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March 8, 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 February 27, 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 March 8, 2023.

Having reviewed the submission, I am unable to certify the summary as a fair and truthful representation of the proposed amendment. During our 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.

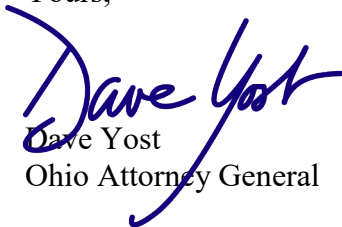
For example, the summary states that the proposed amendment will “create a state cause of action when a person’s constitutional and/or legal rights are violated by a state, county, municipal government, and/or other political subdivision,” but does not indicate that the cause of action arises from injuries caused by government employees, including contractors. Nor does the summary include any information about where the action may be brought or what types of relief are available under the amendment.

Additionally, the summary misstates the proposed amendment with respect to the termination of a government employee. The proposed amendment seeks to make “a court’s finding that a government employee violated a right under the laws or constitution of this State or the United States” a “just cause” reason for terminating the employment of the government employee, but the summary fails to make any mention of this “just cause” presumption. Rather, the summary materially misstates the proposed amendment, which does not, in fact, mandate termination of employment. Moreover, the “just cause” presumption in the proposed amendment applies only to individuals whose employment is pursuant to “any contract or agreement.” The summary fails to set forth this important distinction as well. Thus, a potential signer would likely read the summary and misbelieve that the proposed amendment provides for a guaranteed termination of employment for offending individuals rather than a presumption of “just cause” for termination of certain government employees.

The summary also misleads a potential signer with respect to how the proposed amendment can prevent constitutional rights violations from occurring in the future. Finally, the summary’s statement on “a plaintiff’s claim prevailing” is confusing and vague. Just reading the summary, it is unclear what “court recognition of plaintiff’s claim prevailing” actually means and the summary does not explain that “court recognition” in fact includes only attorney’s fees and litigation costs.

The above instances are 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. Finally, I recommend that the Petitioners carefully review and scrutinize the remainder of the summary to ensure that it accurately captures the proposed amendment’s definitions, contents, and limitations before it is resubmitted to this Office.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

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