

Case No. 2011-1646

**In The
Supreme Court of Ohio**

STATE EX REL. OHIOANS FOR FAIR DISTRICTS, et al.,
Relators,

v.

JON HUSTED, OHIO SECRETARY OF STATE,
Respondent.

Original Action in Mandamus

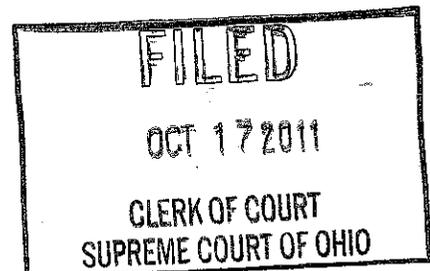
MOTION FOR RECONSIDERATION

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TABLE OF AUTHORITIES

Case Law

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State ex rel. Ohioans for Fair Dists. v. Husted,
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Ohio Constitution, Statutes

Ohio Rev. Code 3519.01.....2, 3

On October 14, 2011, this Court held that Sections I and 2 of Sub.H.B. 319 are subject to referendum and ordered Respondent Secretary of State to discharge the duties of his office pursuant to Article II of the Ohio constitution and R.C. 3519.01. [*State ex rel. Ohioans for Fair Dists. v. Husted*, Slip Op. 2011-Ohio-5333, ¶ 1.]

In their Complaint, and in the conclusion of their Merit Brief, Relators sought, in addition to the relief provided, the following:

“[i]f the Court issues the requested writ of mandamus, grant an extension of the ninety (90) day period in which to submit the referendum petition on Sections 1 and 2 of Substitute House Bill 319 to the Secretary of State from the date of the decision by this Court in order to allow Relators a meaningful opportunity to circulate a referendum petition [See, *State ex rel. LetOhioVote v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶ 54.]”

[Complaint, Prayer for Relief, ¶ 3.]

The October 14, 2011 Decision issued by this Court provides, “[u]nless a valid referendum petition is timely filed with the secretary of state, these sections of H.B. 319 will become effective 90 days from the September 26, 2011 date the bill was filed by the governor in the office of the secretary of state. Section 1c, Article II, Ohio Constitution. [*State ex rel. Ohioans for Fair Dists. v. Husted*, Slip Op. 2011-Ohio-5333, ¶ 1.] This is a departure from the Court’s practice of permitting relators 90 days from the date of this Court’s decision to seek a referendum [See, e.g., *State ex rel LetOhioVote v. Brunner*, 2009 Ohio 4900, ¶ 54:

“[i]n conformity with our decision in Ohio AFL-CIO, 69 OhioSt.3d 236-237, 631 N.E.2d 582, and as acknowledged by the respondents at oral

argument, relators are entitled to an extension of the 90-day period in which to submit a referendum petition on the VLT provisions to the secretary of state. We therefore stay the amendments . . . for 90 days from the date of the decision in order to allow relators a meaningful opportunity to circulate a referendum petition.”

see, also, State ex rel. General Assembly v. Brunner, 115 Ohio St.3d 103, 2007 Ohio 4460, ¶ 15 (extending the 90 day referendum period to run from the date of the decision, finding:

“[i]nterested citizens now have ample opportunity to circulate petitions and seek a vote on the validity of the law in accordance with Section 1c, Article II of the Ohio Constitution. While the result is an unusual one, it is necessary to safeguard the rights reserved to the citizens of this state under the Ohio Constitution.”]

It is impossible to give full effect to the Court’s underlying decision, or to the fundamental right of referendum, unless Relators are also granted a “meaningful opportunity to circulate a referendum petition.” It was clear from the outset that Respondent Secretary of State and the Ohio Attorney General did not consider Sub.H.B. 319 to be subject to referendum and would not accept a summary referendum petition in order to initiate the referendum process pursuant to Ohio Rev. Code. 3519.01. Indeed, on October 6, 2011 Respondent Secretary of State averred in his answer that “[u]nder Article II Section 1d of the Ohio Constitution, Sub.H.B. 319 is not subject to a referendum.” [Answer of Respondent, ¶ 39.] In order to counter the assertion that any assertion that Relators’ claims were not ripe or that Relators had failed to exhaust their remedies, they undertook the vain act of attempting to file their summary referendum petition on October 12, 2011. The petition was

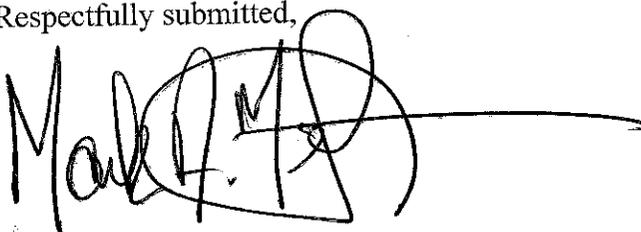
rejected by both the Attorney General and Respondent Secretary of State. {Letters from both the Attorney General and Secretary of State are appended hereto. Both were submitted as Evidence by Relators in the underlying case.]

Following this Court's decision on the evening of Friday, October 14, 2011, Relators attempted to file their summary referendum petitions with both the Attorney General and the Secretary of State that same evening. The Secretary of State's office accepted the summary referendum petitions on Saturday, October 15, 2011 and the Attorney General accept the summary referendum petitions earlier today, on Monday, October 17, 2011.

Relators are unable to circulate a referendum petition until the Attorney General and Secretary of State have fulfilled their duties in accordance with Ohio Rev. Code 3519.01. The Attorney General and Respondent Secretary of State refused to fulfill these duties unless and until ordered by the Court to do so. [See, Letter from Asst. Secretary of State Scott Borgemenke to Counsel for Relators (Oct. 12, 2011)("[i]n the absence of a court order to the contrary, we will not accept for filing any additional referendum-related materials regarding House Bill No. 319;" see, also Letter from Asst. Attorney General to Counsel for Relators (Oct. 12, 2011)("[b]ecause H.B. 319 is not subject to referendum, we must refuse to accept your summary filing.")] Accordingly, Relators had no meaningful opportunity to circulate a referendum petition prior to this Court's decision on October 14, 2011. Relators respectfully request the Court grant the instant

Motion and extend the referendum period to run for 90-days from the date of this Court's decision, October 14, 2011, as it always has in cases where the right of referendum has been vindicated. Relators herein are also entitled to a meaningful opportunity to circulate a referendum petition on Sub.H.B. 319, *i.e.*, the full 90 days provided by the Ohio Constitution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. McGinnis", with a long horizontal line extending to the right.

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CERTIFICATE OF SERVICE

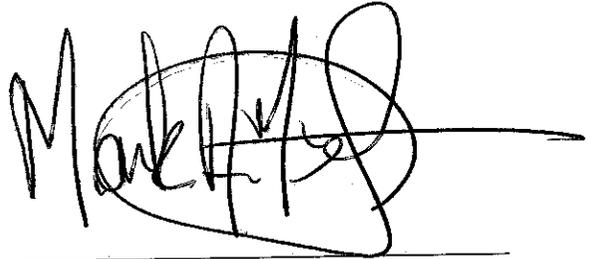
I hereby certify that the foregoing was served via electronic mail upon the following this 17th day of October, 2011:

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A handwritten signature in black ink, appearing to read "Mark A. McGinnis", written over a horizontal line. The signature is stylized and somewhat cursive.

Mark A. McGinnis,
Attorney at Law



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October 12, 2011

Mr. Donald McTigue

RE: Proposed Summary for Referendum Petition on Sub. H.B. 319

Dear Mr. McTigue:

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 Sub. H.B. 319. Sub H.B. 319 is law providing appropriations for the current expenses of the state government and, pursuant to Article II Section 1d of the Ohio Constitution, it became effective immediately and is not subject to referendum.

In addition, the Ohio General Assembly placed two sections in Sub. H.B. 319 showing its intent to make the bill effective immediately.

Section 6 of Sub. H.B. 319 states:

It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprecincting of this state so that candidates may file their petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.

Similarly, Section 7 of Sub. H.B. 319 also states "[t]he sections and items of law contained in this act are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into effect when this act becomes law."

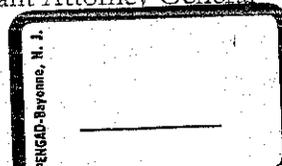
Because Sub. H.B. 319 is not subject to referendum, we must refuse to accept your summary filing.

Sincerely,

Mike DeWine
Ohio Attorney General

Damian W. Sikora
Assistant Attorney General

cc: Jon Husted, Ohio Secretary of State





Jon Husted
Ohio Secretary of State

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October 12, 2011

Donald J. McTigue, Esq.
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VIA HAND DELIVERY & ELECTRONIC MAIL TO DMCTIGUE@ELECTIONLAWGROUP.COM

Dear Mr. McTigue,

Please be advised that the referendum petitions and accompanying correspondence dropped off at our office this morning, while time-stamped, have not officially been accepted by the office of the Ohio Secretary of State.

House Bill No. 319 of the 129th General Assembly went into immediate effect after it was signed by the Governor, and, therefore, is not subject to referendum. The General Assembly so declared in Sections 6¹ and 7² of House Bill No. 319.

Accordingly, the office of the Secretary of State hereby returns to your custody the petitions you filed this morning. In the absence of a court order to the contrary, we will not accept for filing any additional referendum-related materials regarding House Bill No. 319.

Sincerely,

Scott Borgemenke

Assistant Secretary of State

¹ SECTION 6. It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprecincting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.

² SECTION 7. The sections and items of law contained in this act are not subject to the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law.

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through file 47
*** Annotations current through July 22, 2011 ***

TITLE 35. ELECTIONS
CHAPTER 3519. INITIATIVE; REFERENDUM

Go to the Ohio Code Archive Directory

ORC Ann. 3519.01 (2011)

§ 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 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 one proposed law or constitutional amendment under division (A) of *section 3505.062 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.