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Via regular U.S. Mail and E-mail

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Re: Submitted Petition for Initiated Constitutional Amendment to Add Article I, Section 23 of the Ohio Constitution– Untitled.

Dear Mr. Brown,

On July 5, 2024, pursuant to 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 part-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 also my statutory duty to determine whether the submitted summary is a “fair and truthful statement of the proposed law or constitutional amendment.” R.C. 3519.01(A). 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). If I conclude that the summary is fair and truthful, I am to certify it as such within ten days of receipt of the petition. In this instance, the tenth day falls on July 15, 2024.

Having reviewed the renewed submission, I am unable to certify the submitted summary as a fair and truthful representation of the proposed amendment.

Your resubmitted petition lacks a title. As you know, on March 14, 2024, I declined to certify your previously submitted petition for multiple reasons including the fact that your title did not pass the “fair and truthful” test. I explained that:

Finally, the title “Protecting Ohioans’ Constitutional Rights” does not fairly and accurately reflect the nature and scope of the proposed amendment. “A title ‘provides notice of the proposal to the signers of an initiative petition. More so than the text, the title immediately alerts signers to the nature of [the] proposed legislation.’” *State ex rel. Hildreth v. LaRose*, No. 2023-1213, 2023-Ohio-3667, ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597,

575 N.E.2d 835 (1991). The use of the word “protect” in the summary’s title is especially misleading because the amendment does not seek to proactively “protect” Ohioans from violations of constitutional rights. Instead, the nature of the amendment is to *abrogate*: specifically, governmental immunity and similar defenses available to defined government actors. Accordingly, the summary’s title offers a subjective hypothesis (that eliminating such defenses will “protect” the constitutional rights of citizens) regarding the proposed amendment in lieu of an objective description of its character and purport (that it creates a cause of action notwithstanding those defenses). Given the Supreme Court’s holding on the import of petition titles, I find that the proposed summary’s title is not a fair and truthful recitation of the proposed amendment.

I can only assume that your decision to resubmit your petition for constitutional amendment without a title at all is to avoid having to be held to a title that is fair and truthful to Ohio’s electors. Nonetheless, Ohio law does not permit you to circumvent the fair and truthful process by simply failing to submit a title for my evaluation under R.C. 3519.01(A). R.C. 3519.01(A) states, “Whoever seeks to propose a law or constitutional amendment by initiative petition shall, *by a written petition* signed by one thousand qualified electors, submit the proposed law or constitutional amendment and a summary of *it* to the attorney general for examination.” R.C. 3519.01(A) also states, “Within ten days after the receipt of the written petition and the summary of *it*, the attorney general shall conduct an examination of the summary.” In other words, the summary is intended to fairly and truthfully summarize both the proposed constitutional amendment and the written petition.

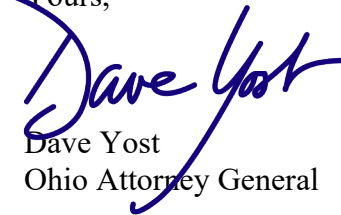
Ohio law clearly sets forth the form and substance that the petition must take. R.C. 3519.05(A) requires the petition to contain a title which must be “briefly expressed and printed in eight-point type.” R.C. 3519.05 is the sole and exclusive guidance on the form that a petition for constitutional amendment must take. Thus, your petition for constitutional amendment that you submit to me for the fair and truthful determination under R.C. 3519.01(A), consistent with R.C. 3519.05(A), must contain a title. This also gives proper context to the fact that R.C. 3519.01(A) contemplates the petition as something more than just a perfunctory, ministerial vehicle.

Further, the title of the proposed constitutional amendment is an indispensable piece to determining whether the summary of it is fair and truthful. Indeed, Ohio law mandates that a petition for a constitutional amendment may not be presented to qualified electors for their signatures unless it contains the title of the amendment. For good reason. Again, a “title immediately alerts signers to the nature of the proposed legislation...there is no question that the title [] is material to a petition.” *State ex rel. Hildreth v. LaRose*, No. 2023-1213, 2023-Ohio-3667, ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597, 575 N.E.2d 835 (1991). I cannot determine whether a summary of a proposed constitutional amendment is fair and truthful without also considering its title. In other words, the title and the text of a proposed amendment work hand in hand to define the character and import of a proposed constitutional amendment. To illustrate by example, a summary of an amendment concerning taxation of Ohioans might be fair and truthful if the title is accurately aligned with the text. But that same summary would not be fair and truthful of the same amendment if the title was “Everybody Gets Free Pizza and Weed”.

The General Assembly assigned to this Office the task of insuring that the summary presented to Ohio electors is fair and truthful. Certification under R.C. 3519.01(A) is this Office's imprimatur that Ohio electors can rely on the summary to educate themselves on whether they will support or oppose the proposed amendment. By withholding the title of your proposed amendment from my fair and truthful determination, I cannot faithfully certify that your summary is fair and truthful.

The lack of a title alone provides sufficient cause to reject the submitted petition, and the petition is rejected on that basis. I reserve the right to address any additional defects or deficiencies that may exist in this petition or future petitions upon their submission to this office for review. Thus, without reaching the balance of the summary, and consistent with my past determinations, I am unable to certify the summary as a fair and truthful statement of the proposed amendment.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

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