



August 1, 2011

VIA HAND DELIVERY & ELECTRONIC MAIL

Hon. Jon Husted
Ohio Secretary of State
180 East Broad Street
Columbus, Ohio 43215

RE: Referendum Petition to Repeal Portions of Am. Sub. H.B. 194
Of the 129th General Assembly

Dear Secretary Husted:

In accordance with the provisions of R.C. 3519.01(B)(1), on July 18, 2011, I received a written petition proposing to repeal portions of Am. Sub. H.B. 194 of the 129th General Assembly (“Proposed Referendum”) and a summary of the measure to be referred. Pursuant to R.C. 3519.01(B)(3), the Attorney General must examine the summary and determine whether it is a fair and truthful statement of the measure to be referred. If the Attorney General concludes that the summary is fair and truthful, he must certify that fact to the Secretary of State within ten business days of receiving it. In this instance, the tenth day falls on Monday, August 1, 2011.

The Ohio Supreme Court has defined “summary” relative to an initiated petition as “a short, concise summing up,” which properly advises potential signers of a proposed measure’s character and purport. *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24 (1931). After reviewing the submission, I have concluded that I am unable to certify the summary as a fair and truthful statement of the measure to be referred. I have two reasons for reaching this decision.

The first reason I cannot certify the proposed summary language is that it contains statements that are not truthful. These statements fall into two categories. The first category is citing to statutory or administrative code provisions that do not exist.

- In Paragraph 3 of the summary, which addresses R.C. 3517.01(B)(25), the summary reads in pertinent part: “The amendment of R.C. 3517.01 . . . supersedes and makes void and of no further effect in the Ohio Administrative Code rules that became effective January 7, 2011 (Ohio Admin. Code Section 111-13-05) . . .” However, Ohio Admin. Code Section 111-13-05 is not a valid citation.
- This same error is repeated as it relates to Section 7 of the bill.
- Paragraph 14 of the summary, which addresses absentee voter requirements, cites to “R.C. 3509.031(B)(1)(5)(b).” However, this sub-section of the Revised Code does not exist. The intended citation was probably R.C. 3509.031(B)(5)(b).

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The second category of untruthful statements is misstatements of current law. One example of such a statement is provided below (and is not intended to be a complete list of misstatements of law contained in the summary):

- In Paragraph 10, bullet point 12, the summary states that Am. Sub. H.B. 194 will “eliminate a provision of current law that permits such an individual’s provisional ballot to be counted if the election officials determine that the individual is eligible to vote.”

Under both current law and the law as amended by Am. Sub. H.B. 194, “election official” is a statutorily defined term. It includes the Secretary of State, employees of the Secretary of State’s Division of Elections, members of a local board of elections, the Director and Deputy Director of a local board of elections, and employees of the board of elections. Current law specifies that only the members of the board of elections can validate a provisional ballot. R.C. 3505.183. Thus, I believe it is misleading to claim that “current law ... permits such an individual’s provisional ballot to be counted if the election officials determine that the individual is eligible to vote.” A correct statement of the law would be that current law permits such an individual’s provisional ballot to be counted if the members of the board of elections determine the individual is eligible to vote.

The second reason I cannot certify the Proposed Referendum is that the summary does not fairly and truthfully describe the matter being referred. Am. Sub. H.B. 194 is a 249 page law comprised of eight (8) Sections. The Proposed Referendum seeks to repeal Sections 5, 6, 7 and 8 in their entirety, but only seeks to repeal portions of Sections 1 and 2 of the bill. Article II, Sec. 1c of the Ohio Constitution provides that a referendum may be filed on “any law, section of any law or any item in any law appropriating money passed by the general assembly.” Because Am. Sub. H.B. 194 does not appropriate money, the only matters upon which a referendum can be staged are either the law as a whole or entire sections of the law, *e.g.*, Section 1, Section 2, etc.

Section 1 of the law, as passed by the General Assembly, amends more than 100 statutes and enacts 13 new statutes of the Revised Code. As discussed above, the summary submitted with the Proposed Referendum does not seek to place Section 1 before the voters, but rather, portions of Section 1 (likewise for Section 2). There is no constitutional authority to submit the referendum in the manner sought by the petitioners – i.e., there is no authority to submit *certain* portions of a section, rather than the section of law in its entirety. Accordingly, I must treat this Proposed Referendum as a submission of Sections 1, 2, 5, 6, 7 and 8 to be referred in their entirety.

The summary properly characterizes Sections 5, 6, and 8. However, because it only summarizes specific portions of Sections 1 and 2, the summary is not fair and truthful (and Section 7, as explained above, contains statements that are not truthful). For example, Am. Sub. H.B. 194 amends R.C. 3509.04, R.C. 3509.05, R.C. 3511.02(A)(5)(b) and (C)(6)(b), R.C. 3511.05 and R.C. 3511.09 in two ways: 1) it requires a voter to use his or her full social security number, instead of just the last four digits of the social security number, in certain situations, and 2) it adds a United States passport to the list of items with which a voter could use to prove his or her identification in certain

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situations. The petitioners attempt to summarize the changes to the aforementioned statutes in Paragraph 15 of their summary. While paragraph 15 summarizes the changes related to social security numbers, it fails to make any mention of passports as identification changes that would also be repealed should the voters approve the referendum.

Hence, the petitioner's summary of Sections 1 and 2 of Am. Sub. H.B. 194 fails to fairly and truthfully summarize everything included in Sections 1 and 2 of Am. Sub. H.B. 194 that would be subject to repeal. The proposed summary is not fair and truthful because it fails to inform a signer about the complete character and purport of the referendum.

Due to all of these deficiencies, I cannot certify the proposed summary to be a fair and truthful summary of the matter to be referred and must, therefore, reject it.

Very Respectfully Yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is written in a cursive, flowing style.

Mike DeWine
Ohio Attorney General

