

IN THE SUPREME COURT OF OHIO

ORIGINAL

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

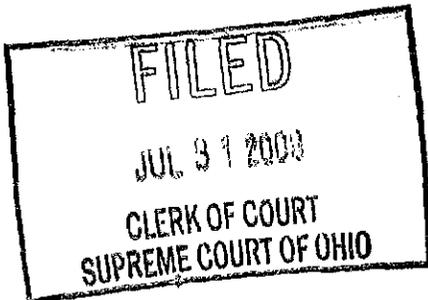
**MERIT BRIEF OF RELATORS LETOHIOVOTE.ORG,
THOMAS E. BRINKMAN, JR., DAVID HANSEN, AND GENE PIERCE**

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INTRODUCTION

The legislation at issue in this case authorizes the Ohio Lottery Commission to implement “video lottery terminals” (“VLTs”), a new form of gambling in the State of Ohio. Given the long-standing divide in our State over authorizing additional forms of gambling, it should have come as no surprise that this legislation would become the subject of deep debate, both on both public policy and constitutional grounds. But despite this public divide, or perhaps because of it, the Legislature saw fit to include these VLT provisions in a biennium budget bill of over 3,000 pages, and, what is more, to declare the provisions beyond the reach of the voters’ right to referendum.

Relators desire to put the VLT provisions of the bill to the voters for their approval or rejection via a citizen referendum. The Secretary of State, however, has stopped that effort, refusing to accept or certify a referendum “summary” petition based upon her asserted belief that the VLT provisions are not subject to referendum. Having been denied their right to referendum, Relators seek a writ of mandamus from this Court that: (i) compels the Secretary of State to treat the VLT provisions in H.B. 1 as subject to the constitutional right of referendum; and (ii) stays those provisions for 90 days, thereby affording Relators the chance to comply with Article II, Section 1c of the Ohio Constitution. (To make such relief feasible, Relators also ask that the Court stay the implementation of these two statutes until it has ruled on this matter, and to expedite its consideration.)

STATEMENT OF THE CASE AND FACTS

The Governor’s VLT Directive and the Biennium Budget

On July 13, 2009, the Governor issued a Directive to the Ohio Lottery entitled “Implementing Video Lottery Terminals.” (Relators’ Evidence (“RE”), Ex. A.) In this Directive,

the Governor states:

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.

Contingent upon the General Assembly's enactment of such legislation, the Governor's Directive instructs the Director of the Lottery Commission to adopt rules regarding implementation of VLTs and to immediately take steps to implement VLTs in accordance with the requirements set forth in the Directive. The Directive further provides that unless the General Assembly enacts and the Governor signs "implementing legislation" prior to or as part of the enactment of the biennium budget bill, the Directive will be null and void.

On the same day the Governor issued the VLT Directive, the General Assembly enacted Amended Substitute House Bill No. 1 ("H.B. 1"). That bill, which exceeds 3,000 pages in length, also includes the 2010-2011 biennium budget. See http://www.legislature.state.oh.us/bills.cfm?ID=128_HB_1. On July 17, after exercising the line-item veto, the Governor signed the bill.

Among the bill's thousands of changes to the Revised Code are certain amendments to Chapter 3770 (State Lottery), which together authorize the Ohio Lottery Commission to operate video lottery terminals, or "VLTs." (RE, Ex. B.) Specifically, H.B. 1 provides:

- that the Lottery Commission has the authority to operate VLTs, and that nothing in Chapter 3770 shall restrict the authority of the commission to issue rules related to the operation of games utilizing VLTs;
- that any reference in Chapter 3770 to "tickets" shall not be construed to limit the Commission's authority to operate VLTs;
- that the Commission shall promulgate rules covering any other subject [not already identified in Section 3770.03(B)] that it determines is necessary for the

operation of VLTs, including the establishment of fees, fines, or payment schedules; and

- that Chapter 2915 of the Revised Code, which governs various forms of gambling, does not apply to, prohibit, or affect “lotteries” conducted pursuant to Chapter 3770, including VLTs.

H.B. 1 also enacts a new section 3770.21, which further outlines the regulations governing VLTs. In accordance with the provisions of this new section:

- “video lottery terminal” is defined to mean any electronic device approved by the Commission that provides immediate prize determinations for participants on an electronic display;
- the commission shall include in its rules concerning VLTs the minimum investments that VLT licensees must make in the buildings and grounds at the permanent or temporary facilities where the terminals will be located;
- no new license or excise tax not in effect on the effective date of section 3770.21 shall be assessed upon or collected from any VLT licensee by any political subdivision of the state that has authority to assess or collect a tax or fee, except for municipal income taxes and horse racing taxes; and
- the Ohio Supreme Court has exclusive jurisdiction over any claim that the provisions dealing with VLTs, or rules adopted under those provisions, are unconstitutional.

Further, the General Assembly in H.B. 1 declared that the new lottery-related law “is or is related to an appropriation for current expenses within the meaning of Ohio Constitution, Article II, Section 1d,” meaning that the provisions “take effect immediately when this act becomes law.” Section 812.20 of H.B. 1.

Relators’ Referendum Effort

Relators Brinkman, Hansen, and Pierce are Ohio electors and taxpayers who desire to exercise their constitutional right of referendum against the VLT provisions in H.B. 1. (Pierce Aff., at ¶¶ 3-8.) To that end, Relators formed a ballot committee—LetOhioVote.org—for which each of them serves as a member and in which capacity each represents petitioners seeking to

refer the VLT provisions to the voters for their approval or rejection at the 2010 general election.

(*Id.*, at ¶¶ 7, 7.)

Prior to filing this lawsuit, Relators took several steps in furtherance of exercising their constitutional referendum right. Immediately after the Governor signed H.B. 1 into law, Relators, through their ballot committee, engaged a national firm to collect approximately 500,000 signatures for their anticipated Referendum Petition. (*Id.*, at ¶ 11.) Thereafter, on July 20, Relators commenced the statutorily required process of collecting signatures on a referendum “summary” petition, which must be submitted to and certified by the Secretary of State as well as the Attorney General before Relators may begin collecting signatures for their Petition. (*Id.*, at ¶ 9.) See R.C. 3519.01(B).

Relators' Lawsuit

On July 21 (the next business day after the Governor signed and filed the budget bill), Relators filed with the Court a complaint for writ of mandamus along with an emergency motion for stay and to expedite. Relators filed this lawsuit as a result of the roadblock put in place by Section 812.20 in H.B. 1, in which the General Assembly sought to remove the VLT provisions from the reach of the public's constitutionally authorized referendum power:

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.

(RE, Ex. C.) While the VLT provisions were declared to be “exempt for the referendum,” hundreds of other provisions of H.B. 1, by contrast, *were* made subject to referendum. See Sections 812.10, 812.30, and 812.50 of H.B. 1. (*Id.*)

On July 23, after the lawsuit had been filed and the Court had issued an expedited schedule for the presentation of evidence and briefs, Relators attempted to file with the Secretary of State a referendum “summary” petition containing in excess of 3,000 signatures of Ohio electors, along with a copy of the measure to be referred. (Pierce Aff., at 12.) See Amended Complaint at ¶¶ 25-27 and Exs. D and E; see also Pierce Aff. Exs. D and E. At that point, the Secretary, by operation of R.C. 3519.01(B), must check the validity of the signatures and determine if the copy of the measure included with the summary petition is the same as the enrolled Act on file with her office. Despite this statutory command, the Secretary refused to accept Relators’ filing, citing the language in Section 812.20 of H.B. 1 providing that the VLT provisions contained therein are not subject to referendum. (Pierce Aff., at ¶ 13 and Ex. D.) On the same day, Relator, following R.C. 3519.01(A), attempted to file with the Attorney General a copy of the proposed summary. (*Id.*, at ¶ 14.) The Attorney General also refused to accept Relators’ filing. (*Id.* at ¶ 15 and Ex. E.)

These collective rejections stopped Relators’ referendum effort in its tracks. Upon receiving certification from the Secretary and the Attorney General, Relators intended to begin collecting signatures on their Referendum Petition. (*Id.* at ¶¶ 16-17.) That effort, however, has been frustrated by the Secretary. See R.C. 3519.05 (requiring certification by Secretary of State to be included with any circulated petitions). Until this Court decides whether the VLT sections of H.B. 1 constitute an “appropriation for the current operating expenses of the state government,” as the State claims, Relators are unable to exercise in full the referendum power afforded them by our Constitution.

ARGUMENT

PROPOSITION OF LAW NO. 1:

House Bill 1's Amendments To Revised Code Chapter 3770 (State Lottery) Are Subject To Referendum In Accordance With Ohio Constitution Article II, Section 1.

As is true for virtually every law passed by the General Assembly, the recently enacted laws regarding video lottery terminals are subject to the citizenry's broad power of referendum. *See* Ohio Const. art II, § 1. H.B. 1's lottery-related provisions incorporate permanent, substantive provisions into the Revised Code, statutorily prescribing that the term "lottery," as used in the Revised Code, encompasses games run through video lottery terminals, or "VLTs," and further, establish investment criteria for VLT licensees and preclude political subdivisions from imposing certain fees or taxes on licensees. Plainly, the law is not a mere "appropriation" under any definition of that word, and thus is not a law exempted from the referendum process by Section 1d of Article II. Nor is there anything in the Ohio Constitution, or this Court's interpretation of that Constitution, which exempts such permanent substantive laws from the referendum if they do not constitute a "change." *See* Secretary's Answer, at ¶29. Consequently, H.B. 1's alteration of the Revised Code with respect to VLTs is clearly subject to referendum.

A. Acts Of The General Assembly Are Presumed To Be Subject To Referendum.

"The people's constitutional right of referendum is one of the bedrocks of democracy." *State ex rel. Riffe v. Brown* (1977), 51 Ohio St. 2d 149, 158 (O'Neill, C.J., dissenting). Engrained in our Constitution, this bedrock right reserves to Ohioans "the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly," except as otherwise provided in the Constitution. Ohio Const. art. II, § 1. Indeed, save for very limited exceptions, the "reserved power of referendum applies to every law

passed in this state and provides an important check on actions taken by the government.” *State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio St.3d 103, 2007-Ohio-3780, ¶ 9.

In recognition of this fundamental right of the citizenry, the Constitution commands that “[n]o law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided”:

When a petition, signed by six per centum of the electors of the state . . . shall have been filed with the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the matter herein provided

Ohio Const. art. II, § 1c. In view of the “paramount importance” of the electorate’s referendum right, the referendum power is viewed broadly, with a presumption favoring voter consideration of legislative acts. *Brunner*, 2007-Ohio-3780, 115 Ohio St.3d, ¶ 8.

H.B. 1 amends Chapter 3770 in numerous respects, providing that: (1) the state lottery commission has authority to operate VLTs; (2) any reference in Chapter 3770 to “tickets” shall not be construed to limit the commission’s authority to operate VLTs; and (3) the commission shall promulgate rules as necessary for the operation of VLTs, including the establishment of fees, fines, or payment schedules. H.B. 1 also articulates, with precision, that Chapter 2915 of the Revised Code, which criminalizes various forms of gambling, does not prohibit VLTs (which likely was added to protect future licensees from prosecution for illegal gaming). Further, H.B. 1 enacts a new section R.C. 3770.21, which, among other things: (1) defines the term “video lottery terminal”; (2) instructs the lottery commission to include in its rules concerning VLTs the minimum investments that VLT licensees must make in the buildings and grounds housing the terminals; and (3) states that, with limited exceptions, no new license or excise tax not in effect on the

effective date of section 3770.21 shall be assessed upon or collected from any VLT licensee by any political subdivision of the State. These provisions, which fall so far outside the scope of the constitutional exceptions, are subject to referendum.

B. Laws Regulating Video Lottery Terminals Plainly Are Not “Appropriations” Immune From The Public’s Broad Right To Referendum.

Despite the strong presumption in favor of the referendum power, to say nothing of the Secretary’s constitutional *duty* to place referenda presented to her on the statewide ballot, see Ohio Const. art II, § 1c, here the Secretary, when presented with summary petitions seeking approval to move ahead with the referendum process, rejected the petitions, short-circuiting the “people’s right to referendum, the right to vote to adopt or to reject any section of any law passed by the legislature.” *State ex rel. Riffe*, 51 Ohio St. 2d at 158 (O’Neill, C.J., dissenting). Simply put, there was no justifiable basis for the Secretary to refuse to initiate the constitutionally mandated referendum process.

In rejecting Relators’ effort to subject to referendum H.B. 1’s lottery-related provisions, the Secretary and the Attorney General (collectively, the “State”) contend that those provisions fall into one of the narrow exceptions to the constitutional referendum power. In that regard, the Ohio Constitution articulates three limited exceptions to the otherwise broad referendum power:

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect [and] shall not be subject to the referendum.

Ohio Const. art. II, § 1d. Other than these specific categories, each of which must be “strictly” construed, every law passed by the General Assembly is subject to the referendum power. *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, syl. ¶¶ 1, 2 (“[T]he language of Section 1d, Article II of the Constitution, expressly enumerating certain exceptions to the people’s right of

referendum upon acts of the General Assembly” should receive a “strict, but reasonable, construction.”).

Citing Section 1d, the State contends that H.B. 1’s lottery-related provisions are exempt from the referendum process because they “provide for appropriations for the current expenses of the state government and state institutions.” See Secretary’s Answer, at ¶ 39; Intervenors’ Answer, at ¶ 36. Plainly, the lottery legislation at issue here is not an “appropriation,” as that term is used in the Constitution. Black’s Law Dictionary defines an “appropriation” as “[a] legislative body’s act of setting aside a sum of money for a public purpose.” Black’s Law Dictionary (7th ed. 1999). To the same effect, the General Assembly, with respect to state budgeting and accounting, defines appropriation to mean “an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.” R.C. 131.01(F) (Revenues and Funds Definitions). As reflected by these common sense definitions, a statutory provision that constitutes an “appropriation” involves spending money. That does not remotely describe the lottery provisions at issue here, which put in place additional regulatory measures with respect to the State’s lottery program. To the extent this regulatory and licensing regime implicates money, it is only because the regulated activity will ultimately *raise* revenue, not spend it. Accordingly, it cannot provide for an appropriation.

Equally true, it is irrelevant, for constitutional purposes, that the lottery-related provisions were included as part of larger bill that contained actual appropriations. In effectuating the citizenry’s broad referendum right, the Court reviews each statutory provision *individually*. See *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 236. In “overrul[ing] [the] decision in *State ex rel. Riffe*,” *Voinovich* made clear that individual provisions that are not “appropriations” are subject to referendum, regardless whether they are shoehorned into a larger

bill that includes other true appropriations provisions. *Id.*; see also *Laidlaw Waste Sys. v. CONRAIL* (1999), 85 Ohio St.3d 413, 416. (“[A]ny provision within a law that appropriates money for government expenses will go into effect immediately because it is not subject to a referendum, while *any provision that does not appropriate money* for government spending will have its effective date delayed for ninety days to allow Ohio’s citizens to consider a referendum.”) (emphasis added). Any other rule would authorize the General Assembly to eviscerate Article II whenever it saw fit. After all, the “right of referendum, . . . [is] reduced to a mere privilege” if the “General Assembly may . . . deny” it merely “by the insertion of an appropriation section in any piece of legislation.” *State ex rel. Riffe*, 51 Ohio St.2d at 158 (O’Neill, C.J., dissenting).

C. The State’s Attempt To Classify The Amendments As Mere “Clarifications” Is Legally Irrelevant.

The State contends that H.B. 1 is not subject to referendum because it did not constitute “a change to the permanent law of the State” since, the State claims, “the Ohio Lottery Commission [had] the authority to operate video lottery terminals” prior to its enactment. See Secretary’s Answer, ¶29; Intervenors’ Answer, ¶ 37. But even assuming the Commission had such authorization prior to H.B. 1, this has absolutely nothing to do with whether that law is subject to referendum. Section 1 of Article II reserves the people’s right to subject to referendum “any law . . . except as hereinafter provided.” There is no exception for laws that do not “change permanent law” (whatever that may mean). Nor is there an exemption in Section 1d (or anywhere else) for laws that clarify, rather than change, the preexisting legal regime. Accordingly, the State simply seeks to revise the Constitution by adding a new exemption that can be found nowhere in its language or history.

Apparently, the Secretary seeks to justify this naked revision of the Constitution by ripping out of context one phrase from Chief Justice O'Neill's dissent in *Riffe*, which was quoted favorably in *Voinovich*. See *Voinovich*, 69 Ohio St.3d at 236 (quoting *State ex rel. Riffe*, 51 Ohio St.2d at 167 (O'Neill, C.J., dissenting)). In that dissent, Chief Justice O'Neill sought to clarify the scope of the "appropriations" exception in Section 1d. He concluded that the exemption encompassed not only parts of the law actually expending money, but also included any part of a law that was "simply a condition under which the appropriation should be drawn," such as a competitive bidding process for the appropriated sums. *Id.* at 165 (quoting *State ex rel. Davies v. Donahey* (1916), 94 Ohio St. 382, 385). Thus, he found that the law in *Davies*, unlike the law at issue in *Riffe* itself, was an appropriation because "the requirement for competitive bidding [in *Davies*] applied only as a condition for that particular appropriation and did not become permanent law." *Id.* Since the exemption for temporary provisions establishing appropriation conditions, such as competitive bidding, obviously were "wholly different" than the "change in permanent law" at issue in *Riffe*, the fact that competitive bidding fell within the "appropriations" exemption did not suggest that the law in *Riffe* should. *Id.*

In other words, the dissent said only that a condition for drawing down the appropriation fell within the "appropriations" exemption, but the exemption would not reach laws which extend longer than the temporary appropriation, and become permanent. This temporal limitation makes perfect sense because it excludes those laws which serve a purpose other than conditioning the appropriation, since they are part of the permanent law and do not expire with the appropriation (usually after two years). Conversely, temporary laws establishing the conditions of the appropriations should be included within the exemption, because "temporary provisions needed to implement the appropriation must also be effective immediately" in order

to “give practical effect to the constitutional exception for appropriations.” *Id.* If the conditions for the appropriations are not immediately effective, then the appropriation will be delayed, which defeats the purpose of the “appropriations” exemption, which was to “ensure that current expenses, such as salaries and other contractual obligations of the State, would be timely honored.” *Id.* at 164-65 (citing 1 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912), at 698-700).

In short, the *Riffe* dissenting opinion in no way hints that “permanent laws” which perpetuate, rather than change, the *status quo* are somehow immune from referendum. The distinction was clearly between laws which were temporary and those which were permanent, not between laws which “change” and those which preserve permanent law. The purpose of this distinction was to identify whether a law was sufficiently intertwined with an actual appropriation to fall within the “appropriations” exemption, not to, as the State would have it, exempt laws “totally unrelated to the appropriation of funds or procedures for their expenditure” because they do not “change” the law. *Id.* at 166.

The State’s alternative “interpretation” of the *Riffe* dissenting opinion, and *Voinovich*’s quotation of it, is pure sophistry which manifestly mangles the opinion beyond recognition. In all events, even if the *Riffe* dissenting opinion could be twisted to support the notion that permanent laws that “clarify” are immune from referendum, the *Constitution*’s language cannot be so twisted. The *Constitution*’s language plainly does not exempt “permanent laws” that maintain the *status quo* from the referendum process. Consequently, regardless of what was intended by the dissenting opinion, the *Constitution*’s plain requirement is that all laws not falling within the “appropriations” (or other) exemptions are subject to referendum. H.B. 1 is plainly such a law.

Although the foregoing disposes of the State's specious argument, it nonetheless bears noting that the exemption it seeks to carve into the Constitution makes no sense, is completely unworkable, frustrates the very purpose of referendum and, in all events, does not immunize H.B. 1 because that law is clearly a "change." In that regard, all permanent laws enacted by the General Assembly, like H.B. 1, inherently "change" existing law because they *alter* the Revised Code. This is true both for laws which indisputably alter the extant legal regime and those which merely clarify ambiguities in that regime. More generally, laws which clarify ambiguities nonetheless constitute a "change to permanent law" because they *alter* the *status quo* by eliminating the ambiguity that existed in the prior permanent law.

Nothing in the text, history or spirit of the Ohio Constitution supports exempting "clarifying" laws from the referendum process. It might well be that the first law would have been subjected to referendum if it had clearly encompassed the ambiguity being clarified, precisely because it is the "clarification" which renders the law controversial. Here, for example, citizens might support a typical state-run lottery (authorized by the Constitution) but not VLTs at race tracks—so H.B. 1's "clarification" arouses new, more intense opposition. In short, the framers of Article II, Section 1 obviously did not contemplate that the Legislature would devote its scarce resources to utterly meaningless laws which literally change nothing, and drew no distinction between laws which change the *status quo* by clarifying prior ambiguities and those laws which embark in entirely new directions.

Equally troubling, the wholly amorphous distinction between laws that "clarify" or those that "change" the *status quo* would necessarily result in contentious and utterly pointless litigation about what prior law authorized, pursuant to unclear and manipulable legal standards. What if a *reasonable* reading of the old law was that it authorized the activity expressly

authorized by the new law, but the “best” or “equally” reasonable reading of the prior law foreclosed the activity now authorized? Does this constitute a “change” under the State’s newly-invented exemption? It certainly changes the permanent law by eliminating the relevant agency’s prior *discretion* to fill in the statutory gaps by, as here, extending its lottery authorization to VLTs, because the new law *requires* the agency to engage in such extension.

More to the point, it simply makes no sense to have the citizens’ right to referendum turn on what an old law said. All new laws should be subject to the citizens’ power to overturn (if they do not fall within the exemptions) regardless of whether lawyers today tell the citizenry they previously misunderstood the *status quo*, so the new law is not really “changing” anything. And, as a practical matter, this sideshow litigation about whether the new law “changes” the *status quo* would need to be resolved at the threshold to determine whether the referendum process is even applicable. As this very case illustrates, engaging in such time-consuming and potentially complicated exploration of the prior legal regime would make the referendum process more expensive and obliterate the short time deadlines contained in the Constitution for certification and signature gathering, while at the same keeping the effective dates of newly enacted laws in a state of perpetual uncertainty, resulting in even more litigation. See, e.g., *State ex rel. Ohio AFL-CIO v. Voinovich* (“*Voinovich II*”) 1994, 69 Ohio St.3d 1208 (clarifying the effective date of legislation previously stayed in *Voinovich I* to allow for referendum); *Laidlaw, supra* (deciding certified question in federal case five years after *Voinovich I* concerning effective date of worker’s compensation legislation).

Moreover, of course, the Secretary of State has neither the expertise nor the authority to resolve complicated questions about prior legal regimes in a variety of substantive areas. Yet

under the State's newly-minted exception, she will be required to resolve such issues even to accept summary petitions.¹

Finally, H.B. 1 clearly is a "change in permanent law," however that phrase is defined. In addition to the fact that H.B. 1 permanently changes the Revised Code and eliminates the prior uncertainty about the Lottery Commission's authority to operate VLTs, it also plainly changes the substance of permanent law by, for the first time, (1) defining the term "video lottery terminal," (2) requiring rules concerning the VLT licensees' minimum investments and (3) precluding new license or excise taxes on licensees after the effective date of section 3770.21. Permanent law never before spoke in any way to the question of what constitutes a VLT or to the qualifications or investment requirements of licensees. Most obviously, H.B. 1 alters the preexisting power of political subdivisions to impose licenses and excise taxes by prospectively precluding any such measures with respect to licensees after the law's effective date. Thus, H.B. 1 flunks even the State's invented test for laws subject to referendum.

* * * * *

At day's end, the State's position fails to respect the long-standing referendum right of the citizenry, one that applies in all but the narrowest instances. That gambling laws would be put before the electorate should come as no surprise to most Ohioans. Whether to legalize gambling in our State has been on the statewide ballot three times since 1990, and will be voted on again this fall. Today, the State seeks to short-circuit the citizenry's right to referendum on

¹ This assumes *arguendo* that the Secretary has any power to reject summary petitions for referendum she deems improper under the Constitution. But see *State ex rel. Barron v. Brown* (1977), 51 Ohio St.2d 169, 171 (duty to comply with R.C. 3519.01(B) unaffected by whether law is subject to referendum). If she does *not* have such power, then her rejection of the summary petitions here is impermissible, regardless whether H.B. 1 is subject to referendum.

another gambling issue that has already generated significant public debate. The voters are constitutionally entitled to consider this proposed expansion of Ohio's gambling law as well.

PROPOSITION OF LAW NO. 2:

The Court Should Order Mandamus Relief, Staying The Effective Date Of The Non-Appropriation Provisions In H.B. 1 For 90 Days From The Date Of The Court's Decision.

Given the Secretary's refusal to commence the constitutionally proscribed referendum process, mandamus relief is appropriate here. See Amended Complaint, ¶ 26. When Relators attempted to file with the Secretary a referendum "summary" petition containing in excess of 3,000 signatures of Ohio electors along with a copy of the measure to be referred, the Secretary, disregarding her duties under R.C. 3519.01(B), refused to accept Relators' filing, citing Section 812.20 of H.B. 1, which indicates that the VLT provisions are not subject to referendum. See *id.* at ¶ 27. On the same day and under the same statute, Relators attempted to file with the Attorney General a copy of the proposed summary; the Attorney General similarly refused to accept Relators' filing. In view of these denials, Relators are stymied in exercising their referendum power, as both the Secretary and the Attorney General have indicated their unwillingness to exercise their statutory duties to further the referendum process.

In instances like these, where State officials have improperly frustrated the referendum process, the Court has authorized two remedies. First, the Court will issue a writ of mandamus ordering the Secretary to treat the relevant measures as subject to referendum. See *Voinovich*, 69 Ohio St.3d at 237 (granting "relators' request for a writ of mandamus on the issue whether" a House Bill "violates the right of referendum under Section 1, Article II of the Ohio Constitution"). Second, the Court establishes a new effective date for the law at issue, typically

“ninety days from the date of th[e] decision,” *Voinovich*, 69 Ohio St.3d at 236, thereby allowing the citizenry the opportunity to exercise their right of referendum. *See also State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio St.3d 103, 2007-Ohio-3780, ¶¶14-16 (extending the referendum period).

Here, like in *Voinovich*, a “meaningful opportunity for the citizens of this state to circulate a petition for a referendum” has been foreclosed by actions of state officials, *Voinovich*, 69 Ohio St.3d at 236, making it appropriate to stay the non-appropriations provisions in H.B. 1 for a period of 90 days from the date of the Court’s opinion. In that way, Relators will have the constitutionally-recognized 90-day period to prepare and submit to the Secretary of State a petition for a referendum. Accordingly, the writ should issue.

CONCLUSION

The State has frustrated Realtors' constitutional right to referendum. Accordingly, Relators ask this Court: (1) to grant a mandamus ordering the Secretary to treat the non-appropriation provisions in H.B. 1 as subject to the referendum and to fulfill her duties under Article II of the Ohio Constitution and Chapter 3519 of the Revised Code; and (2) to establish, from the date of the Court's decision, a 90-day period during which the non-appropriation provisions are not in effect, thereby allowing Relators to exercise their constitutional right of referendum.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Relators' Brief has been delivered by electronic mail this 31st day of July, 2009 to the following counsel for Respondent and Intervenors:

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Appendix

Oh. Const. Art. II, § 1 (2009)

§ 1. In whom legislative power is vested

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

§ 131.01. Definitions

As used in Chapters 113., 117., 123., 124., 125., 126., 127., and 131. of the Revised Code, and any statute that uses the terms in connection with state accounting or budgeting:

(A) "Account" means any record, element, or summary in which financial transactions are identified and recorded as debit or credit transactions in order to summarize items of a similar nature or classification.

(B) "Accounting procedure" means the arrangement of all processes which discover, record, and summarize financial information to produce financial statements and reports and to provide internal control.

(C) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operations of a governmental unit or any of its funds and organizational components.

(D) "Allocation" means a portion of an appropriation which is designated for expenditure by specific organizational units or for special purposes, activities, or objects that do not relate to a period of time.

(E) "Allotment" means all or part of an appropriation which may be encumbered or expended within a specific period of time.

(F) "Appropriation" means an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.

(G) "Assets" means resources owned, controlled, or otherwise used or held by the state which have monetary value.

(H) "Budget" means the plan of financial operation embodying an estimate of proposed expenditures and obligations for a given period and the proposed means of financing them.

(I) "Direct deposit" is a form of electronic funds transfer in which money is electronically deposited into the account of a person or entity at a financial institution.

(J) "Disbursement" means a payment made for any purpose.

(K) "Electronic benefit transfer" means the electronic delivery of benefits through automated teller machines, point of sale terminals, or other electronic media pursuant to section 5101.33 of the Revised Code.

(L) "Electronic funds transfer" means the electronic movement of funds via automated clearing house or wire transfer.

(M) "Encumbrancing document" means a document reserving all or part of an appropriation.

(N) "Expenditure" means a reduction of the balance of an appropriation after legal requirements have been met.

(O) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources, together with all related liabilities, obligations, reserves, and fund balances which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special rules, restrictions, or limitations.

(P) "Lapse" means the automatic termination of an appropriation at the end of the fiscal period for which it was appropriated.

(Q) "Reappropriation" means an appropriation of a previous appropriation that is continued in force in a succeeding appropriation period. "Reappropriation" shall be equated with and incorporated in the term "appropriation."

(R) "Voucher" means the document used to transmit a claim for payment and evidentiary matter related to the claim.

(S) "Warrant" means an order drawn upon the treasurer of state by the director of budget and management directing the treasurer of state to pay a specified amount, including an order to make a lump-sum payment to a financial institution for the transfer of funds by direct deposit or the drawdown of funds by electronic benefit transfer, and the resulting electronic transfer to or by the ultimate payees.

The terms defined in this section shall be used, on all accounting forms, reports, formal rules, and budget requests produced by a state agency, only as defined in this section.

§ 3519.01. Initiative petition to contain only one proposal; certification and approval process for initiative and referendum petitions; challenges

(A) Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately. A petition shall include the text of any existing statute or constitutional provision that would be amended or repealed if the proposed law or constitutional amendment is adopted.

Whoever seeks to propose a law or constitutional amendment by initiative petition shall, by a written petition signed by one thousand qualified electors, submit the proposed law or constitutional amendment and a summary of it to the attorney general for examination. Within ten days after the receipt of the written petition and the summary of it, the attorney general shall conduct an examination of the summary. If, in the opinion of the attorney general, the summary is a fair and truthful statement of the proposed law or constitutional amendment, the attorney general shall so certify and then forward the submitted petition to the Ohio ballot board for its approval under division (A) of section 3505.062 [3505.06.2] of the Revised Code. If the Ohio ballot board returns the submitted petition to the attorney general with its certification as described in that division, the attorney general shall then file with the secretary of state a verified copy of the proposed law or constitutional amendment together with its summary and the attorney general's certification.

Whenever the Ohio ballot board divides an initiative petition into individual petitions containing only proposed law or constitutional amendment under division (A) of section 3505.062 [3505.06.2] of the Revised Code resulting in the need for the petitioners to resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, the attorney general shall review the resubmitted summaries, within ten days after their receipt, to determine if they are a fair and truthful statement of the respective proposed laws or constitutional amendments and, if so, certify them. These resubmissions shall contain no new explanations or arguments. Then, the attorney general shall file with the secretary of state a verified copy of each of the proposed laws or constitutional amendments together with their respective summaries and the attorney general's certification of each.

(B) (1) Whoever seeks to file a referendum petition against any law, section, or item in any law shall, by a written petition signed by one thousand qualified electors, submit the measure to be referred and a summary of it to the secretary of state and, on the same day or within one business day before or after that day, submit a copy of the petition, measure, and summary to the attorney general.

(2) Not later than ten business days after receiving the petition, measure, and summary, the secretary of state shall do both of the following:

(a) Have the validity of the signatures on the petition verified;

(b) After comparing the text of the measure to be referred with the copy of the enrolled act on file in the secretary of state's office containing the law, section, or item of law, determine whether the text is correct and, if it is, so certify.

(3) Not later than ten business days after receiving a copy of the petition, measure, and summary, the attorney general shall examine the summary and, if in the attorney general's opinion, the summary is a fair and truthful statement of the measure to be referred, so certify.

(C) Any person who is aggrieved by a certification decision under division (A) or (B) of this section may challenge the certification or failure to certify of the attorney general in the supreme court, which shall have exclusive, original jurisdiction in all challenges of those certification decisions.

§ 3519.05. Form of petition

If the measure to be submitted proposes a constitutional amendment, the heading of each part of the petition shall be prepared in the following form, and printed in capital letters in type of the approximate size set forth:

"INITIATIVE PETITION

**Amendment to the Constitution
Proposed by Initiative Petition
To be submitted directly to the electors"**

"Amendment" printed in fourteen-point boldface type shall precede the title, which shall be briefly expressed and printed in eight-point type. The summary shall then be set forth printed in ten-point type, and then shall follow the certification of the attorney general, under proper date, which shall also be printed in ten-point type. The petition shall then set forth the names and addresses of the committee of not less than three nor more than five to represent the petitioners in all matters relating to the petition or its circulation.

Immediately above the heading of the place for signatures on each part of the petition the following notice shall be printed in boldface type:

"NOTICE

Whoever knowingly signs this petition more than once, except as provided in section 3501.382 [3501.38.2] of the Revised Code, signs a name other than one's own on this petition; or signs this petition when not a qualified voter, is liable to prosecution.

The heading of the place for signatures shall be substantially as follows:

"(Sign with ink. Your name, residence, and date of signing must be given.)

Rural Route or Month

other Post- Day

Signature County Township office address Year

(Voters who do not live in a municipal corporation should fill in the information called for by headings printed above.)

(Voters who reside in municipal corporations should fill in the information called for by headings printed below.)

Street Month
City or and Day

Signature County Village Number Ward Precinct Year"

The text of the proposed amendment shall be printed in full, immediately following the place for signatures, and shall be prefaced by "Be it resolved by the people of the State of Ohio." Immediately following the text of the proposed amendment must appear the following form:

"I,, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 [3501.38.2] of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by (Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

(Signed)
(Address of circulator's permanent residence in this state)

.....
WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

If the measure proposes a law, the heading of each part of the petition shall be prepared as follows:

"INITIATIVE PETITION

Law proposed by initiative petition first to be submitted to the General Assembly."

In all other respects the form shall be as provided for the submission of a constitutional amendment, except that the text of the proposed law shall be prefaced by "Be it enacted by the people of the state of Ohio."

The form for a supplementary initiative petition shall be the same as that provided for an initiative petition, with the exception that "supplementary" shall precede "initiative" in the title thereof.

The general provisions set forth in this section relative to the form and order of an initiative petition shall be, so far as practical, applicable to a referendum petition, the heading of which shall be as follows:

"REFERENDUM PETITION

To be submitted to the electors for their approval or rejection"

The title, which follows the heading, shall contain a brief legislative history of the law, section, or item of law to be referred. The text of the law so referred shall be followed by the certification of the secretary of state, in accordance with division (B)(2)(b) of section 3519.01 of the Revised Code, that it has been compared with the copy of the enrolled act, on file in the secretary of state's office, containing such law, section, or item of law, and found to be correct.

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 ~~food 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,

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;" All other amendments
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.