



MIKE DEWINE

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September 16, 2011

VIA U.S. MAIL & ELECTRONIC MAIL

Theresa Gray
11540 Lancaster Dr.
Auburn Township, OH 44023
contact@omca2012.org

RE: Ohio Medical Cannabis Amendment

Dear Ms. Gray:

In accordance with the provisions of R.C. 3519.01(A), on September 7, 2011, I received a written petition proposing to add the Ohio Medical Cannabis Amendment to Ohio's Constitution and a summary of the proposed amendment. 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 respect to your submission, this office sent 97 part-petitions¹ (containing approximately 2,365 unverified signatures) to 55 county boards of elections. With all but one county reporting back, 1,344 signatures have been verified.

Pursuant to R.C. 3519.01(A), I must examine the summary and determine whether it is a fair and truthful statement of the proposed amendment. If I conclude that the summary is fair and truthful, I must certify that fact to the Secretary of State within ten days of receiving it. In this instance, the tenth day falls on September 17, 2011.

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). After reviewing the submission, I have concluded that I am unable to certify your summary as a fair and truthful representation of the proposed amendment for three reasons: 1) the summary contains at least one statement that is contradictory to the text of the proposed amendment, 2) the summary omits portions of the proposed amendment, and those omissions prevent the summary from meeting the fair and truthful standard, and 3) the summary contains at least one statement that is not in the proposed amendment.

The first reason I cannot certify the summary language is because, on at least one occasion, it misstates the actual text of the proposed amendment. With regard to the amount of marijuana a residential cultivator may possess, page 3 of the summary states that in areas zoned residential, designated cultivators "are permitted to cultivate up to 12 mature and 12 immature cannabis plants

¹ The Committee noted that it had submitted 98 part-petitions. One possible reason for the discrepancy is that the submission included one voter registration card, without any part-petitions, for Ashland County. The card, absent any accompanying part-petitions, was sent to the Ashland County Board of Elections for processing.

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and possess up to 200 grams of usable medical cannabis,” which is the equivalent amount permitted for one registered qualified patient. However, Section 25(D) of the amendment actually states that “The cultivation of cannabis in areas zoned residential shall be limited the number of immature and mature cannabis plants allowed *two* registered qualified patients and an amount of usable cannabis equal to the amount of *two* registered qualified patients.” (emphasis added). Because the summary misstates the actual language of the amendment, it is not fair and truthful.

The second reason I cannot certify the summary language is that the summary fails to address several pertinent portions of the proposed amendment. For example:

- Section 20(A) of the amendment states that “All information, data and records received and kept by the Division [of Medical Cannabis Control], or its contracted agency, for the purposes of administering this Amendment, are strictly confidential and not subject to disclosure, . . . except as necessary for authorized employees of the Division, Department [of Public Safety Investigative Unit] or law enforcement personnel to perform official duties for the Division pursuant to this Amendment.” The summary fails to address this exception to Ohio’s public records laws and the limited circumstances under which law enforcement entities could access information, data and records received and kept by the Division.
- Section 20(D) of the amendment states that if law enforcement personnel, or any employee of the Division of Medical Cannabis Control or its contracted agency “knowingly divulges any information contained in the secure confidential registry verification system to unauthorized persons, it shall be a crime of a third degree misdemeanor.” It also states that if divulged information “pertains to a practitioner or patient’s data covered under the Health Insurance Portability and Accountability Act, the crime shall be a second degree misdemeanor.” Finally, the section states that if the divulged information “leads to any harm to a cardholder’s person or property the crime shall be a first degree misdemeanor and added to other criminal penalties associated with the harm caused.” The summary fails to address these new criminal penalties.
- Parts (G) and (H) of Section 19 of the amendment significantly modify law enforcement obligations and powers to take action against suspected wrongdoing by a confidential registry card holder or at a permitted cannabis cultivation site. These new obligations and restrictions are not addressed in the summary.
- Section 25(E) of the amendment states that commercial cultivators may possess as many plants *and* as much usable cannabis as eight qualified patients (1,600 grams). The summary, however, states that the eight-patient amount is limited to the number of plants, and makes no mention of usable cannabis. The summary fails to address the fact that a commercial cultivator would have the ability to possess up to 1,600 grams of usable medical cannabis.
- The last sentence of 25(E) of the amendment states that the newly-created Commission of Medical Cannabis Control is authorized to increase the amount of plants allowed under a commercial cultivator’s permit. The summary fails to address this.
- Section 27(I) of the amendment states that a commercial cultivation permit holder may “apply for and obtain more than one permit and conduct activities allowable under all the

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permits they hold.” The fact that individuals could hold multiple permits is not mentioned in the summary.

- The summary fails to address the fact that Section 17(D) of the amendment would allow a minor with a qualifying medical condition to use medical marijuana with parental consent.
- Section 3(L) of the amendment asserts that state and local law enforcement “. . . shall not provide any information from any cannabis-related investigation of the person or entity [who lawfully holds a permit] to any law enforcement authority that does not recognize the protection of this Amendment.” Under this amendment, law enforcement agencies would be prohibited from sharing *any* investigative information with out-of-state law enforcement agencies – no matter the nature of the information – if it was initially gleaned from a cannabis-related investigation of a permit holder. This broad prohibition on information sharing between law enforcement agencies is not included in the summary.
- At least two sections in the amendment allow certain permit holders to “gift, dispense or transfer” cannabis products to cardholders. Cultivation permit holders are permitted to do this under Section 26(E), and Scientific Research Laboratory permit holders are permitted to do this with seeds, cuttings, clones, etc. under Section 30(A)(2). All fees, fines and excise taxes generated under this program would be directed to the newly-created Medical Cannabis Control Fund. Consequently, the only revenue going to the State under this amendment would be from sales tax. The fact that certain cannabis-related transactions could be conducted through transfer or gift, without benefit to the State through sales tax collection, is not mentioned in the summary.
- Section 38(B) of the amendment states that if the Division of Medical Cannabis Control fails to issue a confidential registry identification card in response to a valid application or renewal application within 28 days of its submission, “the confidential registry identification cards shall be deemed granted, . . .” This is not addressed in the summary.

Finally, I have identified at least one statement in the summary that cannot be found in the amendment itself. The summary states that “The Treasurer of the State of Ohio shall provide a loan of up to two million dollars” to the Division of Medical Cannabis Control for hiring personnel, leasing quarters, obtaining the necessary equipment, and for any other purpose directly related to fulfilling the mission of the proposed amendment, “to be paid back with interest to the treasury within thirty months of the effective date of this Amendment.” This loan is not mentioned in the text of the amendment.

For all of these reasons, I am unable to certify the summary as a fair and truthful statement of the proposed amendment. However, I must caution that this is not intended to be an exhaustive list of all defects in the submitted summary.

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Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is written in a cursive style with a blue background behind the text.

Mike DeWine
Ohio Attorney General

cc: Committee to Represent the Petitioners

Dr. Robert Fitrakis, Esq.
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**Tally Sheet:
Ohio Medical Cannabis**

Board of Elections	Part_ Petitions	Signatures verified	Invalid Signatures	Voter Regis. Cards	UPS Tracking
Ashland County Board of Elections				1	voter registration card sent by regular mail
Ashtabula County Board of Elections	1	2	0		4347
Athens County Board of Elections	1	13	9	2	4679
Belmont County Board of Elections	1	5	1		
Butler County Board of Elections	2	17	5		4759
Carroll County Board of Elections	1	1	0		4740
Champaign County Board of Elections	1	3	1		4731
Clark County Board of Elections	2	5	3		4722
Clermont County Board of Elections	1	0	5		4713
Clinton County Board of Elections	1	1	0		4704
Columbiana County Board of Elections	1	1	0		4697
Crawford County Board of Elections	1	1	0	1	4688
Cuyahoga County Board of Elections	4	58	71	3	8264
Delaware County Board of Elections	2	35	25	6	8255
Erie County Board of Elections	1	1	0		8246
Fairfield County Board of Elections	1	39	12	8	8237
Franklin County Board of Elections	18	884	651	118	
Geauga County Board of Elections	2	10	5		8228
Greene County Board of Elections	1	9	4		8219
Guernsey County Board of Elections	1	0	3	1	8200
Hamilton County Board of Elections	4	31	8	6	8193
Hancock County Board of Elections	1	6	5		8184
Henry County Board of Elections	1	1	1		4301
Hocking County Board of Elections	1	2	1		4310
Huron County Board of Elections	1	0	1		4329
Knox County Board of Elections	1	3	2	1	4338
Lake County Board of Elections	1	0	1		5443
Licking County Board of Elections	2	21	26	3	5452
Logan County Board of Elections	1	2	1	1	5461
Lorain County Board of Elections	3	11	5		5470
Lucas County Board of Elections	3	34	19	2	5489
Madison County Board of Elections	1	7	3	1	5498
Mahoning County Board of Elections	1	18	1	2	5505

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Ohio Medical Cannabis**

Board of Elections	Part_ Petitions	Signatures verified	Invalid Signatures	Voter Regis. Cards	UPS Tracking
Marion County Board of Elections	1	6	3		5514
Medina County Board of Elections	1	2	4		5523
Miami County Board of Elections	1	2	6		5532
Montgomery County Board of Elections	4	15	11		5541
Morrow County Board of Elections	1	2	1		5550
Muskingum County Board of Elections	2	10	6	2	5569
Ottawa County Board of Elections	1	0	1		5578
Perry County Board of Elections	1	4	4	1	5587
Pike County Board of Elections	1	0	1		5596
Portage County Board of Elections	3	8	6		5603
Preble County Board of Elections	1	1	0		5612
Richland County Board of elections	1	4	1		5621
Ross County Board of Elections	1	6	2	1	5630
Sandusky County Board of Elections	2	2	2		5649
Seneca County Board of Elections	1	3	1	2	1Z 474 833 23 1040 5658
Shelby County Board of Elections	1	5	2	2	1Z 474 833 23 1040 5667
Stark County Board of Elections	2	13	5		1Z 474 833 23 1040 5676
Summit County Board of Elections	1	15	9	2	1Z 474 833 23 1040 5685
Trumbull County Board of Elections	2	15	0		1Z 474 833 23 1040 5694
Tuscarawus County Board of Elections	1	1	1	1	1Z 474 833 23 1040 5701
Union County Board of Elections	1	0	1		1Z 474 833 23 1040 5710
Williams County Board of Elections	1				1Z 474 833 23 1040 5729 *unable to confirm delivery. We are looking into the matter with UPS.
Wood County Board of Elections	2	9	3		1Z 474 833 23 1040 5738
Totals	97	1344	939	167	