



DAVE YOST

OHIO ATTORNEY GENERAL

Constitutional Offices
Section
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March 2, 2023

Donald J. McTigue
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Re: Submitted Petition for Initiated Constitutional Amendment to Enact Article I, Section 22 of the Ohio Constitution— “The Right to Reproductive Freedom with Protections for Health and Safety Amendment”

Dear Mr. McTigue,

On February 21, 2023, in accordance with Ohio Revised Code Section 3519.01(A), I received a written petition containing (1) a copy of a proposed constitutional amendment, and (2) a summary of the same measure. One of my statutory duties as Attorney General is to send all of the petitions to the appropriate county boards of elections for signature verification. With all of the county boards of elections reporting back, at least 1,000 signatures have been verified.

It is my statutory duty to determine whether the submitted summary is a “fair and truthful statement of the proposed constitutional amendment.” R.C. 3519.01(A). That is, my role is limited to determining whether the wording of the summary properly advises potential petition signers of a measure’s material components. If I conclude that the summary is fair and truthful, I am to certify it as such within ten days after receipt of the petition.

I cannot base my determination on the wisdom or folly of a proposed amendment as a matter of public policy. “These arguments must be addressed to the electorate,” not to me. *State ex rel. Schwartz v. Brown*, 32 Ohio St.2d 4, 11, 288 N.E.2d 821 (1972).

Elected office is not a license to simply do what one wishes. The rule of law necessarily means that there are limits to the decision-making of those who temporarily exercise public authority. This is true of prosecutors who will not enforce criminal statutes with which they disagree, or presidents who wish to take actions not authorized by the Constitution or Congress.

It is also true of attorneys general required by a narrow law to make a decision about the truthfulness of a summary. My personal views on abortion are publicly known. In this matter, I am constrained by duty to rule upon a narrow question, not to use the authority of my office to effect a good policy, or to impede a bad one. A duty that never compels an unpleasant duty or act is not duty, but self-service, the opposite of public service—government by solipsism. That way lies chaos, and ultimately the breakdown of self-governance.

I state these first principles because it has become increasingly common for elected leaders to ignore them when convenient, and the process is accelerating as each side in our perpetual conflicts expects their own to act as faithlessly as the other side.

Enough.

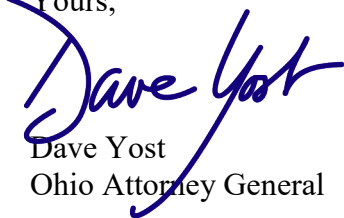
Having examined the submission, I conclude that the summary is a fair and truthful statement of the proposed amendment. I am therefore submitting the following certification to the Ohio Secretary of State:

Without passing on the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed amendment.

My certification of the summary under Section 3519.01(A) should not be construed as an affirmation of the enforceability and constitutionality of the proposed amendment. *See State ex rel. Barren v. Brown*, 51 Ohio St.2d 160, 171, 365 N.E.2d 887 (1977) (holding that the "factual determination" that a summary is fair and truthful "is the extent of the role and authority of the Attorney General"). Indeed, there are significant problems with the proposed amendment, and if adopted, it will not end the long-running litigation on this topic, but simply transform it.

Should the proposal make it to the ballot, those arguments will be properly addressed to the electorate, as the Ohio Supreme Court suggested.

Yours,

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

Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

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