the Statutes that Am. Sub. H.B. 224 Repeals

Am. Sub. H.B. 224 repeals two statutes that were addressed in Am. Sub. H.B. 194. Am. Sub. H.B. 224 repeals R.C. 3503.20, which was newly enacted in Am. Sub. H.B. 194, and R.C. 3509.031, which was amended in Am. Sub. H.B. 194. The language used by the General Assembly with respect to these two Revised Code sections signals its intent to repeal these sections outright. The title of Am. Sub. H.B. 224 states that the bill is "to repeal sections 3503.20 and 3509.031," and uncodified section 2 of Am. Sub. H.B. 224 states that "sections 3503.20 and 3509.031 of the Revised Code are hereby repealed." Because the General Assembly used language indicating outright repeals of R.C. 3503.20 and R.C. 3509.031, these sections are completely removed from the law. *See* LSC Drafting Manual, at III-13 to III-14.

Am. Sub. H.B. 194 enacted R.C. 3503.20, a section that did not exist prior to Am. Sub. H.B. 194. If Am. Sub. H.B. 194 is stayed (or never goes into effect as a result of the referendum), R.C. 3503.20 does not become effective and is not the law of Ohio. Therefore, Am. Sub. H.B. 224's repeal of R.C. 3503.20 has no effect if Am. Sub. H.B. 194 is subject to a stay.[4]

Am. Sub. H.B. 194 amended R.C. 3509.031. Am. Sub. H.B. 224's repeal of R.C. 3509.031 is effective even if Am. Sub. H.B. 194 is subject to a stay (or never goes into effect as a result of a referendum).[5] The General Assembly used language signaling an outright repeal of R.C. 3509.031. This indicates that the General Assembly intended to remove R.C. 3509.031 in its entirety. The General Assembly did not limit its action to removing only those portions of R.C. 3509.031 that were amended in Am. Sub. H.B. 194. Therefore, Am. Sub. H.B. 224 repeals R.C. 3509.031.

Effect of a Stay of Am. Sub. H.B. 194 on the Statutes Amended in Am. Sub. H.B. 194 and Thereafter Incorporated and Amended in Am. Sub. H.B. 224

Numerous statutory provisions were amended in Am. Sub. H.B. 194. Many of those statutes, as amended, were incorporated and amended in Am. Sub. H.B. 224. Those statutes include R.C. 3501.13, R.C. 3503.02, R.C. 3503.14, R.C. 3503.19, R.C. 3503.28, R.C. 3505.18, R.C. 3505.181, R.C. 3505.183, R.C. 3509.03, R.C. 3509.04, R.C. 3509.05, R.C. 3509.07, R.C. 3511.02, R.C. 3511.04, R.C. 3511.05, R.C. 3511.09, R.C. 3511.10, R.C. 3511.11, and R.C. 3511.14 As you note, the amendments in Am. Sub. H.B. 224 are based on the statutes as amended in Am. Sub. H.B. 194.

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[4] If Am. Sub. H.B. 194 does take effect, either on September 30, 2011, or after the November 2012 general election, Am. Sub. H.B. 224 repeals R.C. 3503.20. Accordingly, R.C. 3503.20 will not be the law of Ohio.

[5] If Am. Sub. H.B. 194 is subject to a stay, Am. Sub. H.B. 224 repeals R.C. 3509.031 as it existed prior to the passage of Am. Sub. H.B. 194. If Am. Sub. H.B. 194 goes into effect, Am. Sub. H.B. 224 repeals R.C. 3590.031 as amended in Am. Sub. H.B. 194.

If Am. Sub. H.B. 194 is subject to a stay, or if electors reject the bill at the November 2012 general election, the changes made by Am. Sub. H.B. 194 will not go into effect. If Am. Sub. H.B. 194 does not go into effect, the law will remain as it existed prior to the General Assembly's efforts in Am. Sub. H.B. 194 to change it. *See Stevens v. Ackman*, 91 Ohio St. 3d at 191 (where subsequent bill relied on statutes as amended in an earlier bill that was found unconstitutional, the law returned to the law as it "existed prior to the earlier bill's attempt to change it").

If Am. Sub. H.B. 194 is subject to a stay, and therefore the amendments made therein do not go into effect, we must determine whether the action of the General Assembly in Am. Sub. H.B. 224 suffices to enact or reenact the amendments made in Am. Sub. H.B. 194 so that those provisions take effect regardless of the stay of Am. Sub. H.B. 194. Our analysis relies on "the clear precedent set by the Supreme Court of Ohio addressing the effect of amendments to those statutes that are invalid in their entirety from the outset due to the circumstances of their enactment." *U.A.W. v. Brunner*, 182 Ohio App. 3d 1, at ¶33. That case, *Stevens v. Ackman*, involved a situation analogous to this one.

In *Stevens v. Ackman*, the court considered whether Am. Sub. H.B. 215, 122nd Gen. A. (1997) (eff. June 30, 1997, with certain provisions eff. Sept. 29, 1997), enacted or reenacted a Revised Code provision, R.C. 2744.02, that was enacted by previous legislation, Am. Sub. H.B. 350, 121st Gen. A. (1996) (eff. Jan. 27, 1997, with certain provisions effective on other dates), that subsequently was deemed unconstitutional. *Stevens v. Ackman*, 91 Ohio St. 3d at 190-94. The court held that "[i]t is clear that while the General Assembly intended to make a minor amendment in Am. Sub. H.B. 215 to R.C. 2744.02(B), *the General Assembly did not intend to take any action whatsoever* with regard to R.C. 2744.02(C)." *Id*. at 193 (emphasis added). Several appellate court decisions have followed *Stevens v. Ackman* in determining the General Assembly's intent when it passes subsequent legislation based on prior legislation that is not effective. *See State v. Arnold*, Muskingum App. No. CT2009-0021, 2010-Ohio-3125, at ¶¶16-17 (where a subsequent bill made no changes to R.C. 2929.14(E), the court concluded that "the amendment of R.C. 2929.14 … did not operate to reenact those portions of the statute the Ohio Supreme Court severed" from an earlier bill); *U.A.W. v. Brunner*, 182 Ohio App. 3d 1, at ¶35 (the provisions in question as reprinted in subsequent legislation "cannot reflect newly enacted statutory language by the legislature because much of the 'existing language' text reflected therein is based upon [a prior bill's] versions of the code that never became law"); *Hibbitt v. First United Equities, Inc.*, Cuyahoga App. No. 80073, 2002-Ohio-2033, at ¶¶16-25 (where the printing format of H.B. 708 did not indicate an intent to reenact R.C. 1343.011(B), which appeared in regular typeface without any capitalization to indicate new material, "the General Assembly intended to make minor amendments to R.C. 1343.011(A) and (C), and … did not intend to take any action whatsoever with regard to R.C. 1343.011(B)").

Therefore, in order for Am. Sub. H.B. 224 to successfully reenact or enact the amendments originally made in Am. Sub. H.B. 194, "the General Assembly must have intended the act [*i.e.*, Am. Sub. H.B. 224] to have that effect." *Stevens v. Ackman*, 91 Ohio St. 3d at 193. To determine the General Assembly's intent when it passed Am. Sub. H.B. 224, and thereby determine what law will be in effect if Am. Sub. H.B. 194 is subject to a stay, we again must consider the particular language used by the General Assembly in Am. Sub. H.B. 224. We must then consider the formatting style used by the General Assembly in Am. Sub. H.B. 224.

First, we consider the specific language used by the General Assembly in Am. Sub. H.B. 224. Significantly, the General Assembly chose language to "amend" the Revised Code sections therein enumerated.[6] The title and uncodified section 1 of Am. Sub. H.B. 224 clearly state that the listed statutes are to be amended. The General Assembly did not use the language necessary to enact these sections anew. The General Assembly did not enact sections that did not previously exist in the Revised Code, as would be indicated if the bill read "To enact sections…." Nor did the General Assembly repeal and reenact these sections, as would be indicated if the bill read "To enact new sections…" and "to repeal sections…." Further, the General Assembly indicated its intent to amend these sections by following the procedures required to amend a statute—new language is underlined and language to be deleted is stricken through as required by rule 103-5-01(A)-(B). Therefore, we conclude that the pertinent language of Am. Sub. H.B. 224 manifests no intent on the part of the General Assembly to enact or reenact the Revised Code sections amended in Am Sub. H.B. 194.

Next, we examine the formatting style used by the General Assembly in Am. Sub. H.B. 224. In this analysis, we consider the requirements set forth by Article II, § 15(D) of the Ohio Constitution and by the Legislative Service Commission in rule 103-5-01. Our analysis is guided by the Ohio Supreme Court's application of these requirements in *Stevens v. Ackman*.

In *Stevens v. Ackman*, the Ohio Supreme Court noted that Am. Sub. H.B. 215 (the subsequent bill) "amended" the Revised Code section in question and reprinted the entire version of that section as enacted by the earlier legislation, Am. Sub. H.B. 350. *Stevens v. Ackman*, 91 Ohio St. 3d at 192. The court found that "[t]he printing format of Am. Sub. H.B. 215 indicates no intent to reenact or enact R.C. 2744.02(C). R.C. 2744.02(C) appears in the printed act in regular type, without the capitalization that would indicate new material pursuant to R.C. 101.53." *Id.* at 194. Similarly, in Am. Sub. H.B. 224, the General Assembly reprinted the amendments made in Am. Sub. H.B. 194 in regular typeface, without the underlining required to indicate new material pursuant to rule 103-5-01(A).

Moreover, as in *Stevens v. Ackman*, Am. Sub. H.B. 224 reprinted the entire version of each statute being amended as each statute existed at the time. The versions thought to be in existence at the time of Am. Sub. H.B. 224 were the versions as amended in Am. Sub. H.B. 194. The reprinting of the language from Am. Sub. H.B. 194 does not indicate that the General Assembly intended to enact or reenact those sections. As the Ohio Supreme Court explained in a case that predated its decision in *Stevens v. Ackman*:

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[6] Further, as required by Article II, § 15(D) of the Ohio Constitution, uncodified section 2 of Am. Sub. H.B. 224 states that each of the corresponding "existing sections" of the Revised Code "are hereby repealed." This language does not indicate an outright repeal of these statutes. Rather, this language means that the General Assembly intended this to be an "existing repeal" of the amended sections as required by Article II, § 15(D) of the Ohio Constitution. *See* LSC Drafting Manual, at III-13.

> [B]y observing the constitutional form of amending a section of a statute the Legislature does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. Any other rule of construction would surely introduce unexpected results and work great inconvenience.

Weil v. Taxicabs of Cincinnati, Inc., 139 Ohio St. 198, 206, 39 N.E.2d 148 (1942) (quotation omitted). Rather, Article II, § 15(D) of the Ohio Constitution required the General Assembly to reprint the entire version of each statute it sought to amend in Am. Sub. H.B. 224. Therefore, we conclude that the formatting style of Am. Sub. H.B. 224 manifests no intent on the part of the General Assembly to enact or reenact the amendments made by Am. Sub. H.B. 194.

R.C. 1.54 further supports the foregoing conclusion. R.C. 1.54 provides: "A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute." According to the Ohio Supreme Court, "it is not correct to assume" that provisions from a prior act that are included in a subsequent act as amended are "in that respect a new statute or a later statute." *In re Hesse*, 93 Ohio St. at 234. In that decision, the court noted that "the only change made in the statute was the addition of two classes of misdemeanors." *Id.* Accordingly the court concluded that "[t]he provisions contained in the act as amended which were in the original act are not considered as repealed and again reenacted, but are regarded as having been continuous and undisturbed by the amendatory act." *Id. See also Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. at 206 ("where an act is amended, the part of the original act which remains unchanged is to be considered as having continued in force as the law from the time of its original enactment, and new portions as having become the law only at the time of amendment"); *In re Allen*, 91 Ohio St. 315, 320-21, 110 N.E. 535 (1915) ("there was no intention to change the operation of the original section as to provisions which are not changed" (quotation omitted)); *State v. Arnold*, 2010-Ohio-3125, at ¶¶13, 15. Reprinting language from Am. Sub. H.B. 194 in Am. Sub. H.B. 224 does not constitute an enactment or reenactment of those provisions. *See* Ohio Const. art. II, § 15(D); R.C. 1.54.

Because we conclude that the General Assembly did not enact or reenact the amendments made in Am. Sub. H.B. 194 when it passed Am. Sub. H.B. 224, the amendments made in Am. Sub. H.B. 194 will not go into effect if Am. Sub. H.B. 194 is stayed. Instead, Am. Sub. H.B. 224 controls as to the statutes amended therein, provided that, if Am. Sub. H.B. 194 is subject to a stay, language previously added by Am. Sub. H.B. 194 to the statutes amended in Am. Sub. H.B. 224 is deleted and language previously deleted by Am. Sub. H.B. 194 from the statutes amended in Am. Sub. H.B. 224 is reinserted. In other words, we must harmonize the statutes amended in Am. Sub. H.B. 224 with those statutes as they existed prior to the passage of Am. Sub. H.B. 194. In practice, this means that we must look at both the amendments made in Am. Sub. H.B. 194 and the amendments made in Am. Sub. H.B. 224. By way of example, let us consider R.C. 3505.181(A). To determine how R.C. 3505.181(A) should read after Am. Sub. H.B. 224 goes into effect, we will start with the language stated in Am. Sub. H.B. 224. We must then remove any language added in Am. Sub. H.B. 194 (shown below with the language stricken through) and add any language removed by that bill (shown below with underlined language).

Sec. 3505.181. (A) All of the following individuals shall be permitted to cast a provisional ballot at an election:

(1) An individual who declares that the individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote;

(2) An individual who has a social security number and provides to the election officials the last four digits of the individual's social security number as permitted by division (A)(2) of section 3505.18 of the Revised Code;

~~(2)~~(3) An individual who ~~does not have or~~ has but is unable to provide to the election officials any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code and who has a social security number but is unable to provide the last four digits of the individual's social security number as permitted under division (A)(2) of that section;

(4) An individual who does not have any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code, who cannot provide the last four digits of the individual's social security number under division (A)(2) of that section because the individual does not have a social security number, and who has executed an affirmation as permitted under division (A)(4) of that section;

~~(3)~~(5) An individual whose name in the poll list or signature pollbook has been marked under section 3505.09 or 3511.13 of the Revised Code as having requested an absent voter's ballot or ~~a uniformed services or overseas~~ an armed service absent voter's ballot for that election and who appears to vote at the polling place;

~~(4)~~(6) An individual whose notification of registration has been returned undelivered to the board of elections and whose name in the official registration list and in the poll list or signature pollbook has been marked under division (C)(2) of section 3503.19 of the Revised Code;

~~(5)~~(7) An individual who is challenged under section 3505.20 of the Revised Code and the election officials determine that the person is ineligible to vote or are unable to determine the person's eligibility to vote;

(8) An individual whose application or challenge hearing has been postponed until after the day of the election under division (D)(1) of section 3503.24 of the Revised Code;

~~(6)~~(9) An individual who changes the individual's name and remains within the precinct, moves from one precinct to another within a county, moves from one precinct to another and changes the individual's name, or moves from one county to another within the state, ~~or moves from one county to another and changes the individual's name~~ and completes and signs the required forms and statements under division (B) or (C) of section 3503.16 of the Revised Code;

~~(7)~~(10) An individual whose signature, in the opinion of the precinct officers under section 3505.22 of the Revised Code, is not that of the person who signed that name in the registration forms;

~~(8)~~(11) An individual who is challenged under section 3513.20 of the Revised Code who refuses to make the statement required under that section, or who a majority of the precinct officials find lacks any of the qualifications to make the individual a qualified elector;

(12) An individual who does not have any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code, who cannot provide the last four digits of the individual's social security number under division (A)(2) of that section because the person does not have a social security number, and who declines to execute an affirmation as permitted under division (A)(4) of that section;

(13) An individual who has but declines to provide to the precinct election officials any of the forms of identification required under division (A)(1) of section 3501.18 of the Revised Code or who has a social security number but declines to provide to the precinct officials the last four digits of the individual's social security number ~~(9) An individual who is casting a ballot after the time for the closing of the polls under section 3501.32 of the Revised Code pursuant to a court order extending the time for the closing of the polls~~.

Each of the following statutes amended in Am. Sub. H.B. 224 must be harmonized, as demonstrated above, with those statutes as they existed prior to the passage of Am. Sub. H.B. 194: R.C. 3501.13, R.C. 3503.02, R.C. 3503.14, R.C. 3503.19, R.C. 3503.28, R.C. 3505.18, R.C. 3505.181, R.C. 3505.183, R.C. 3509.03, R.C. 3509.04, R.C. 3509.05, R.C. 3509.07, R.C. 3511.02, R.C. 3511.04, R.C. 3511.05, R.C. 3511.09, R.C. 3511.10, R.C. 3511.11, and R.C. 3511.14. As demonstrated above, Am. Sub. H.B. 224 controls as to the statutes amended therein, provided that, if Am. Sub. H.B. 194 is subject to a stay, language previously added by Am. Sub. H.B. 194 to the statutes amended in Am. Sub. H.B. 224 is deleted and language previously deleted by Am. Sub. H.B. 194 from the statutes amended in Am. Sub. H.B. 224 is reinserted.

Effect of Uncodified Section 3 of Am. Sub. H.B. 224

Your third question asks whether uncodified section 3 of Am. Sub. H.B. 224 is relevant to the analysis of your first and second questions. Uncodified section 3 states as follows:

> Notwithstanding any provision of Am. Sub. H.B. 194 of the 129th General Assembly to the contrary, *on and after the effective date of that act* all provisions of Title XXXV of the Revised Code that refer to an elector providing the elector's Social Security Number on any document under the Election Law shall require only the last four digits of the elector's Social Security Number to be provided. (Emphasis added.)

By its terms, uncodified section 3's Social Security number directive applies only "on and after the effective date" of Am. Sub. H.B. 194, and therefore does not apply if Am. Sub. H.B. 194 is

subject to a stay. Therefore, uncodified section 3 of Am. Sub. H.B. 224 does not alter our conclusion regarding the effect a stay of Am. Sub. H.B. 194 will have on the statutory provisions in Am. Sub. H.B. 224 that were incorporated from Am. Sub. H.B. 194.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. The repeal of R.C. 3503.20 in Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011) has no effect if Am. Sub. H.B. 194, 129th Gen. A. (2011) (eff. Sept. 30, 2011) is subject to a stay.

2. Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011), repeals R.C. 3509.031.

3. Am. Sub. H.B. 224, 129th Gen. A. (2011) (eff. July 27, 2011, with certain provisions eff. Oct. 26, 2011) controls as to the statutes amended therein, provided that, if Am. Sub. H.B. 194, 129th Gen. A. (2011) (eff. Sept. 30, 2011) is subject to a stay, language previously added by Am. Sub. H.B. 194 to the statutes amended in Am. Sub. H.B. 224 is deleted and language previously deleted by Am. Sub. H.B. 194 from the statutes amended in Am. Sub. H.B. 224 is reinserted. Uncodified section 3 of Am. Sub. H.B. 224 does not alter this conclusion.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General