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OHIO ATTORNEY GENERAL

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Section
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August 23, 2023

Via regular U.S. Mail and E-mail

McTigue & Colombo LLC
J. Corey Colombo, Esq.
545 East Town Street
Columbus, Ohio 43215
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Re: Submitted Petition for Initiated Constitutional Amendment to Add Article XX of the Ohio Constitution– “Ohio Citizens Redistricting Commission”

Dear Attorney Colombo,

On August 14, 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 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 August 23, 2023.

Having reviewed the submission, I am unable to certify the summary as a fair and truthful representation of the proposed amendment. During our review of the summary, we identified omissions and misstatements that, as a whole, would mislead a potential signer as to the actual scope and effect of the proposed amendment.

First, the summary’s statements on the composition of the Commission is materially confusing and vague. The summary states that the Commission will be “composed of 15 members—5 affiliated with the political party whose candidate for governor received the highest number of votes at the preceding election for governor (“First Major Party”), 5 affiliated with the political party whose candidate for governor received the second highest number of votes at the election (“Second Major Party”), and 5 not affiliated with either of those political parties (“Independent”).” Summary, paragraph 1. There are two material inaccuracies in this portion of the summary when compared to the proposed amendment. First, for members affiliated with the

Second Major Party, the summary does not specify that “the election” means the last election held for governor, while it does specify that detail for the First Major Party. See proposed Section 11 (C) and (D). Thus, the summary fails to accurately summarize the definition of “Second Major Party”. Second, the summary fails to accurately summarize or define the 5 “Independent” commission members. The summary merely states that an Independent is “not affiliated with either of those political parties.” On the other hand, the proposed amendment provides that Independents are “not affiliated with either the First Major Party or the Second Major Party as determined by the bipartisan screening panel based on available information.” See proposed Amendment, Section 11(B). The accurate and truthful summarization of the make up of the proposed Commission is of utmost importance. The summary’s failure to do so is a critical and fatal omission.

Second, the summary’s statements pertaining to the bipartisan panel are materially misleading. The summary states that the bipartisan screening panel for members of the Ohio Citizens Redistricting Commission must “retain the services of a professional search firm to assist with the application and application review processes.” Summary, paragraph 8. However, the corollary provision in the proposed amendment explicitly states that “the bipartisan screening panel shall engage a professional search firm to solicit applications for commissioner, screen and provide information about applicants, check references, and otherwise facilitate the application review and applicant interview process.” Proposed Amendment, Section 2(D). The summary thus diminishes the actual role of the search firm in the application process, by merely stating the search firm would “assist” the panel. The summary does not indicate to a potential signer that the search firm is in fact delegated responsibilities that the panel itself cannot perform. This creates confusion to someone reading the summary, who might think that the screening panel has the discretionary authority to delegate tasks to a search firm.

Third, the summary omits critical words and materially misleads a potential signer with respect to several terms. The summary states that the proposed amendment “set[s] forth criteria for determining political party affiliation for appointment to the Panel,” Summary, paragraph 5, but the proposed amendment does not actually contain such criteria for the panel. Section 2(D)(2) of the proposed amendment specifies criteria for serving on the commission, but not the panel. A potential signer who reads the summary would be misled by the omission that the proposed amendment would not have criteria for determining party affiliation for the panel as well as the commission, both of which are supposed to be bipartisan.

Fourth, the summary states that redistricting plans contain a requirement that “Ohio state incarcerated individuals” shall be counted at their last known residence address for purposes of population equalization (Summary, paragraph 20), while the proposed amendment states that “Persons in the custody of the Ohio Department of Rehabilitation and Corrections or its successor agency shall be counted at their last known pre-incarceration address.” Proposed Amendment, Section 6(C)(1)(b). The latter requirement would not include incarcerated individuals in non-ODRC facilities, like county jails. Thus, the summary on this point is overbroad and would mislead a potential signer as to which “incarcerated individuals” would be included in this provision.

Fifth, Paragraph 21 of the summary contains an inaccurate and incomplete definition of “community of interest” despite the fact that the summary purports to fully define that term. First,

the summary is inaccurate because it omits a critical phrase as to what record must be used to determine “community of interest.” It states, “Define community of interest as an area where the record demonstrates the existence of communities of people.....” It omits the fact that Section 6(C)(3)(a) of the proposed amendment specifically defines “community of interest” as “an area where the record before the commission demonstrates the existence of communities of people.....” (emphasis added.). Thus, a potential signer would not know that “community of interest” is limited to the record before the commission only. Second, the definition of “community of interest” is incomplete because it completely fails to even mention the additional criteria in Section 6(C)(3)(b), (c) and (d). To proffer an incomplete definition as a comprehensive one is, by its very nature, misleading.

Sixth, Paragraph 24 of the summary, which summarizes the impasse procedure, contains a material misrepresentation. It states that “for any plan at an impasse, each commissioner shall submit a plan to be subject to a ranked choice selection....” (emphasis added.). However, Section 7(A)(1) of the proposed amendment does not require each commissioner to submit his or her own plan upon impasse. Instead, that section gives each commissioner three days to “submit no more than one proposed redistricting plan.” That section goes on to state that “Any redistricting plan submitted for the ranked choice selection process....” The plain language of proposed Section 7(A)(1) merely gives each commissioner the option to submit his or her own plan for the ranked choice selection process. It does not mandate that each commissioner must submit a plan in the case of impasse. Thus, the summary on this point would materially mislead a potential signer on this point.

Seventh, Paragraph 24 of the summary also contains a material omission with regard to the tie-break provision set forth in proposed Section 7(A)(2)(b). It provides that if the ranked choice selection process ends in two plans receiving equal points, the tie will be broken “through a random process.” The fact that the proposed amendment includes an impasse process which ultimately may result in a redistricting plan being selected “through a random process” is a critical fact which should be articulated in the summary. This is especially true when the summary purports to set forth the entire impasse process, yet omits this critical, potential step.

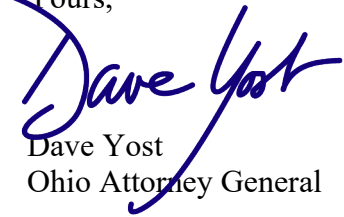
Eighth, the summary requires that applications for appointment to the screening panel “be sent to all Ohio retired judges.” Summary, paragraph 6. The proposed amendment contains no such requirement.

Ninth, the summary provides near-recitations of some sections of the proposed amendment while giving short shrift to other sections, which is materially confusing to a potential signer. For example, Paragraphs 20 and 25 of the summary are lengthy compilations of amendment provisions that contain nearly half as many words as the sections of the proposed amendment that they are summarizing. The length of these paragraphs alone would lead a potential signer to think that these sections have a greater importance or should have a greater emphasis in a consideration of the proposed amendment.

The above instances are a just a few examples of the summary’s omissions and misstatements. It is significant to ask voters to make factual findings at the ballot box. A summary that fails to inform a signer of the existence of such findings does not fairly and truthfully reflect the amendment’s import. 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,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style. The word "Dave" is written in a larger, more prominent script than "Yost".

Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners