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August 18, 2023

Via regular U.S. Mail and E-mail

Kyle Pierce
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director@oceqi.org

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

Dear Mr. Pierce,

On August 9, 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 August 18, 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 actual scope and effect of the proposed amendment.

First, the summary is not a “short, concise summing up” of the proposed amendment, it is a partial, regrouped version of the proposed amendment. *State ex rel. Hubbell*, at 27. The result is a “summary” that could easily be mistaken as the actual proposed amendment, both in substance and format. In other words, potential signers could easily misbelieve that in reading the summary they actually read the proposed amendment when in fact they did not. This dangerously frustrates the entire purpose of the summary.

Secondly, the summary contains material inaccuracies as to defined terms. For instance, we note that while the proposed amendment states that a “public employee means any *entity*” the word

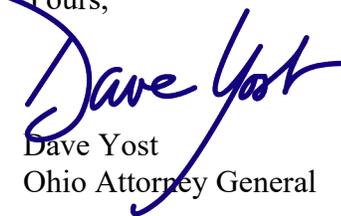
“entity”, which is a much broader term encompassing more than individuals, is omitted from the summary. And the summary mischaracterizes the definition of “political subdivision” as “*anybody* corporate or politic...”, when the proposed amendment defines it as “*any body* corporate or politic...”. Moreover, “public employee” is defined as an independent contractor “who is authorized to act and is acting under color of law.” However, the summary omits the second portion of the defined term “authorized to act”. These omissions in the defined terms could materially mislead a potential signer about the nature of the liability created by an entity or an independent contractor acting without authority.

Thirdly, the summary is also materially confusing, vague, and contradictory regarding the liability of an employee vis-a-vis a “public employee”. The summary suggests that the State or political subdivision can only be held liable for the conduct of “employees” rather than “public employees” which include employees *and* independent contractors as set forth in the defined term “public employee”. This creates a contradiction between the summary and proposed amendment.

Finally, the portion of the summary that outlines the forum in which an action can be brought based on the defendant(s) named does not accurately describe that same portion of the proposed amendment.

The above instances are a just a few examples of the summary’s omissions and misstatements. 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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