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OHIO ATTORNEY GENERAL

Constitutional Offices
Section
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December 28, 2023

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 V, Sections 1, 2 and 6 of the Ohio Constitution – “Secure and Fair Elections”

Dear Mr. McTigue,

On December 19, 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 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 December 28, 2023.

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

First, the summary repeatedly refers to verification of voter identity as a “specified process,” although the various “specified processes” to which the summary refers differ markedly from each other. There is not one “specified process” but three different processes outlined in the proposed amendment by which elector identity is to be verified depending on whether the voter is (1) requesting an absentee ballot, (2) voting by absentee ballot, or (3) voting in person by signed declaration. Because the summary uses the same phrase “specified process” for three different processes, a reader is likely to believe that the same process is used in each of these scenarios. The summary is misleading in this regard.

Nor does the summary fairly explain the different requirements for verification of a voter's identity based on how they cast their ballot. While under (C)(8)(b) a voter seeking to cast an in-person ballot without a form of the identification required by (C)(8)(a) may sign a declaration attesting to their identity, their identity can be verified by comparing the signature on file *or* by confirming the voter's date of birth with the voter's record. However, a voter seeking to cast an absentee ballot must provide a signature *and* either a state identification/driver's license or social security number. There is a marked difference in the proposed amendments requirements for different types of ballots and this is not evident from a review of the summary.

The scope and means by which the identity of voters in Ohio are verified is of great public concern and interest. The summary fails to provide this necessary clarity and, by using the same term "specified process" when referring to different processes, obfuscates the differing ways in which voter identification is to be verified. It further obscures the different requirements mandated for verifying voter identity.

"To be clear, this analysis is not meant to imply that a verbatim recitation of the specific processes outlined in the amendment is necessary. Indeed, by definition, the summary must be a "short, concise summing up" of the proposed amendment. *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24 (1931). Nonetheless, the summary falls short of providing the necessary clarity on this issue for it to be considered fair and truthful.

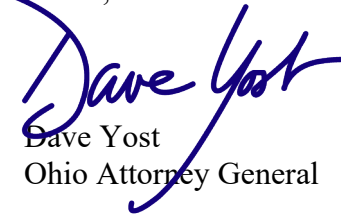
Second, the summary's description of the types of "person" to which the amendment applies is incomplete. A reader is not likely to understand "any ... entity" as stated in the summary to include the broader scope of both public and private entities and their agents as set forth in the proposed amendment. The omission from the summary of the specific types of entities actually covered by the proposed amendment materially alters the scope of the amendment's effect. It is therefore misleading in this regard.

Third, the title "Secure and Fair Elections" does not fairly or truthfully summarize or describe the actual content of the proposed amendment. The current title of Article V, Section 1 is "Who May Vote" and the proposed amendment renames Section 1 to "Voting Rights". Substantively, the proposed amendment is a compilation of specific election regulations. While the petitioners may believe that these proposed regulations may ultimately result in secure and fair elections, the title is completely untethered to the actual substance of the proposed amendment. Thus, the title is misleading and fails to fairly and truthfully describe the content of the proposed amendment.

Finally, the proposed amendment requires that, in the case of either a deficient absentee ballot or a deficient absentee ballot application, the elector "has a right to be notified immediately and afforded due process, including an equitable and accessible opportunity to correct" issues with the absentee ballot application or absentee ballot envelope. Proposed Amendment, Sections (C)(9)(b) and (E)(3). In contrast, the summary omits the words "immediately" and "afforded due process". The proposed amendment's requirements for immediate notice and due process in the event of a deficient absentee ballot application or absentee ballot envelope is a critical aspect of the process. To fairly and truthfully summarize the proposed amendment, the summary should include this omitted language. By not doing so, the summary again misleads the reader as to the scope and effect of the proposed amendment with respect to the process required.

The above instances are just a few examples of the summary's omissions and misstatements, and further review will be undertaken should the matter be resubmitted. Thus, without reaching the balance of the summary, 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 style with a large, sweeping initial "D".

Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners