

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* LETOHIOVOTE.ORG, *et al.* :  
 : Case No. 2009-1310  
 Relators, :  
 :  
 vs. : Original Action in Mandamus  
 :  
 HON. JENNIFER BRUNNER, :  
 :  
 Respondent. :

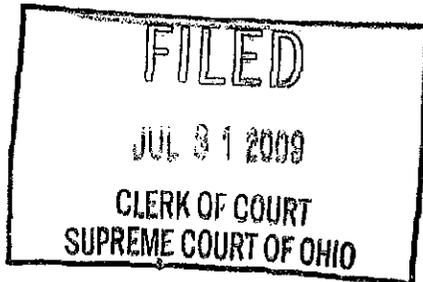
RELATORS' EVIDENCE

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## **RELATORS' EVIDENCE**

Pursuant to the Court's Scheduling Order and Rule X, Section 7 of the Ohio Supreme Court Rules of Practice, Relators submit the attached evidence in support of their claim for writ of mandamus. The evidence is indexed as follows:

1. Governor's VLT Directive (Relators' Exhibit A)
2. R.C. Sections 3770.03 and 3770.21 of Am. Sub. H.B. 1 (Relators' Exhibit B)
3. Sections 812.10 through 812.50 of Am. Sub. H.B. 1 (Relators' Exhibit C)
4. Affidavit of Gene Pierce in Support of Writ of Mandamus, which includes the following exhibits:
  - Letter from Secretary of State rejecting Summary Petition (Relators' Exhibit D)
  - Letter from Ohio Attorney General rejecting Summary Petition (Relators' Exhibit E).

Respectfully submitted,



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*Gene Pierce*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Relators' Evidence has been delivered by electronic mail this 31<sup>st</sup> day of July, 2009 to the following counsel for Respondent and

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Counsel for Relators

# EXHIBIT A

Directive to the Ohio Lottery

July 13, 2009

**Implementing Video Lottery Terminals**

1. **Ohio is Facing Significant Economic Challenges.** The national economic recession has caused many and substantial hardships for the people of Ohio. Many Ohioans rely on the health, safety and welfare services provided by the State. Declining employment and recessionary sales have led to declining tax revenues realized by the State, making it more and more challenging for the State to provide the educational, health and other services its people deserve. Without additional revenues, the State would be required to cut services even beyond the significant levels already undertaken and under consideration in current budget discussions.
2. **The Implementation of Video Lottery Terminals (VLTs) is an Important Part of Ohio's Balanced Budget Plan.** The immediate implementation of VLTs by the Ohio Lottery is projected to generate approximately \$933 million in net proceeds during the coming biennium. The dedication of that revenue to education programs is critical to our continued efforts to strengthen Ohio's education system. Increased lottery revenues allow the state to dedicate scarce general revenue funds to critical programs benefiting the health, safety and welfare of Ohio's citizens, avoiding devastating cuts to those programs.
3. **Implementation of VLTs Should Only Be Undertaken With Strong Legal Footing.** The Ohio Constitution authorizes the General Assembly to establish an agency of the State to manage lottery games to support education programs. The General Assembly has established the Ohio Lottery as that agency and has enacted various statutes authorizing the lottery to conduct and operate lottery games in accordance with the Constitution. The General Assembly has indicated to me its intent to pass legislation which would expressly acknowledge that the Ohio Lottery has the authority to implement VLTs under the existing laws of the State of Ohio and that the implementation of VLTs does not violate any provision of Ohio's separate prohibitions on gambling activity.
4. **The Lottery Director Should Immediately Take Steps to Implement VLTs.** With an express acknowledgement of the General Assembly that the Ohio Lottery has the authority to implement VLTs, I believe that the Ohio Lottery can, and I direct the Lottery Director to, adopt rules regarding the implementation of VLTs and immediately take steps to implement VLTs in accordance with the following requirements unless and until they are modified or rejected by the General Assembly:
  - a. **VLTs Should Only Operate At Licensed Racetrack Facilities.** So as to limit the proliferation of gambling activity to locations in which the local community has expressed its support for such activity, the Lottery Director should assure that

licenses to operate VLTs are issued only to those who will operate the VLTs at facilities operated by those already licensed to offer pari-mutuel betting.

- b. VLTs Should Operate at Only Seven Racetrack Facilities at Any One Time.** Again, in order to limit the proliferation of gambling in the state, the Lottery Director should assure that only seven licenses to operate VLTs are issued at any one time.
  - c. VLTs Licenses Shall Be Granted for a Minimum of Ten Years.** To assure effective regulatory oversight regarding those licensed to operate VLTs, licenses should be granted for a minimum of ten years and should be transferred only in accordance with strictly established guidelines.
  - d. Strict Background Checks of Prospective VLT Licensees Shall Be Undertaken.** Strict criminal and financial background checks of all prospective VLT licensees shall be undertaken prior to the issuance of any such licenses and only those meeting clearly articulated standards shall be granted such licenses.
  - e. VLTs Should Be Implemented Quickly, But Contracts Should Follow All Standard Bidding Requirements.** The Lottery should use any existing contracts it has which would permit the rapid implementation of VLTs, but any Lottery Commission contract for services associated with the implementation of VLTs must be awarded by competitive bidding unless competitive bidding requirements are waived by the Controlling Board.
  - f. All VLT Profits Should Benefit Education Programs in Ohio.** In order to comply with the constitutional requirement regarding the use of lottery net proceeds, all VLT net proceeds shall be deposited and utilized to benefit education programs in Ohio in the same manner as all other lottery net proceeds.
- 5. Absence of Implementing Legislation.** If the implementing legislation described in Paragraph 3 is not enacted into law as part of or prior to the FY10-11 biennial budget law and such law is not signed into law by me within five days of the issuance of this Directive, the Directive shall then be deemed immediately null and void.

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Ted Strickland, Governor

# EXHIBIT B

municipal corporation or township that has filed with the superintendent of insurance a certified copy of an adopted resolution, ordinance, or regulation authorizing the procedures described in divisions (C) and (D) of section 3929.86 of the Revised Code from receiving insurance proceeds under section 3929.86 of the Revised Code.

Sec. 3770.03. (A) The state lottery commission shall promulgate rules under which a statewide lottery may be conducted, which includes, and since the original enactment of this section has included, the authority for the commission to operate video lottery terminal games. Any reference in this chapter to tickets shall not be construed to in any way limit the authority of the commission to operate video lottery terminal games. Nothing in this chapter shall restrict the authority of the commission to promulgate rules related to the operation of games utilizing video lottery terminals as described in section 3770.21 of the Revised Code. The rules shall be promulgated pursuant to Chapter 119. of the Revised Code, except that instant game rules shall be promulgated pursuant to section 111.15 of the Revised Code but are not subject to division (D) of that section. Subjects covered in these rules shall include, but need not be limited to, the following:

- (1) The type of lottery to be conducted;
- (2) The prices of tickets in the lottery;
- (3) The number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes shall be awarded to holders of winning tickets.

(B) The commission shall promulgate rules, in addition to those described in division (A) of this section, pursuant to Chapter 119. of the Revised Code under which a statewide lottery and statewide joint lottery games may be conducted. Subjects covered in these rules shall include, but not be limited to, the following:

- (1) The locations at which lottery tickets may be sold and the manner in which they are to be sold. These rules may authorize the sale of lottery tickets by commission personnel or other licensed individuals from traveling show wagons at the state fair, and at any other expositions the director of the commission considers acceptable. These rules shall prohibit commission personnel or other licensed individuals from soliciting from an exposition the right to sell lottery tickets at that exposition, but shall allow commission personnel or other licensed individuals to sell lottery tickets at an exposition if the exposition requests commission personnel or licensed individuals to do so. These rules may also address the accessibility of sales agent locations to commission products in accordance with the "Americans with Disabilities

Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101 et seq.

(2) The manner in which lottery sales revenues are to be collected, including authorization for the director to impose penalties for failure by lottery sales agents to transfer revenues to the commission in a timely manner;

(3) The amount of compensation to be paid licensed lottery sales agents;

(4) The substantive criteria for the licensing of lottery sales agents consistent with section 3770.05 of the Revised Code, and procedures for revoking or suspending their licenses consistent with Chapter 119. of the Revised Code. If circumstances, such as the nonpayment of funds owed by a lottery sales agent, or other circumstances related to the public safety, convenience, or trust, require immediate action, the director may suspend a license without affording an opportunity for a prior hearing under section 119.07 of the Revised Code.

(5) Special game rules to implement any agreements signed by the governor that the director enters into with other lottery jurisdictions under division (J) of section 3770.02 of the Revised Code to conduct statewide joint lottery games. The rules shall require that the entire net proceeds of those games that remain, after associated operating expenses, prize disbursements, lottery sales agent bonuses, commissions, and reimbursements, and any other expenses necessary to comply with the agreements or the rules are deducted from the gross proceeds of those games, be transferred to the lottery profits education fund under division (B) of section 3770.06 of the Revised Code.

(6) Any other subjects the commission determines are necessary for the operation of video lottery terminal games, including the establishment of any fees, fines, or payment schedules.

(C) Chapter 2915. of the Revised Code does not apply to, affect, or prohibit lotteries conducted pursuant to this chapter.

(D) The commission may promulgate rules, in addition to those described in divisions (A) and (B) of this section, that establish standards governing the display of advertising and celebrity images on lottery tickets and on other items that are used in the conduct of, or to promote, the statewide lottery and statewide joint lottery games. Any revenue derived from the sale of advertising displayed on lottery tickets and on those other items shall be considered, for purposes of section 3770.06 of the Revised Code, to be related proceeds in connection with the statewide lottery or gross proceeds from statewide joint lottery games, as applicable.

~~(D)~~(E)(1) The commission shall meet with the director at least once each month and shall convene other meetings at the request of the

chairperson or any five of the members. No action taken by the commission shall be binding unless at least five of the members present vote in favor of the action. A written record shall be made of the proceedings of each meeting and shall be transmitted forthwith to the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, and the house minority leader.

(2) The director shall present to the commission a report each month, showing the total revenues, prize disbursements, and operating expenses of the state lottery for the preceding month. As soon as practicable after the end of each fiscal year, the commission shall prepare and transmit to the governor and the general assembly a report of lottery revenues, prize disbursements, and operating expenses for the preceding fiscal year and any recommendations for legislation considered necessary by the commission.

Sec. 3770.05. (A) As used in this section, "person" means any person, association, corporation, partnership, club, trust, estate, society, receiver, trustee, person acting in a fiduciary or representative capacity, instrumentality of the state or any of its political subdivisions, or any other combination of individuals meeting the requirements set forth in this section or established by rule or order of the state lottery commission.

(B) The director of the state lottery commission may license any person as a lottery sales agent. No license shall be issued to any person or group of persons to engage in the sale of lottery tickets as the person's or group's sole occupation or business.

Before issuing any license to a lottery sales agent, the director shall consider all of the following:

(1) The financial responsibility and security of the applicant and the applicant's business or activity;

(2) The accessibility of the applicant's place of business or activity to the public;

(3) The sufficiency of existing licensed agents to serve the public interest;

(4) The volume of expected sales by the applicant;

(5) Any other factors pertaining to the public interest, convenience, or trust.

(C) Except as otherwise provided in division (F) of this section, the director of the state lottery commission shall refuse to grant, or shall suspend or revoke, a license if the applicant or licensee:

(1) Has been convicted of a felony or has been convicted of a crime involving moral turpitude;

(2) Has been convicted of an offense that involves illegal gambling;

(3) Has been found guilty of fraud or misrepresentation in any connection;

(4) Has been found to have violated any rule or order of the commission; or

(5) Has been convicted of illegal trafficking in ~~feed-stamps~~ supplemental nutrition assistance program benefits.

(D) Except as otherwise provided in division (F) of this section, the director of the state lottery commission shall refuse to grant, or shall suspend or revoke, a license if the applicant or licensee is a corporation and any of the following applies:

(1) Any of the corporation's directors, officers, or controlling shareholders has been found guilty of any of the activities specified in divisions (C)(1) to (5) of this section;

(2) It appears to the director of the state lottery commission that, due to the experience, character, or general fitness of any director, officer, or controlling shareholder of the corporation, the granting of a license as a lottery sales agent would be inconsistent with the public interest, convenience, or trust;

(3) The corporation is not the owner or lessee of the business at which it would conduct a lottery sales agency pursuant to the license applied for;

(4) Any person, firm, association, or corporation other than the applicant or licensee shares or will share in the profits of the applicant or licensee, other than receiving dividends or distributions as a shareholder, or participates or will participate in the management of the affairs of the applicant or licensee.

(E)(1) The director of the state lottery commission shall refuse to grant a license to an applicant for a lottery sales agent license and shall revoke a lottery sales agent license if the applicant or licensee is or has been convicted of a violation of division (A) or (C)(1) of section 2913.46 of the Revised Code.

(2) The director shall refuse to grant a license to an applicant for a lottery sales agent license that is a corporation and shall revoke the lottery sales agent license of a corporation if the corporation is or has been convicted of a violation of division (A) or (C)(1) of section 2913.46 of the Revised Code.

(F) The director of the state lottery commission shall request the bureau of criminal identification and investigation, the department of public safety, or any other state, local, or federal agency to supply the director with the criminal records of any applicant for a lottery sales agent license, and may periodically request the criminal records of any person to whom a lottery

sales agent license has been issued. At or prior to the time of making such a request, the director shall require an applicant or licensee to obtain fingerprint impressions on fingerprint cards prescribed by the superintendent of the bureau of criminal identification and investigation at a qualified law enforcement agency, and the director shall cause those fingerprint cards to be forwarded to the bureau of criminal identification and investigation, to the federal bureau of investigation, or to both bureaus. The commission shall assume the cost of obtaining the fingerprint cards.

The director shall pay to each agency supplying criminal records for each investigation a reasonable fee, as determined by the agency.

The commission may adopt uniform rules specifying time periods after which the persons described in divisions (C)(1) to (5) and (D)(1) to (4) of this section may be issued a license and establishing requirements for those persons to seek a court order to have records sealed in accordance with law.

(G)(1) Each applicant for a lottery sales agent license shall do both of the following:

(a) Pay to the state lottery commission, at the time the application is submitted, a fee in an amount that the director of the state lottery commission determines by rule adopted under Chapter 119. of the Revised Code and that the controlling board approves;

(b) Prior to approval of the application, obtain a surety bond in an amount the director determines by rule adopted under Chapter 119. of the Revised Code or, alternatively, with the director's approval, deposit the same amount into a dedicated account for the benefit of the state lottery. The director also may approve the obtaining of a surety bond to cover part of the amount required, together with a dedicated account deposit to cover the remainder of the amount required.

A surety bond may be with any company that complies with the bonding and surety laws of this state and the requirements established by rules of the commission pursuant to this chapter. A dedicated account deposit shall be conducted in accordance with policies and procedures the director establishes.

A surety bond, dedicated account, or both, as applicable, may be used to pay for the lottery sales agent's failure to make prompt and accurate payments for lottery ticket sales, for missing or stolen lottery tickets, or for damage to equipment or materials issued to the lottery sales agent, or to pay for expenses the commission incurs in connection with the lottery sales agent's license.

(2) A lottery sales agent license is effective for one year.

A licensed lottery sales agent, on or before the date established by the

director, shall renew the agent's license and provide at that time evidence to the director that the surety bond, dedicated account deposit, or both, required under division (G)(1)(b) of this section has been renewed or is active, whichever applies.

Before the commission renews a lottery sales agent license, the lottery sales agent shall submit a renewal fee to the commission in an amount that the director determines by rule adopted under Chapter 119. of the Revised Code and that the controlling board approves. The renewal fee shall not exceed the actual cost of administering the license renewal and processing changes reflected in the renewal application. The renewal of the license is effective for up to one year.

(3) A lottery sales agent license shall be complete, accurate, and current at all times during the term of the license. Any changes to an original license application or a renewal application may subject the applicant or lottery sales agent, as applicable, to paying an administrative fee that shall be in an amount that the director determines by rule adopted under Chapter 119. of the Revised Code, that the controlling board approves, and that shall not exceed the actual cost of administering and processing the changes to an application.

(4) The relationship between the commission and a lottery sales agent is one of trust. A lottery sales agent collects funds on behalf of the commission through the sale of lottery tickets for which the agent receives a compensation.

(H) Pending a final resolution of any question arising under this section, the director of the state lottery commission may issue a temporary lottery sales agent license, subject to the terms and conditions the director considers appropriate.

(I) If a lottery sales agent's rental payments for the lottery sales agent's premises are determined, in whole or in part, by the amount of retail sales the lottery sales agent makes, and if the rental agreement does not expressly provide that the amount of those retail sales includes the amounts the lottery sales agent receives from lottery ticket sales, only the amounts the lottery sales agent receives as compensation from the state lottery commission for selling lottery tickets shall be considered to be amounts the lottery sales agent receives from the retail sales the lottery sales agent makes, for the purpose of computing the lottery sales agent's rental payments.

Sec. 3770.21. (A) "Video lottery terminal" means any electronic device approved by the state lottery commission that provides immediate prize determinations for participants on an electronic display.

(B) The state lottery commission shall include, in any rules adopted

concerning video lottery terminals, the level of minimum investments that must be made by video lottery terminal licensees in the buildings and grounds at the facilities, including temporary facilities, in which the terminals will be located, along with any standards and timetables for such investments.

(C) No license or excise tax or fee not in effect on the effective date of this section shall be assessed upon or collected from a video lottery terminal licensee by any county, township, municipal corporation, school district, or other political subdivision of the state that has authority to assess or collect a tax or fee by reason of the video lottery terminal related conduct authorized by section 3770.03 of the Revised Code. This division does not prohibit the imposition of taxes under Chapter 718, or 3769, of the Revised Code.

(D) The supreme court shall have exclusive, original jurisdiction over any claim asserting that this section or section 3770.03 of the Revised Code or any portion of those sections or any rule adopted under those sections violates any provision of the Ohio Constitution, any claim asserting that any action taken by the governor or the lottery commission pursuant to those sections violates any provision of the Ohio Constitution or any provision of the Revised Code, or any claim asserting that any portion of this section violates any provision of the Ohio Constitution. If any claim over which the supreme court is granted exclusive, original jurisdiction by this division is filed in any lower court, the claim shall be dismissed by the court on the ground that the court lacks jurisdiction to review it.

(E) Should any portion of this section or of section 3770.03 of the Revised Code be found to be unenforceable or invalid, it shall be severed and the remaining portions remain in full force and effect.

Sec. 3773.35. Any person who wishes to conduct a public or private competition that involves boxing or, wrestling match or exhibition, mixed martial arts, kick boxing, tough man contests, tough guy contests, or any other form of boxing or martial arts shall apply to the Ohio athletic commission for a promoter's license. Each application shall be filed with the commission on forms provided by the commission, and shall be accompanied by an application fee as prescribed in section 3773.43 of the Revised Code and, with the exception of wrestling events, by a cash bond, certified check, bank draft, or surety bond of not less than five twenty thousand dollars conditioned for compliance with sections 3773.31 to 3773.57 of the Revised Code and the rules of the commission. The applicant shall verify the application under oath.

The commission shall prescribe the form of the application for the promoter's license. The application shall include the name of the applicant,

# EXHIBIT C

SECTION 803.70. The amendment by this act of division (B) of section 5751.02 of the Revised Code is to clarify the General Assembly's intent of that section when it was enacted by Am. Sub. H.B. 66 of the 126th General Assembly.

SECTION 806.10. The items of law contained in this act, and their applications, are severable. If any item of law contained in this act, or if any application of any item of law contained in this act, is held invalid, the invalidity does not affect other items of law contained in this act and their applications that can be given effect without the invalid item of law or application.

SECTION 809.10. An item of law, other than an amending, enacting, or repealing clause, that composes the whole or part of an uncodified section contained in this act has no effect after June 30, 2011, unless its context clearly indicates otherwise.

SECTION 812.10. Except as otherwise provided in this act, the amendment, enactment, or repeal by this act of a section is subject to the referendum under Ohio Constitution, Article II, Section 1c and therefore takes effect on the ninety-first day after this act is filed with the Secretary of State or, if a later effective date is specified below, on that date.

The amendments by this act to section 3901.381 of the Revised Code take effect twelve months after the effective date specified in the first paragraph of this section.

The amendments by this act to sections 3733.02 and 4781.06 of the Revised Code take effect January 1, 2010.

The amendment, enactment, or repeal by this act of sections 4505.20, 4517.01, 4517.02, 4517.03, 4517.052, 4517.27, 4517.30, 4517.33, 4517.43, 4781.02, 4781.04, 4781.05, 4781.16, 4781.17, 4781.18, 4781.19, 4781.20, 4781.21, 4781.22, 4781.23, 4781.24, 4781.25, and 4781.99 of the Revised Code takes effect July 1, 2010.

The amendment of sections 1739.05, 1751.14, 3923.24, 3923.241, 5743.15, 5743.61, and 5747.01 of the Revised Code takes effect January 1, 2010.

The enactment of section 3903.77 of the Revised Code takes effect one year after the effective date specified in the first paragraph of this section.

The enactment of sections 153.013 and 5525.26 of the Revised Code takes effect January 1, 2010.

Sections 803.10 and 803.20 of this act take effect January 1, 2010.

The amendments by this act to sections 3319.391 and 3327.10 of the Revised Code take effect January 1, 2010.

SECTION 812.20. The amendment, enactment, or repeal by this act of the sections listed below is exempt from the referendum because it is or relates to an appropriation for current expenses within the meaning of Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, or defines a tax levy within the meaning of Ohio Constitution, Article II, Section 1d, and therefore takes effect immediately when this act becomes law or, if a later effective date is specified below, on that date.

Sections 103.24, 121.40, 121.401, 121.402, 122.011, 124.03, 124.152, 124.181, 124.183, 124.27, 124.34, 124.381, 124.382, 124.385, 124.386, 124.392, 124.393, 124.821, 124.822, 124.86, 126.05, 131.33, 133.02, 133.022, 145.298, 152.12, 166.02, 166.08, 166.11, 166.25, 166.28, 173.70, 173.71, 173.72, 173.721, 173.722, 173.723, 173.724, 173.73, 173.731, 173.732, 173.74, 173.741, 173.742, 173.75, 173.751, 173.752, 173.753, 173.76, 173.77, 173.771, 173.772, 173.773, 173.78, 173.79, 173.791, 173.80, 173.801, 173.802, 173.803, 173.81, 173.811, 173.812, 173.813, 173.814, 173.815, 173.82, 173.83, 173.831, 173.832, 173.833, 173.84, 173.85, 173.86, 173.861, 173.87, 173.871, 173.872, 173.873, 173.874, 173.875, 173.876, 173.88, 173.89, 173.891, 173.892, 173.90, 173.91, 173.99, 303.213, 307.79, 319.301, 319.302, 319.54, 321.24, 323.156, 504.21, 505.82, 901.20, 901.43, 901.91, 903.082, 903.11, 903.25, 905.32, 905.33, 905.331, 905.36, 905.38, 905.381, 905.50, 905.51, 905.52, 905.56, 905.66, 907.13, 907.14, 907.16, 907.30, 907.31, 921.02, 921.06, 921.09, 921.11, 921.13, 921.16, 921.22, 921.27, 921.29, 923.44, 923.46, 927.51, 927.52, 927.53, 927.54, 927.56, 927.69, 927.70, 927.701, 927.71, 927.74, 942.01, 942.02, 942.06, 942.13, 943.01, 943.02, 943.031, 943.04, 943.05, 943.06, 943.07, 943.13, 943.14, 943.16, 953.21, 953.22, 953.23, 1501.01, 1501.05, 1501.07, 1501.30, 1504.01, 1504.02, 1504.03, 1504.04, 1506.01, 1507.01, 1511.01, 1511.02, 1511.021, 1511.022, 1511.03, 1511.04, 1511.05, 1511.06, 1511.07, 1511.071, 1511.08, 1514.08, 1514.10, 1514.13, 1515.08, 1515.183, 1517.02, 1517.10, 1517.11, 1517.14 (1547.81), 1517.15, 1517.16 (1547.82), 1517.17 (1547.83), 1517.18 (1547.84), 1519.03, 1520.02, 1520.03, 1521.02, 1521.03, 1521.031, 1521.04, 1521.06, 1521.061, 1521.062, 1521.064, 1521.07, 1521.10, 1521.11, 1521.12, 1521.13, 1521.14, 1521.15, 1521.16, 1521.18, 1521.19, 1523.01, 1523.02, 1523.03, 1523.04,

1523.05, 1523.06, 1523.07, 1523.08, 1523.09, 1523.10, 1523.11, 1523.12, 1523.13, 1523.14, 1523.15, 1523.16, 1523.17, 1523.18, 1523.19, 1523.20, 1541.03, 1547.01, 1547.02, 1547.51, 1547.52, 1547.531, 1547.54, 1547.542, 1547.73, 1547.85, 1547.86, 1547.87, 1547.99, 1548.10, 1707.37, 2101.01, 2301.02, 2301.03, 2921.13, 3301.122, 3301.57, 3301.95, 3302.031, 3302.05, 3302.07, 3306.01, 3306.012, 3306.02, 3306.03, 3306.04, 3306.05, 3306.051, 3306.052, 3306.06, 3306.07, 3306.08, 3306.09, 3306.091, 3306.10, 3306.11, 3306.12, 3306.13, 3306.17, 3306.18, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3306.25, 3306.29, 3306.291, 3306.292, 3306.30, 3306.31, 3306.33, 3306.34, 3306.35, 3306.40, 3306.50, 3306.51, 3306.52, 3306.53, 3306.54, 3306.55, 3306.56, 3306.57, 3306.58, 3307.31, 3307.64, 3309.41, 3309.48, 3309.51, 3310.08, 3310.09, 3310.41, 3311.059, 3311.0510, 3311.06, 3311.19, 3311.21, 3311.29, 3311.52, 3311.76, 3313.483, 3313.55, 3313.64, 3313.642, 3313.843, 3313.98, 3313.981, 3314.028, 3314.08, 3314.085, 3314.087, 3314.088, 3314.091, 3314.10, 3314.13, 3314.35, 3316.041, 3316.06, 3316.20, 3317.01, 3317.011, 3317.013, 3317.018, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.025, 3317.0210, 3317.0211, 3317.0216, 3317.031, 3317.04, 3317.061, 3317.063, 3317.081, 3317.082, 3317.12, 3317.16, 3317.18, 3317.20, 3317.201, 3318.011, 3318.051, 3319.088, 3319.221, 3319.57, 3319.70, 3319.71, 3323.091, 3323.14, 3323.142, 3324.05, 3326.21, 3326.33, 3326.39, 3327.02, 3327.04, 3327.05, 3329.16, 3333.04, 3333.122, 3333.27, 3333.28, 3333.38, 3333.391, 3333.392, 3333.61, 3333.62, 3333.66, 3345.32, 3349.242, 3353.20, 3365.01, 3704.14, 3704.143, 3706.04, 3712.03, 3714.03, 3718.03, 3733.43, 3745.015, 3748.01, 3748.04, 3748.07, 3748.12, 3748.13, 3770.03, 3770.21, 3901.3812, 3923.90, 3923.91, 4117.02, 4117.12, 4117.24, 4141.01, 4141.31, 4501.06, 4501.24, 4501.29, 4503.068, 4503.10, 4503.19, 4503.40, 4503.42, 4505.06, 4505.09, 4519.59, 5101.073, 5111.21, 5111.65, 5111.651, 5111.68, 5111.681, 5111.685, 5111.686, 5111.688, 5111.689, 5111.874, 5111.875, 5112.30, 5112.31, 5112.37, 5112.39, 5112.40, 5112.41, 5112.42, 5112.43, 5112.44, 5112.45, 5112.46, 5112.47, 5112.48, 5123.0412, 5123.0417, 5123.19, 5123.193, 5123.197, 5126.05, 5126.24, 5153.163, 5502.12, 5703.80, 5715.26, 5725.18, 5727.84, 5729.03, 5739.01, 5739.03, 5739.033, 5739.051, and 6111.044 of the Revised Code.

The amendment by this act of sections 711.001, 711.05, 711.10, 711.131, 4736.01, 6111.04, and 6111.044 of the Revised Code as amended by Sections 101.01 and 101.02 takes effect immediately when this act becomes law.

The repeal and reenactment of section 5112.371 of the Revised Code.

The amendment by this act to division (A) of section 124.134 of the

Revised Code takes effect on August 30, 2009, and the remainder of that section takes effect immediately when this act becomes law.

The amendment, enactment, or repeal of sections 122.85, 3721.02, 3721.50, 3721.51, 3721.511, 3721.512, 3721.513, 3721.53, 3721.55, 3721.56, 4301.43, 4503.182, 4507.23, 5111.20, 5111.231, 5111.24, 5111.243, 5111.25, 5111.262, and 5111.263 of the Revised Code takes effect July 1, 2009.

The repeal of sections 5112.40, 5112.41, 5112.42, 5112.43, 5112.44, 5112.45, 5112.46, 5112.47, and 5112.48 of the Revised Code takes effect October 1, 2011.

Sections of this act prefixed with section numbers in the 200's, 300's, 400's, 500's, 700's, and 800's, except for Sections 265.60.60, 265.70.20, 265.80.10, 309.40.20, 309.50.30, 313.20, 371.60.20, 399.20, 523.10, 701.20, 745.60, and 751.10 of this act.

The amendment of Sections 120.01 and 120.02 of Am. Sub. H.B. 119 of the 127th General Assembly takes effect immediately when this act becomes law.

The amendment of Section 153 of Am. Sub. H.B. 117 of the 121st General Assembly.

Sections 309.30.20, 309.30.30, 309.30.40, 309.30.50, 309.30.60, and 309.30.70 of this act take effect July 1, 2009.

SECTION 812.30. The sections that are listed in the left-hand column of the following table combine amendments by this act that are and that are not exempt from the referendum under Ohio Constitution, Article II, Sections 1c and 1d and section 1.471 of the Revised Code.

The middle column identifies the amendments to the listed sections that are subject to the referendum under Ohio Constitution, Article II, Section 1c and therefore take effect on the ninety-first day after this act is filed with the Secretary of State or, if a later effective date is specified, on that date.

The right-hand column identifies the amendments to the listed sections that are exempt from the referendum because they are or relate to an appropriation for current expenses within the meaning of Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, or define a tax levy within the meaning of Ohio Constitution, Article II, Section 1d, and therefore take effect immediately when this act becomes law or, if a later effective date is specified, on that date.

Section of law	Amendments subject to referendum	Amendments exempt from referendum
121.04	All amendments except	The amendment striking

	those described in the right-hand column	"Water;" the amendment replacing "conservation" with " <u>resources</u> "; and the amendment striking "Real estate and land management;"
127.16	The amendment to divisions (D)(2) and (34)	All other amendments
1521.05	All amendments except those described in the right-hand column	The amendments to division (B)
1521.063	All amendments except those described in the right-hand column	The amendments to divisions (A) and (A)(1) replacing "division of water" with "division of soil and water resources"
3301.07	The amendment that strikes through original division (N)	All amendments except the amendment described in the middle column
3302.031	All amendments except those described in the right-hand column	The amendments to division (A)
3313.6410	Division (A)	Division (B)
3314.03	All amendments except the amendments described in the right-hand column	The amendments to division (A)(8)
3315.37	All amendments except the amendment described in the right-hand column	The amendment to the fourth paragraph that strikes through "3333.27,"
3317.01	The amendments to division (B)	All other amendments
3319.088	The amendments to the second paragraph of division (C)	All other amendments
3734.57	The amendment to division (A) authorizing electronic payment of solid waste disposal fees	All other amendments to division (A)
4117.01	All amendments except	The amendment to

	those described in the right-hand column	division (C)(5), the amendment striking the language from division (C)(15), and the amendments adjusting the division numbering in divisions (C)(16) and (17)
5751.20	All amendments except those described in the right-hand column	The amendments to division (B), effective July 1, 2009

SECTION 812.50. (A) The amendments by this act to sections 109.57, 109.572, and 3319.291 of the Revised Code are subject to the referendum. Except as otherwise provided in division (B) of this section, the amendments take effect on the ninety-first day after this act is filed with the Secretary of State.

(B) The following amendments take effect January 1, 2010:

(1) The amendment creating division (F)(2)(c) of section 109.57 of the Revised Code and the amendment to division (F)(4) of that section;

(2) The amendment to division (B)(2) of section 109.572 of the Revised Code;

(3) All of the amendments to section 3319.291 of the Revised Code except the amendments to divisions (A)(3) and (4) of that section.

SECTION 815.10. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 9.314 of the Revised Code as amended by Am. Sub. H.B. 106 and Sub. H.B. 204, both of the 125th General Assembly.

Section 109.57 of the Revised Code as amended by both Sub. H.B. 428 and Sub. S.B. 163 of the 127th General Assembly.

Section 109.572 of the Revised Code as amended by Sub. H.B. 195, Sub. H.B. 545, and Sub. S.B. 247, all of the 127th General Assembly.

Section 109.77 of the Revised Code as amended by Am. Sub. H.B. 490, Sub. H.B. 545, and H.B. 675, all of the 124th General Assembly.



8. My fellow committee members, Thomas E. Brinkman, Jr. and David Hansen, are qualified electors of the State of Ohio, according to the Ohio Secretary of State's voter registration database.

9. Pursuant to R.C. 3519.01(B), before LetOhioVote.org may begin to circulate its Referendum Petition, it is required (i) to submit a petition containing the signatures of at least 1,000 Ohio electors, along with a proposed summary and copy of the sections of H.B. 1 sought to be referred to the voters, to the Ohio Secretary of State and Ohio Attorney General, (ii) to obtain certification from the Secretary that the copy of the measure to be referred is a true and accurate copy of the measure, as compared to the enrolled Act on file with the Secretary, and (iii) to obtain certification from the Attorney General that the summary is a fair and truthful statement of the measure to be referred.

10. Under Ohio law, the respective certifications of the Secretary and Attorney General must appear on the Referendum Petition, or the Petition will be rejected by the Secretary.

11. LetOhioVote.org hired a petition firm to collect signatures on its Referendum Summary Petition. The Committee also entered into an agreement with a national petition management firm to collect approximately 500,000 signatures for the Referendum Petition and to manage the Petition effort.

12. On July 23, 2009, I attempted to file a Referendum Summary Petition, consisting of numerous part petitions containing in excess of 3,000 signatures of purported Ohio electors, to the Ohio Secretary of State.

13. The Secretary's office rejected the filing. I spoke to Brian Shinn, Assistant General Counsel to the Secretary, and he informed me that the reason the Secretary was rejecting

our Referendum Summary Petition is because Section 812.20 of H.B. 1 says that the VLT Sections (sections 3770.03 and 3770.21) of H.B. 1 are not subject to referendum. A true and accurate copy of the letter provided to me by Mr. Shinn is attached to this Affidavit as *Exhibit D* and made a part hereof.

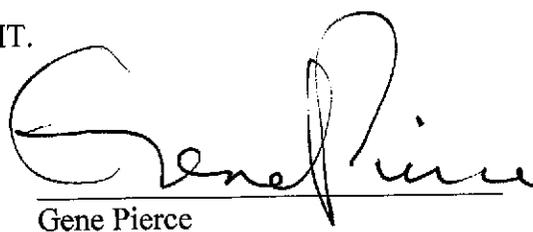
14. After my visit to the Secretary's office I went to the Attorney General's office where, in accordance with the requirements of section 3519.01(B)(1) of the Revised Code, I attempted to file a copy of one of the summary part-petitions with the Attorney General to allow him to review our proposed summary and determine whether to certify it.

15. The Attorney General's office rejected the filing. A true and accurate copy of the letter provided by the Attorney General's office to the Committee's attorney is attached as *Exhibit E* and made a part hereof.

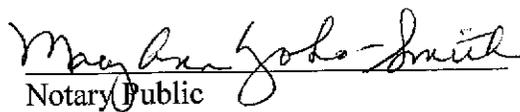
16. Prior to the Secretary's and the Attorney General's rejection of the Committee's Referendum Summary Petition, the Committee had intended—once it received the required certifications from the Secretary and Attorney General under section 3519.01(B)(2) and (3)—to begin the constitutionally-prescribed referendum process, including collecting signatures on a Referendum Petition.

17. The Secretary's rejection of the Committee's Referendum Summary Petition has precluded the Committee from being able to exercise its constitutionally-guaranteed right of referendum while this case is pending.

FURTHER AFFIANT SAYETH NAUGHT.

  
Gene Pierce

Sworn to and subscribed before me on this 31<sup>st</sup> day of July, 2009.

  
Notary Public



Mary Ann Yoho-Smith  
Notary Public, State of Ohio  
My Commission Expires  
11/11/13

# EXHIBIT D



**JENNIFER BRUNNER**  
**OHIO SECRETARY OF STATE**

180 East Broad Street, 15<sup>th</sup> floor  
Columbus, Ohio 43215-3726 USA  
Tel.: 1-614-466-2655  
Fax: 1-614-644-0649  
[www.sos.state.oh.us](http://www.sos.state.oh.us)

July 23, 2009

Today, Gene Pierce with LetOhioVote.org appeared at the Ohio Secretary of State's office and indicated that he had petitions related to a proposed referendum on the amendments to R.C. 3770.03 and the enactment of R.C. 3770.21 in H.B. 1.

The Ohio Secretary of State declines to accept the filing of these referendum petitions.

Sincerely,

A handwritten signature in cursive script that reads "Brian E. Shinn".

Brian E. Shinn  
Assistant General Counsel

# EXHIBIT E



RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

July 23, 2009

*By Email*

Mr. David R. Langdon  
Langdon Law LLC  
11175 Reading Road, Suite 104  
Cincinnati, Ohio 45241

Re: Proposed Summary for Referendum Petition on Am. Sub. H.B. 1

Dear David:

As a follow-up to our email and telephone conversations, I am writing to inform you that the Attorney General's office will not accept your filing of a proposed summary for a referendum petition on Am. Sub. H.B. 1.

Section 812.20 of Am. Sub. H.B. 1 provides that "[t]he amendment, enactment, or replay by this act" of Sections 3770.03 and 3770.21 of the revised code are "exempt from referendum ... and therefore take[] effect immediately when this act becomes law...." Based upon the Attorney General's duties under current Ohio law and the clear dictate that these provisions are not subject to referendum, our office cannot accept a summary for a proposed referendum.

Sincerely,

Richard N. Coglianesse  
Principal Assistant Attorney General