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February 2, 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 and Gene Therapy Choice and Anti-Discrimination Act”

Dear Ms. Smith,

On January 24, 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 Wednesday, February 2, 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:

First, the summary materially misstates and mischaracterizes the proposed statute. For example, the summary states that the proposed Section 3792.02 “provid[es] increased transparency and reinforcement of existing laws proscribing public school vaccination exemptions and privacy for staff and students.” However, this contradicts the proposed statute’s actual purpose and intent, which states that “[i]ndividuals have a right to direct their own health care decisions, free from coercion or penalty,” and “[i]ndividuals have a right to expect that their personal privacy rights remain protected, specifically private health information.” The proposed statute also states that schools “shall honor the exemptions from the immunizations requirements.” Because the term “proscribe” means “to prohibit,” the summary erroneously states that the proposed statute prohibits vaccination exemptions and privacy, when in fact it favors them. This is a substantial misstatement


and mischaracterization of the proposed statute, and this reason alone prevents the summary from being fair and truthful.

Similarly, the summary appears to list various “[m]easures to prohibit and prevent discrimination” on the basis of vaccine or gene therapy status, including but not limited to: “[d]enial of service or access,” “[s]egregation,” “[r]equiring a vaccine or gene therapy status label,” and “[r]equiring disease or immunity testing.” Because the summary purports to permit what the proposed statute actually prohibits, a potential signer would feel misled by the summary when it is compared with the proposed measure. Additionally, the summary erroneously states that the proposed statute prohibits: “Providing any disposition, service, financial aid, or benefit to a business, corporation, business trust, estate, trust, partnership, or association that is different from, or is provided in a different manner than that provides to other individuals due to vaccination or gene therapy status.” Because the proposed statute does not purport to prohibit treating businesses differently than individuals, the summary misstates and mischaracterizes the proposed statute.

Second, numerous material provisions in the proposed statute were omitted from the summary. For example, the summary states that the proposed statute prohibits “[r]equired or mandated disclosure of vaccine or gene therapy status” as well as “[r]equired participation in a vaccine or gene therapy passport system,” but it fails to mention that the proposed statute also prohibits “otherwise request[ing]” the disclosure of vaccine or gene therapy status or the participation in a vaccine or gene therapy passport system. The summary is misleading because it purports to prohibit only mandatory requirements regarding the disclosure of one’s vaccine or gene therapy status or participation in a passport system, but the proposed statute also prohibits permissive requests regarding the same. As a result, the summary mischaracterizes the broad scope of actions prohibited by the proposed statute.

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,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

Dave Yost
Ohio Attorney General

cc: Committee to Represent the Petitioners

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