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VIA FIRST CLASS MAIL & EMAIL

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Re: Proposed Constitutional Amendment – Ohio Sovereignty

Dear Members of the People's Constitution Coalition of Ohio:

A written petition proposing to enact an article of the Ohio Constitution was submitted to my office on March 16, 2010, in accordance with Section 3519.01(A) of the Ohio Revised Code. This statute specifies that the Attorney General is to conduct an examination of the summary within ten days of receiving it. In this instance, the tenth day falls on Friday, March 26, 2010.

As part of our statutory duties, this office must send all of the part petitions to the appropriate county boards of election for verification of signatures. With respect to your submission, our office sent 312 part-petitions (containing approximately 2,026 unverified signatures) to 76 county boards of election. With all county boards reporting back, 1,739 signatures have been verified.

My particular duty with regard to the content of the proposed amendment is to opine whether the submitted summary is a fair and truthful statement of the proposed initiated amendment. After reviewing the submission, I have concluded that I am unable to certify your summary as a fair and truthful statement of the measure to be referred. What follows is a non-exhaustive list of some of the amendment's problematic sections.

**Section 2: Sovereignty of Ohio Citizens**

The summary states that all government *functions* are open to public inspection, while the amendment states that government "books, records and operations" can not only be inspected, but also monitored, audited and disseminated.

This is an example of the amendment's specific provisions having a much broader impact on current laws than the general terms of the summary would indicate. Most people have no issue with the general idea that "government should be open to the public." But specifically making *all* government records, even law enforcement and juvenile records, publicly available for auditing and dissemination is a different matter entirely.

If the summary included the same material terms as the amendment, it would be a more fair account of the measure.

### **Section 11: Enforcement of the Ohio Constitution, Federal Search Warrants**

The summary states that federal agents are simply required to “utilize” the sheriff in their execution of warrants in a given county. The amendment, on the other hand, states that federal agents cannot execute a warrant unless they have the sheriff’s authority to do so. Even with the sheriff’s authority, federal agents would not actually execute the warrants. This would be done by the sheriff, and the federal agents may not even be present, based on the sheriff’s discretion. The summary is not a truthful representation of the amendment’s text on this point. Reading the summary alone, a reader would probably think that federal agents could execute search warrants in their usual fashion, as long as the county sheriff is kept apprised. But the amendment’s language actually transfers all authority regarding federal warrants to the county sheriff, which is not reflected in the summary.

### **Section 11: Enforcement of the Ohio Constitution, Right to Bear Arms**

Here, again, is another example of the amendment’s specific provisions having a much broader impact on current laws than the general terms of the summary would indicate. Most people understand the general right to bear arms. The amendment, however, states that there can be no prohibition on the right to bear arms as applied to “any manner of arms, weapon, personal armament and other devices and munitions designed for personal use.” In order to be fair, the summary would, at the very least, need to include the same terms used in the amendment when it describes “arms,” and explain that the amendment contemplates no limitations on the right to bear these arms except in a few limited circumstances, such as conviction of a “high crime.”

### **Section 12: People’s Constitution Council**

In this section, the amendment identifies a “People’s Constitution Council” which brings grievances against government bodies, educates the public and preserves the Constitution. The summary states that the Council’s basic structure is defined in the amendment.

The basic structure of this Council is significant enough that the average person would want to know several things about it that are not explained in the summary, such as how the group proposes to get its funding (presumably through some sort of public dollars in the form of 0.05 percent of state revenue). Further, the group would exist outside of the scope of state government, yet could use government dollars to not only carry out its mission, but to fund its campaigns and amass additional resources. Additionally, members of the group circulating the petition contemplate standing in as the first Council, which means these members would administer a qualifying test for others to run against them in subsequent elections. The amendment also states that members of the Council (at least those in good standing) would receive money for re-election from some sort of central fund – money that would presumably not be available to people outside the Council who wish to run for a seat against them. If this is how the petitioners would like to set up the inaugural Council, they need to make these material facts known in the summary.

This provision is the single biggest obstacle to the summary meeting a "fair and truthful" standard. There are simply too many material terms which are not explained in the summary. Our office has certified summaries in the past that state that something is explained in the full text of the measure. However, if the terms are material to the average person's understanding of that measure, then the summary must mention those items.

#### **Section 14: Preservation of Sovereignty**

The summary here does not explain that sanctions and penalties may be imposed on those who subvert the principles of the Constitution through a covert act; nor does the summary mention that violating the principles of this Constitution would be an "act of aggression." If the terms "sanction," "penalty," and "act of aggression," were used in the summary, it would certainly come closer to meeting the "fair and truthful" standard.

#### **Section 15: Transition Period for Existing Laws**

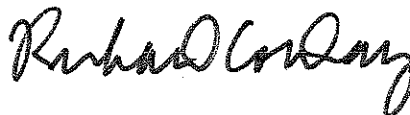
In this section, the same terms used in the summary should be used in the amendment – either giving the state and all political subdivisions a "reasonable" time in which to comply with the amendment, or "4 years" to comply with the amendment.

#### **Conclusion**

While I have identified several areas where the summary language does not present a fair and truthful account of the amendment's text, I would caution that rectification of the specific issues identified in this letter does not assure a final certification by our office.

Finally, I fully realize that the People's Constitution Coalition of Ohio will not be pleased with my determination. One of the things your amendment emphasizes is that public servants have a duty to the people of Ohio. In this case, my duty is simply to examine the summary language as it relates to the amendment text, and determine whether that language is fair and truthful. I would like to assure you that I take this duty very seriously, and it is precisely for this reason that I am unable to certify the summary.

Sincerely,



RICHARD CORDRAY  
Ohio Attorney General