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March 14, 2024

Via regular U.S. Mail and E-mail

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Re: Submitted Petition for Initiated Constitutional Amendment to Add Article I, Section 22 of the Ohio Constitution– “Protecting Ohioans’ Constitutional Rights”

Dear Mr. Brown,

On March 5, 2024, 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 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.” 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 March 14, 2024.

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

I understand that I have rejected the Petitioners’ summaries on multiple previous occasions. Sometimes the language of the proposed amendment has changed and the summaries have failed the fair and truthful test, which I have always explained in detail. Regrettably, the Petitioners have submitted summaries that repeat the misstatements and/or omissions that I have specifically identified in previously rejected summaries. That is the case with my rejection today.

For example, the current summary is misleading with respect to the scope of subsection (C) of the proposed amendment. The summary and proposed amendment say two different things. That is,

the qualifier “or any subset thereof” as used in the proposed amendment modifies and broadens the phrase “government actors”. Proposed Amendment, Section (C)(1). The summary, on the other hand, says differently: it rewords the amendment such that “or any subset thereof” directly follows and modifies the comma-separated clause “immunities or defenses.” Summary, paragraph 5. But the proposed amendment actually abrogates the immunities or defenses available to “any subset” of *government actors*. This renders the summary misleading in two aspects. First, this misstatement affirmatively misleads the reader into believing that the proposed amendment broadly abrogates “any subset” of *immunities or defenses available* to “government actors.” Second, the misstatement results in the summary’s omission of this broader, undefined category of “any subset” of “government actors” created by the proposed amendment. **This latter problem was identified as one of the reasons that I was unable to certify Petitioners’ previous summary on November 17, 2023.** Thus, again, the summary fails to fairly and truthfully reflect the scope of the proposed amendment’s effect as set forth in its subsection (C).

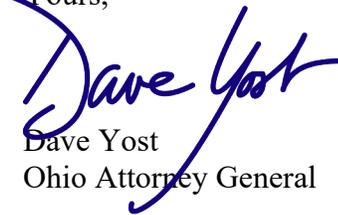
Second, in subsection (F), the proposed amendment provides that “[a] claim made under this Section shall be commenced no later than six years from the date that deprivation of a constitutional right is alleged to have occurred.” Proposed Amendment, Subsection (F). On the other hand, the summary confusingly provides in consecutive sentences: “A claim made under this Amendment must be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred. All claims must be commenced no later than six years from the date the alleged constitutional violation is alleged to have occurred.” Summary, Paragraphs 8-9. These sentences read together pose a significant risk of confusing and misleading any reader of the summary. The sentences lead the reader to believe that there is some distinction or difference in the proposed amendment between the statute of limitations applicable to “[a] claim made under this Amendment” as opposed to “[a]ll claims.” In reality, the proposed amendment makes no such distinction or difference. Nonetheless, a reader will likely assign significance to the fact that the summary repeats itself in this manner while using different language.

Finally, the title “Protecting Ohioans’ Constitutional Rights” does not fairly and accurately reflect the nature and scope of the proposed amendment. “A title ‘provides notice of the proposal to the signers of an initiative petition. More so than the text, the title immediately alerts signers to the nature of [the] proposed legislation.’” *State ex rel. Hildreth v. LaRose*, No. 2023-1213, 2023-Ohio-3667, ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597, 575 N.E.2d 835 (1991). The use of the word “protect” in the summary’s title is especially misleading because the amendment does not seek to proactively “protect” Ohioans from violations of constitutional rights. Instead, the nature of the amendment is to *abrogate*: specifically, governmental immunity and similar defenses available to defined government actors. Accordingly, the summary’s title offers a subjective hypothesis (that eliminating such defenses will “protect” the constitutional rights of citizens) regarding the proposed amendment in lieu of an objective description of its character and purport (that it creates a cause of action notwithstanding those defenses). Given the Supreme Court’s holding on the import of petition titles, I find that the proposed summary’s title is not a fair and truthful recitation of the proposed amendment.

The above instances are just a few examples of the summary’s omissions and misstatements. Any of these omissions or misrepresentations, together or alone, are sufficient to reject the submitted petition. As I have said before, it is significant to ask voters to make factual findings at the ballot box. A summary that fails to inform a signer of the existence of such findings does not fairly and

truthfully reflect the amendment's import. Thus, without reaching the balance of the summary, and consistent with my past determinations, I am unable to certify the summary as a fair and truthful statement of the proposed amendment.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

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