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Via regular U.S. Mail and E-mail

Diana D. Smith
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Initiativepetitionhb248@gmail.com

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

Dear Ms. Smith,

On November 30, 2021, 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 Thursday, December 9, 2021.

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:

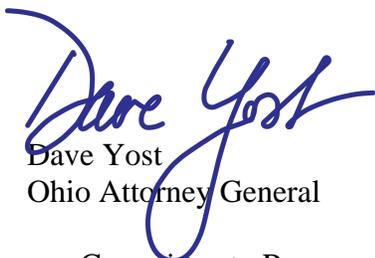
First, the summary fails to define operative terms of the proposed statute such as “gene therapy,” “passport system” and “registry,” “personally identifiable information,” “school,” and “businesses.” These terms are material to a cursory understanding of the proposed statute, yet these material definitions are not contained in the summary. And, the summary does not advise the potential signer that material definitions can be found in the proposed statute. Additionally, the proposed statute assigns definitions to certain terms such as “school” and “businesses” that are different than their common usage. For example, the proposed statute broadly defines “school” to include a privately funded school, a board of education, and a governing authority of a school. In short, the summary’s failure to define operative terms of the proposed statute prevents it from being fair and truthful and is misleading to a potential signer.

Second, numerous material provisions in the proposed statute were omitted from the summary. For example, the summary states that the proposed statute prohibits certain individuals and entities from “requiring any vaccine or gene therapy,” but it fails to mention that the proposed statute also prohibits certain individuals and entities from “otherwise request[ing] vaccine or gene therapy.” In other words, the summary sets forth a narrower scope of actions than what is actually prohibited by the proposed statute. Similarly, the summary states that the proposed statute prohibits “discrimination” against an individual or a business for their choices regarding vaccine or gene therapy, but it fails to disclose that the proposed statute also prohibits a wide variety of actions that are not commonly understood to be discriminatory actions. For example, providing “any disposition, service, financial aid, or benefit” as a result of these choices is also prohibited by the statute. The summary’s failure to disclose these prohibited actions are material omissions that affect its fair and truthful evaluation.

Third, the summary fails to mention important exceptions in the proposed statute. The summary states that the proposed statute prohibits certain individuals and entities from “requiring any vaccine or gene therapy,” “requesting any vaccine or gene therapy status,” or “disclosing” such status. However, the summary fails to mention that there are important exceptions to these prohibitions. For example, the proposed statute does not prohibit certain students from being required to provide proof of immunization against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, and rubella. And, healthcare providers and insurers can require, request, or disclose information relating to vaccine or gene therapy status “as it pertains to patient care, treatment, or billing.” Finally, the summary fails to disclose that the proposed statute will remain in effect in all circumstances, even during a state of emergency.

In total, 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.

Yours,



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Ohio Attorney General

cc: Committee to Represent the Petitioners

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