



# DAVE YOST

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March 11, 2022

*Via regular U.S. Mail and E-mail*

Diana D. Smith  
6785 Smith Road  
Bradford, Ohio 45308  
Initiativepetitionhb248@gmail.com

Re: Submitted Petition for a new Section 3792.02 to be added to the Ohio Revised Code—  
“Vaccine Choice and Anti-Discrimination Act”

Dear Ms. Smith,

On March 3, 2022, I received a written petition containing (1) a copy of the proposed section, and (2) a summary of the same measure. This petition and summary were submitted to this Office in accordance with Ohio Revised Code (“ORC”) Section 3519.01(A). 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 March 11, 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 statute for the following reasons:

The summary materially misstates the proposed statute with respect to “businesses.” A recurring issue with the summary is that it erroneously states that the statute imposes various restrictions and protections on businesses when, in fact, the statute does not restrict or protect businesses in the stated manner. For example, Proposed Section 3792.02(D) prohibits any “person, public official or employee, public agency, state agency, political subdivision, school, child day-care center, nursing home, residential care facility, health care provider, insurer, institution or employer” from discriminating against individuals on the basis of their vaccination status. However, the summary erroneously states that the statute also prohibits “businesses” from discriminating against individuals on the basis of their vaccination status when, in fact, the statute does not prohibit businesses from doing so. Because the summary purports to impose restrictions on businesses when the proposed statute does not, a potential signer would feel misled by the summary when it is compared with the proposed statute.

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Similarly, proposed Section 3792.02(F) prohibits public entities from issuing an order that encourages “any person, public official or employee, public agency, state agency, political subdivision, school, child day-care center, nursing home, residential care facility, health care provider, insurer, institution, or employer” to violate any provision of the Section. The proposed subsection also prohibits public entities from issuing an order that penalizes the same for refusing to violate any provision of the Section. Notably, the statute does not include “businesses” in this protected category. However, the summary erroneously states that public entities are also prohibited from issuing an order that either (a) encourages “businesses” to violate any provision of the Section, or (b) penalizes “businesses” for refusing to violate any provision of the Section. Because the summary purports to give businesses certain legal protections that the proposed statute does not give to businesses, the summary is misleading when it is compared with the proposed statute.

Finally, the goal of proposed Section 3792.02(E) is to protect businesses honoring individuals’ rights. In furtherance of this goal, the proposed subsection prohibits any “person, public official or employee, public agency, state agency, political subdivision, or insurer” from discriminating against any “business, corporation, business trust, estate, trust, partnership, or association.” But the summary misstates Subsection (E) in two ways. *First*, the summary erroneously states that the statute also prohibits any “businesses” from discriminating against the protected entities. This is a misstatement of the statute because the subsection does not restrict businesses in this manner. Because the summary purports to impose restrictions on businesses when the proposed statute does not, a potential signer would feel misled by the summary when it is compared with the proposed statute. *Second*, the summary generally states that the proposed statute will ensure the “protection of businesses.” However, the summary fails to make any indication that an “estate” or “trust” would also be included in this protected category. This is misleading because a reasonable person of ordinary intelligence would not consider an “estate” or “trust” to be included in a commonly understood definition of “business.” This is also misleading because the summary specifically includes the definition of a “business,” which the summary defines as “any corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or similar entity.” In short, although the summary states that the proposed statute will protect “businesses,” it fails to make any indication that an “estate” or “trust” would be included in this protected category. This is a material omission, and a potential signer would feel misled by the summary when it is compared with the proposed statute.

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

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Yours,

A handwritten signature in blue ink, appearing to read "Dave Yost".

Dave Yost  
Ohio Attorney General

cc: Committee to Represent the Petitioners

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