



DAVE YOST

OHIO ATTORNEY GENERAL

Constitutional Offices Section
Office 614-466-2872
Fax 614-728-7592

October 14, 2022

Via regular U.S. Mail and E-mail

Donald J. McTigue
McTigue & Colombo LLC
545 East Town Street
Columbus, Ohio 43215
dmctigue@electionlawgroup.com

Re: Submitted Petition for Initiated Constitutional Amendment to Amend Article II, Section 34a of the Ohio Constitution — “Raise the Wage Ohio Amendment”

Dear Mr. McTigue,

On October 5, 2022, in accordance with Ohio Revised Code (“ORC”) Section 3519.01(A), I received a written petition containing (1) a copy of a proposed constitutional amendment to amend Article II, Section 34a, 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.” ORC Section 3519.01(A). 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 October 15, 2022.

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). 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 numerous omissions that, as a whole, would mislead a potential signer as to the actual scope and effect of the proposed amendment to the current constitutional provision.

For example, the summary states that the proposed amendment would “[a]mend the existing definition of ‘employee’ in Article II, Section 34a to include every instance in which an employer suffers or permits an individual to work,” but fails to mention that the proposed amendment does not include “individual[s] employed in or about the property of the employer or individual’s residence on a casual basis” in this definition. Because the summary fails to disclose the casual basis exception to the definition of “employee,” a potential signer would believe that the proposed amendment’s definition of an “employee” is broader than what it actually is. Thus, the summary

would mislead a potential signer as to the actual scope and effect of the proposed amendment to the current constitutional provision.

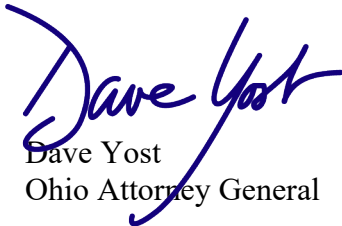
Similarly, the summary purports to increase the minimum wage rate for inflation “beginning” in 2029, but the proposed amendment would actually stop the annual increases for inflation that are currently in effect and recommence them in 2029. Because the summary fails to explain that Section 34a, as it is currently written, has provided for the annual increase of the minimum wage in accordance with inflation since 2008, and that the proposed amendment would actually stop these increases until 2029; a potential signer would feel misled by the summary when it is compared to the language of the proposed amendment. Additionally, the summary fails to mention that the proposed amendment actually strikes out portions of the current constitutional provision regarding the rate and inflation increases.

The summary also fails to sufficiently inform a potential signer of the proposed amendment’s changes to wage requirements for employees with disabilities, employees under 16 years of age, and tipped employees:

- Specifically, the summary states that the proposed amendment to Section 34a would remove the “current exemption” that provides that the full minimum wage rate does not apply to employees with mental or physical disabilities. But the summary fails to mention that Section 34a currently provides that “[t]he state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment,” and that the proposed amendment removes this provision completely. The summary’s failure to mention this state licensing process, and that the proposed amendment would strike out the entire process, is a material omission that prevents the summary from accurately explaining the actual scope and effect of the proposed amendment.
- Similarly, the summary states that the proposed amendment would “[r]emove the current exemption[] * * * that provide[s] that the full minimum wage rate does not apply to employees under the age of sixteen,” but fails to mention that Section 34a currently provides that employees under 16 “shall be paid a wage rate of not less than that established under the Fair Labor Standards Act.” The summary’s consistent failure to mention existing protections and requirements in place, as a whole, are material omissions that prevent the summary from being fair and truthful.
- In addition, the summary states that the proposed amendment would “modify current language to provide” incremental increases to a pro-rated minimum wage rate that an employer can pay a tipped employee below the minimum wage rate. But the summary fails to mention Section 34a’s current requirement as to minimum wage rates for tipped employees, which states for tipped employees “[a]n employer may pay an employee less than, but not less than half, the minimum wage rate required by this section,” and that the proposed amendment removes this requirement completely. This is another omission that contributes to the summary’s pattern of failure to mention existing protections currently found in Section 34a. For all of these reasons, the summary fails to sufficiently inform a potential signer of the actual scope and effect of the proposed amendment.

In total, because of its numerous omissions, the summary does not properly advise a potential signer of the proposed amendment's character and limitations. For these reasons, I am unable to certify the summary as a fair and truthful statement of the proposed amendment. Finally, I recommend that the Petitioners carefully review and scrutinize the remainder of the summary to ensure that it accurately captures the proposed amendment's definitions, contents, and limitations before it is resubmitted to this Office.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee to Represent the Petitioners

Prentiss Haney
918 Windsor Street, Apt. 2
Cincinnati, Ohio 45206

Taneisha Latoya Head
2829 East 125th Street
Cleveland, Ohio 44120

Kandiss Bondurant
1736 Rebecca Street
Columbus, Ohio 43219

Linda Howard
3715 Stanley Tolliver Avenue
Cleveland, Ohio 44115

Katherine Paris
15830 South Park Boulevard
Shaker Heights, Ohio 44120