

**IN THE SUPREME COURT OF OHIO**

**HEALTHY FAMILIES OHIO, INC.**  
545 E Town St  
Columbus, Ohio 43215,

**and**

**GARRETT M. DOUGHERTY**  
3495 Bear Pointe Circle  
Powell, Ohio 43065

**Relators,**

v.

**THE OHIO BALLOT BOARD**  
180 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

**HON. JON HUSTED**  
Ohio Secretary of State  
180 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

**HON. MIKE DeWINE**  
Ohio Attorney General  
30 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

**PERSONHOOD OHIO**  
James P. Johnston, Agent  
5063 Dresden Court  
Zanesville, Ohio 43701

**JAMES PATRICK JOHNSTON**  
5063 Dresden Court  
Zanesville, Ohio 43701

**FRANK WEIMER**  
4999 Bott Road  
Belleville, Ohio 44813

**DAVID DAUBENMIRE**  
50 Woody Knoll Drive  
Thornville, Ohio 43076

**12-0070**

Case No.

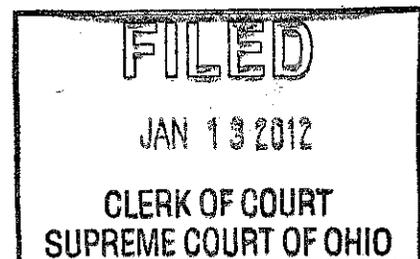
**CHALLENGE TO INITIATIVE  
PETITION PURSUANT TO  
ARTICLE II, SECTION 1g, OF  
THE OHIO CONSTITUTION  
and**

**ORIGINAL ACTION IN MANDAMUS  
AND PROHIBITION**

**and**

**ORIGINAL ACTION UNDER  
OHIO REV. CODE 3519.01**

**ALTERNATIVE WRIT REQUESTED**



**TOM RADDELL**  
134 E 212<sup>th</sup> St  
Euclid, Ohio 44123

**Respondents.**

Donald J. McTigue (0022849)  
Mark A. McGinnis (0076275)  
J. Corey Colombo (0072398)  
McTIGUE & MCGINNIS LLC  
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*Counsel for Relators*

NOW COME THE RELATORS, and for the challenge herein, hereby aver as follows:

**NATURE OF THE ACTION AND JURISDICTION**

1. This is an original action commenced pursuant to this Court's jurisdiction under: a) Section 1g, Article II of the Ohio Constitution, which grants the Court "original, exclusive jurisdiction over all challenges made to state initiative and referendum petitions and signatures made upon such petitions;" b) Article IV, 2(B) of the Ohio Constitution providing for original jurisdiction in mandamus and prohibition, and Ohio Rev. Code Chapter 2731 pertaining to mandamus, peremptory and alternative writs, and; c) Ohio Rev. Code 3519.01(C) which provides that "[a]ny 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."
2. Respondent Personhood Ohio seeks through a statewide initiative petition under Art. II, Sections 1a and 1g of the Ohio Constitution ("initiative petition") to amend Article I, Section 1 of the Ohio Constitution and Article I, Section 16 of the Ohio Constitution ("Proposed Amendment") to provide:

"Be it resolved by the people of the State of Ohio that Article I, Section 16, of the Ohio Constitution be adopted and read as follows:

Redress in courts. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

*Insert:* Article I, Section 16(b). "Person" and "men" defined:

(A) The words "person" in Article 1, Section 16, and "men" in Article 1, Section , apply to every human being at every stage of the biological development of that human being or human organism, including fertilization.

(B) Nothing in this Section shall affect genuine contraception that acts solely by preventing the creation of a new human being; or human "eggs" or oocytes prior to the beginning of life of a new human being; or reproductive technology or In Vitro Fertilization (IVF) procedures that respect the right to life of newly created human beings."

3. Relators seek an order and/or judgment from this Court holding: (1) that the initiative petition is defective for the reason that it fatally fails to contain the text of an existing constitutional provision that would be amended if the Proposed Amendment is adopted; (2) that the initiative petition is fatally defective for the reason that it contains more than one proposal, *i.e.*, amendment to the constitution, and/or; (3) that the certification of the Attorney General that the petitioners summary is a fair and truthful statement of the Proposed Amendment is erroneous.
4. Relators affirmatively aver that they have acted with the utmost diligence in bringing the instant action within the timeframe contemplated by the Ohio Constitution, that there has been no unreasonable delay or lapse of time in asserting their rights herein and, further, there is no prejudice to Respondents. [See, e.g., *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277.] Specifically, the action has

been timely filed well before the 95<sup>th</sup> day before the November 6, 2012 general election in accordance with Sec. 1g, Art. II, of the Ohio Constitution.

5. Relators' affirmatively aver that the Complaint herein is being served on the date of this filing to all Relators and/or their Counsel via personal service, facsimile transmission, and/or e-mail pursuant to S.Ct.Prac.R. 13.1(F).
6. Relators lack adequate relief other than an order or judgment from this Court that the Proposed Amendment fails to contain the text of an existing constitutional provision that would be amended if the Proposed Amendment is adopted, that the Proposed Amendment contains more than one proposal, and/or that the certification of the Attorney General that the petitioners' summary is a fair and truthful statement of the Proposed Amendment is erroneous.

#### **PARTIES**

7. Relator Healthy Families Ohio, Inc. is a nonprofit corporation, organized pursuant to Section 501(c)(4) of the Internal Revenue Code, and chartered in the State of Ohio.
8. Relator Garrett M. Dougherty is the Treasurer of Healthy Families Ohio, Inc., and a qualified elector of the State of Ohio.
9. Respondent Ohio Secretary of State Jon Husted ("Secretary of State") is the Ohio Secretary of State, the Chief Elections Officer of the State of Ohio. Pursuant to Ohio Rev. Code § 3501.05(K), Respondent Husted has a statutory responsibility to determine and certify the sufficiency or insufficiency of all

statewide initiative petitions. [Sec. 1g, Art. II, Ohio Constitution; Ohio Rev. Code § 3519.16.]

10. Respondent Ohio Ballot Board (“Ballot Board”) is established by Art. XVI, Sec. 1, of the Ohio Constitution and Ohio Revised Code 3505.061. The duties of the Ballot Board are set forth in Ohio Rev. Code 3505.062 and 3519.01 and include determining whether an initiative petition contains only one proposed amendment to the Ohio Constitution so as to enable the voters to vote on a proposal separately.
11. Respondent Mike DeWine is the Attorney General of the State of Ohio, a constitutional officer in the Executive Department of the State pursuant to Art. III, Sec. 1 of the Ohio Constitution and the chief law officer of the State pursuant to Ohio Rev. Code 109.02 (“Attorney General”). Ohio Rev. Code 3519.01(B) requires petitioners who wish to propose by initiative petition an amendment to the constitution to first submit a petition with a summary of the Proposed Amendment to the Attorney General who must examine and certify the summary if, in his opinion, it is a “fair and truthful statement of the measure to be referred.”
12. Respondents James Patrick Johnston, Frank Weimer, David Daubenmire, and Tom Raddell (“Petitioners”) are the individuals designated on the face of the initiative petition to represent the petitioners in all matters relating to the initiative petition or its circulation pursuant to Ohio Rev. Code § 3519.02.

13. Respondent Personhood Ohio is a political action committee that is responsible for the supervision, management, and/or organization of the signature gathering effort seeking to place the Proposed Amendment on the November 6, 2012 General Election ballot. Personhood Ohio is a ballot issue political action committee formed in accordance with Ohio Rev. Code § 3517.12 to report contributions and expenditures in connection with the initiative petition.

**STATEMENT OF REASONS FOR CHALLENGE TO INITIATIVE PETITION/  
SPECIFIC STATEMENT OF FACTS UPON WHICH CHALLENGE IS BASED**

14. In order to appear on the general election ballot, initiative proponents proposing an amendment to the Ohio Constitution must submit at least 385,245 valid signatures, a number equal to at least 10% of the total vote cast for the office of governor in the last gubernatorial election. [Sec. 1a Art. II, Ohio Constitution.] Further, petitioners are required to submit valid signatures equal to at least five percent of the total vote cast for governor at the most recent gubernatorial election in at least 44 of the 88 counties in Ohio. [Sec. 1g, Art. II, Ohio Constitution.] Finally, the petition must comply with various other constitutional and statutory requirements in order for the proposed amendment to be submitted to the electors, including the requirements set forth in Art. II, Sec. 1g of the Ohio Constitution and Ohio Rev. Code 3519.01.
15. On December 21, 2011, the Petitioners filed a copy of an initiative petition containing the Proposed Amendment and a proposed summary with the

Attorney General for examination pursuant to Ohio Rev. Code 3519.01.  
[Petitioners' Letter to Attorney General (Dec. 21, 2011), *appended hereto* at  
A.]

16. The summary of the Proposed Amendment provides:

“The Ohio Personhood Amendment would amend the Ohio Constitution to define the word “person” and “men” as those terms are used in Article 1, Section 1, and Article I, Section 16, of the Ohio constitution, to include every human being at every stage of biological development, including fertilization.

The proposed law would not

1. Affect genuine contraception that acts solely by preventing the creation of a new human being;
2. Affect human “eggs” or oocytes prior to the beginning of the life of a new human being;
3. Affect reproductive technology or IVF procedures that respect the right to life of newly created human beings.”

17. On December 27, 2011, Relators transmitted a letter to the Attorney General asserting four grounds upon which Petitioners' summary was defective, to wit: (1) the summary fails to include a vital part of the new definition being proposed for the terms “person” and “men;” namely, the term “human organism;” (2) the summary states that the Proposed Amendment would include three exceptions to the newly defined terms “person” and “men” in two separate sections of the Ohio Constitution, but the text of the amendment actually applies the exception to only one section of the Constitution; (3) the summary fails to provide would be signers of the petition with any information regarding the subject matter of Sections 1 and 16 of Article I, and; (4) the summary does nothing to actually explain the meaning

of the numbered “exceptions.” [Relators’ Letter to Attorney General (Dec. 27, 2011), *appended hereto* at G.]

18. On December 31, 2011, the Attorney General determined that the Petitioners’ summary of the Proposed Amendment is a fair and truthful statement of the measure to be referred, and issued his certification pursuant to Ohio Rev. Code 3519.01. [Attorney General’s Certification Letter (Dec. 30, 2011), *appended hereto* at B.]
19. Ohio Rev. Code 3505.062 requires the Ohio Ballot Board to meet within ten days after receiving the Attorney General’s certification under Ohio Rev. Code 3519.01 to determine whether the petition contains only one proposed constitutional amendment to enable the voters to vote on a proposal separately. On January 4, 2011, Secretary Husted issued notice of the ballot board hearing. [Press Release, Secretary of State Husted Announces Ballot Board Meeting (Jan. 4, 2012), *appended hereto* at C.]
20. On January 9, 2011, the Ohio Ballot Board held a quasi-judicial hearing, on the record, following notice thereof, whereupon it heard testimony from counsel for Relators relating to whether or not the Proposed Amendment contains only one constitutional amendment. Relators’ counsel also submitted a legal memorandum on this issue to the Ballot Board. At the conclusion of the hearing, Ballot Board Member Senator Keith Faber made a Motion that the Ballot Board certify the proposed personhood amendment as containing only one constitutional amendment, which passed by a vote of 3-2. [Agenda,

Meeting of Ballot Board, *appended hereto* at D; Relators' Memorandum of Law to Ballot Board, *appended hereto* at H.]

21. That same day, on January 9, 2012, the Secretary of the Ballot Board issued a letter to the Attorney General indicating that the Ballot Board had met in a public session and determined that the Proposed Amendment contains only one proposed constitutional amendment. [Letter to Attorney General Mike DeWine (Jan. 9, 2012), *appended hereto* at E.]
22. Based on the Attorney General's determination that the summary is fair and truthful, and the Ballot Board's determination that the Proposed Amendment constitutes a single amendment to the constitution and certification of same to the Attorney General, the Petitioners may now collect signatures on the initiative petition. Based on information and belief, the Petitioners are now collecting signatures on part-petitions and/or intend to collect signatures on part-petitions for the purpose of placing the issue on the November 6, 2012 general election ballot. Petitioners have produced an Initiative Petition and disseminated it on the PersonhoodOhio website, an exemplar copy of which is *appended hereto* at F.

#### **FIRST CHALLENGE/CLAIM**

**The Initiative Petition Fails to Include the Text of a Constitutional Provision That Would be Amended by the Proposed Amendment in Violation of Ohio Rev. Code 3519.01 and/or Sec. 1g, Art. II of the Ohio Constitution**

23. Relators incorporate by reference each and every allegation above as if completely restated herein.
24. Sec. 1g, Art. II, of the Ohio Constitution requires that:

“Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution.” [Emphasis added.]

25. Sec. 1g, Art. II, of the Ohio Constitution further provides that:

“Laws may be passed to facilitate [this section] but in no way limiting or restricting either such provisions or the powers herein reserved.”

26. Ohio Rev. Code 3519.01(A) requires that:

“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.” [Emphasis added.]

27. By its express terms, the Proposed Amendment would define the word “men” in Article I, Section 1 of the Ohio Constitution to “apply to every human being at every stage of the biological development of that human being or human organism, including fertilization.” However, the Proposed Amendment fails to set forth the text of the existing constitutional provision, Article I, Section 1.

28. Petitioners and PersonhoodOhio are circulating and intend to file the initiative petition without the text of Art I, Sec. 1 of the Ohio Constitution.

29. Ohio Rev. Code 3519.01(C) provides:

“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.”

30. Relators are aggrieved by the Attorney General’s decision to certify the summary of the Proposed Amendment as fair and truthful despite

Petitioner's abject failure to comply with Ohio Rev. Code 3519.01 by failing to include the text of Article I, Section 1 Ohio Constitution. Accordingly, Relators are entitled to relief under this section.

31. The Attorney General's determination that the summary of the Proposed Amendment was fair and truthful pursuant to Ohio Rev. Code 3519.01 was a quasi-judicial determination.
32. The Attorney General's determination that the summary of the Proposed Amendment was fair and truthful pursuant to Ohio Rev. Code 3519.01 despite the failure of the petition to include the text of the existing constitutional provision that would be amended if the Proposed Amendment is adopted as required by the statute was unauthorized by law.
33. The Attorney General has a clear legal duty to ensure that the requirements of Ohio Rev. Code 3519.01 have been complied with in determining that the summary of the Proposed Amendment is fair and truthful.
34. By certifying the summary of the Proposed Amendment as fair and truthful despite the failure to include the text of constitutional provision that would be amended if the Proposed Amendment is adopted as required by Ohio Rev. Code 3519.01, the Attorney General abused his discretion and/or clearly disregarded applicable law. [See, e.g., *State ex rel. Brown v. Butler Cty. Bd. Of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, ¶ 23.] Accordingly, Relators are entitled to extraordinary relief.

35. The Secretary of State has a clear legal duty to not accept for filing and/or to not certify as valid and sufficient or to reject as invalid and insufficient an initiative petition that does not comply with Ohio Rev. Code 3519.01 or Sec. 1g, Art. II, of the Ohio Constitution.
36. Relators have no adequate remedy in the ordinary course of law.
37. Relators have a clear legal right to require that a proposed constitutional amendment is brought in accordance with Ohio Rev. Code 3519.01 and Sec. 1g, Art. II, of the Ohio Constitution, and that the Attorney General and Secretary of State comply with their duties as set forth herein.
38. Accordingly, Relators are entitled to each of the following: special statutory relief pursuant to Ohio Rev. Code 3519.01; a writ of prohibition, a writ of mandamus, and/or alternative and peremptory writs, and/or; relief pursuant to Sec. 1g, Art. II, of the Ohio Constitution, holding that:
  - a) the initiative petition fails to satisfy the requirement of Ohio Rev. Code 3519.01(A) that an initiative petition contain the text of any existing constitutional provision that would be amended if the Proposed Amendment is adopted;
  - b) the proposed summary is not a fair and truthful statement of the Proposed Amendment because no petition was presented to the Attorney General containing the text of Article I, Section 1 of the Ohio Constitution, and/or;

- c) the initiative petition fails to satisfy the requirements of Sec 1g, Art. II, of the Ohio Constitution that an initiative petition set forth the full text the amendment.

### SECOND CHALLENGE/CLAIM

#### The Summary of the Proposed Amendment is Not a Fair and Truthful Statement of the Proposed Constitutional Amendment

39. Relators incorporate by reference each and every allegation above as if completely restated herein.
40. The Petition Summary states that the Proposed Amendment would define “person” and “men” to include “every human being at every stage of biological development, including fertilization.” However, the full text of the Proposed Amendment actually states that “person” and “men” will be defined to include “every human being at every stage of biological development of that human being or human organism, including fertilization.” [Emphasis added.] The Petition Summary therefore does not accurately represent the text of the Amendment by failing to include “human organism” in the definitions for “person” and “men”. This is a material omission in the Summary. The proposed Amendment treats “human being” and “human organism” as being different – which they are – by listing them separately, but the Summary only references “human being.”
41. The Summary of the Proposed Amendment states that it would define the terms “person” and “men” as used in two separate sections of the Ohio

Constitution: Article I, Section 1 and Article 1, Section 16. The Summary adds that the proposed Amendment will not affect “genuine contraception . . . ;” “human ‘eggs’ or oocytes . . . ;” and “reproductive technology or IVF procedures . . . .” The Summary misrepresents the actual text of the Amendment by overstating the reach of these “exceptions.” The text of the Proposed Amendment expressly limits the three “exceptions” to Section 16 of Article I by stating “(B) Nothing in this Section [Section 16] shall affect . . . .” Therefore, the “exceptions” do *not* apply to Section 1 of Article I, as the Summary wrongly states. This is a critical flaw in the Summary, as Section 1 and Section 16 deal with entirely different subject matters. Article I, Sec. 16 relates to due process and access to courts, while Article 1, Sec. 1 relates to inalienable rights. Therefore, it is not fair and truthful for the Petition Summary to state that the so-called “exceptions” listed would apply to both Sections of the Constitution that are being newly amended.

42. The summary of the Proposed Amendment is also not fair because it fails to provide would-be signers of the petition with any information regarding the subject matter of Sections 1 and 16 of Article I. It simply states that the Proposed Amendment would define the words “person” and “men” “as those terms are used” in those sections. By not setting forth to any degree the subject matter of the two sections, the Summary provides no context within the Summary for voters to determine the import of the proposed definition. Furthermore, defining a term “as used” in a given section necessarily limits

the definition to that section, and thus is not a change to the term as used throughout the Constitution. For that reason, it is that much more important to know the subject matter of the section that the new definition would be applied to.

43. Further, the Summary does nothing to actually explain the meaning of the numbered “exceptions.” Specifically,

a) The first “exception” states, “The proposed law would not . . . [a]ffect genuine contraception that acts solely by preventing the creation of a new human being.” But, a voter could interpret the term “genuine contraception” in several different ways, including to apply to common forms of hormonal birth control, such as “the pill” and/or IUDs. However, because the Proposed Amendment would define “person” and “men” as “a human being at every stage of the biological development of that human being or organism, including fertilization,” the so-called “exception” in the proposed Amendment would *not* apply to these forms of hormonal birth control. This is because common forms of hormonal birth control can work in several different ways including by preventing implantation of a fertilized egg, which under the proposed Amendment would be a “person” or “m[an].” Thus, without a more accurate explanation of the reach of this exception, and in particular, what the exception would *not* reach, the petition Summary does not “assure a free, intelligent and informative vote by the average citizen affected,” *Markus v. Board of Elections* (1970), 22 Ohio St.2d 197.

b) The second “exception” in the Petition Summary states, “The proposed law would not . . . [a]ffect human ‘eggs’ or oocytes prior to the beginning of the life of a new human being.” This language is problematic for at least two reasons. First, the average voter does not know what an “oocyte” is. Moreover, because the proposed Amendment does not define when “the beginning of life” is (but rather proposes a new definition for “person” and “men”), and because when “life begins” may be interpreted differently by different voters depending on one’s political, religious, medical, and philosophical viewpoints, the petition Summary, at a minimum, should inform voters that the proposed Amendment does not define “when life begins” and will likely have to be construed by the courts.

c) The third “exception” in the petition Summary states, “The proposed law would not . . . [a]ffect reproductive technology or IVF procedures that respect the right to life of newly created human beings.” This language is also problematic for several reasons. First, because not all voters are familiar with the acronym “IVF,” the Petition Summary should instead use the terms “in vitro fertilization.” Second, in vitro fertilization almost invariably involves the destruction of some very early embryos. Voters should be made aware of this critical fact in order for them to truly understand the potential limitations of this “exception.” Moreover, the text of the proposed Amendment does not define what it means to “respect the right to life” – language that has different meaning for different people, including couples that choose to

undergo in vitro fertilization treatment. Thus, voters should also be made aware of this fact, and that this language will likely have to be construed by the courts.

44. Relators are aggrieved by the Attorney General's decision to certify the summary of the Proposed Amendment as fair and truthful despite the fact that it is not, and therefore does not satisfy Ohio Rev. Code 3519.01. Accordingly, Relators are entitled to relief under this section.
45. The Attorney General's determination that the summary of the Proposed Amendment is fair and truthful pursuant to Ohio Rev. Code 3519.01 was a quasi-judicial determination.
46. The Attorney General's determination that the summary of the Proposed Amendment is fair and truthful pursuant to Ohio Rev. Code 3519.01 was unauthorized by law.
47. The Attorney General has a clear legal duty to ensure that the summary of the Proposed Amendment is fair and truthful in accordance with Ohio Rev. Code 3519.01.
48. By certifying the summary of the Proposed Amendment as fair and truthful, the Attorney General abused his discretion and/or clearly disregarded applicable law. [See, e.g., *State ex rel. Brown v. Butler Cty. Bd. Of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, ¶ 23.] Accordingly, Relators are entitled to extraordinary relief.
49. Relators have no adequate remedy in the ordinary course of law.

50. Relators have a clear legal right to require that an initiative petition proposing a constitutional amendment comply with Ohio Rev. Code 3519.01 and Sec. 1g, Art. II, of the Ohio Constitution, and that the Attorney General complies with his duties as set forth herein.
51. Accordingly, Relators are entitled to each of the following: special statutory relief pursuant to Ohio Rev. Code 3519.01; a writ of prohibition, a writ of mandamus, and/or alternative and peremptory writs, and/or; relief pursuant to Sec. 1g, Art. II, of the Ohio Constitution, holding that:
- a) the proposed summary is not a fair and truthful statement of the Proposed Amendment, and;
  - b) the initiative petition fails to satisfy the requirements of Ohio Rev. Code 3519.01 and Sec 1g, Art. II, of the Ohio Constitution.

### **THIRD CHALLENGE/CLAIM**

#### **The Proposed Amendment Contains Two Constitutional Amendments Upon Which The Voters Are Entitled to Vote Separately**

52. Relators incorporate by reference each and every allegation above as if completely restated herein.
53. The Proposed Amendment expressly sets forth that it amends Article I, Section 16, of the Ohio Constitution, regarding Redress in Courts, by defining the term “person” as used in that section and also expressly amends Article I, Section 1 of the Ohio Constitution, relating to a completely different subject matter, inalienable rights, by defining the term “men” as used in that section.
54. Article I, Section 1, of the Ohio Constitution, states:

“All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”

55. The initiative petition seeks to accomplish the amendment of two separate sections of the Ohio Constitution while setting forth the text of only one and referring to the other through the legislative shorthand of cross-reference. In fact, the word “men” does not even appear in Article I, Section 16, yet that is where the Petition places the definition for the term. In fact, the Proposed Amendment defines two terms, one of which appears only in Section 1 and the other only in Section 16. Neither section contains both terms. Each term relates to its own section.
56. The Proposed Amendment asks voters to vote once on amending two sections of the constitution relating to two separate subjects: inalienable rights and redress in courts. “Inalienable rights” and “redress in courts” are two distinctly different legal concepts. The proposed major definitional change to the word “men” in Article I, Section 1 to encompass “every human being at every stage of the biological development of that human being or human organism, including fertilization” would alter the entire concept of the inalienable rights that belong to every Ohioan.
57. Accordingly, the Proposed Amendment should be split into two amendments to enable the voters to vote on each proposal separately.
58. The Ohio Ballot Board has a clear legal duty to determine whether the Petition “contains only one proposed law or constitutional amendment so as

to enable the voters to vote on a proposal separately” and a clear legal duty to “divide the initiative petition into individual petitions containing only one proposed ... constitutional amendment so as to enable the voters to vote on each proposal separately.” [Ohio Rev. Code 3505.062(A).]

59. The Attorney General has a clear legal duty not to certify a summary of a Proposed Amendment as fair and truthful unless it contains only one constitutional amendment upon the initiative petition proposing it pursuant to Ohio Rev. Code 3519.01.
60. Relators are aggrieved by the Attorney General’s decision to certify the summary of the Proposed Amendment as fair and truthful and the Ohio Ballot Board’s decision that the initiative petition sets forth only one proposed amendment despite Petitioner’s failure to comply with Ohio Rev. Code 3519.01 by proposing more than one constitutional amendment.
61. The Attorney General’s determination that the summary of the Proposed Amendment was fair and truthful pursuant to Ohio Rev. Code 3519.01 was a quasi-judicial determination.
62. The Ohio Ballot Board’s determination that the Proposed Amendment consists of one issue was a quasi-judicial determination.
63. The Attorney General’s determination that the summary of the Proposed Amendment was fair and truthful pursuant to Ohio Rev. Code 3519.01 was unauthorized by law.

64. The Ohio Ballot Board's determination that the Proposed Amendment consists of a single issue was unauthorized by law.
65. By certifying the summary of the Proposed Amendment as fair and truthful despite the fact that the Proposed Amendment contained more than one proposal, the Attorney General abused his discretion and/or clearly disregarded applicable law. [See, e.g., *State ex rel. Brown v. Butler Cty. Bd. of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, ¶ 23.] Accordingly, Relators are entitled to extraordinary relief.
66. By determining that the Proposed Amendment consists of one issue, the Ballot Board abused its discretion and/or clearly disregarded applicable law. [See, e.g., *State ex rel. Brown v. Butler Cty. Bd. Of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, ¶ 23.] Accordingly, Relators are entitled to extraordinary relief.
67. Relators have no adequate remedy in the ordinary course of law.
68. Relators have a clear legal right to require that an initiative petition proposing a constitutional amendment comply with Ohio Rev. Code 3519.01 and Ohio Rev. Code 3505.062 and that the Attorney general and Ohio ballot Board comply with their statutory duties as set forth herein.
69. Accordingly, Relators are entitled to special statutory relief pursuant to Ohio Rev. Code 3519.01, and/or a writ of prohibition, and/or a writ of mandamus, and/or alternative and peremptory writs, and/or, pursuant to Sec. 1g, Art. II, of the Ohio Constitution, holding that:

- a) the proposed summary is not a fair and truthful statement of the Proposed Amendment, and;
- b) the initiative petition fails to satisfy the requirements of Ohio Rev. Code 3519.01 and Sec 1g, Art. II, of the Ohio Constitution.

**Prayer for Relief**

WHEREFORE, Relators respectfully pray the Court to grant the following relief:

- A. Issue an Order, Judgment, and/or Writ of Mandamus or Prohibition, holding that the summary of the Proposed Amendment is not a fair and truthful statement of the Proposed Amendment and therefore the initiative petition is invalid;
- B. Issue an Order, Judgment, and/or Writ of Mandamus or Prohibition, holding that the initiative petition contains more than one proposed constitutional amendment and therefore the initiative petition is invalid;
- C. Issue an Order, Judgment, and/or Writ of Mandamus or Prohibition, holding that the Proposed Amendment fails to contain the full text of Article I, Section 1 of the Ohio Constitution and therefore the initiative petition is invalid;
- D. Issue an Order and/or Writ of Mandamus or Prohibition directing the Secretary of State not to accept for filing and/or not to certify the initiative petition containing the Proposed Amendment and/or an Order and/or Writ of Mandamus or Prohibition directing the Secretary of State to reject as invalid and insufficient the initiative petition;
- E. Issue an Order and/or Writ of Mandamus or Prohibition directing that the Attorney General find that the summary is not a fair and truthful statement of the Proposed Amendment;
- F. Issue an Order and/or Writ of Mandamus or Prohibition directing that the Ohio Ballot Board split the Proposed Amendment into two proposed amendments;
- G. Issue an Alternative Writ to award any such relief as may be appropriate;

H. Assess the costs of this action against Respondents;

I. Award Complainants their attorneys' fees and expenses; and

J. Award such other relief as may be appropriate.

Respectfully submitted,



Donald J. McTigue (0022849)

Mark A. McGinnis (0076275)

J. Corey Colombo (0072398)

McTIGUE & MCGINNIS LLC

550 East Walnut Street

Columbus, Ohio 43215

Tel: (614) 263-7000

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*Counsel for Relators*

# Personhood

## OHIO

Personhood Ohio Board  
Dr. Patrick Johnston, Zanesville  
Tom Raddell, Cleveland  
Franklin Weimer, Bellville  
Dave Daubenmire, Thornville

December 21, 2011

ATTORNEY GENERALS OFFICE

Ohio Attorney General Mike DeWine  
30 E. Broad St., 14th floor  
Columbus, Ohio 43215

DEC 21 2011

RECEIVED  
CONSTITUTIONAL OFFICES

Dear Mr. DeWine,

Thomas Jefferson said, "The care of human life and happiness and not their destruction is the first and only legitimate object of good government." We respectfully deliver more than 1800 signatures of Ohio voters with our Initiative Petition to amend the Ohio Constitution to protect every preborn child in Ohio. This is Ohio's moral duty and within our lawful, constitutional jurisdiction. The Ohio Personhood Amendment defines the word "person" and "men" as those terms are used in Article 1, Section 1, and Article 1, Section 16 of the Ohio Constitution, to include every human being at every stage of biological development, including fertilization.

The proposed law would not:

1. Affect genuine contraception that acts solely by preventing the creation of a new human being;
2. Affect human "eggs" or oocytes prior to the beginning of the life of a new human being;
3. Affect reproductive technology or IVF procedures that respect the right to life of newly created human beings.

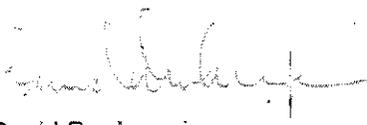
We anticipate your certification, pursuant to Ohio Revised Code 3519.01(A).

The Personhood Ohio committee includes:

James Patrick Johnston 5063 Dresden Court Zanesville, Ohio 43701	Frank Weimer 4999 Bott Road Bellville, Ohio 44813	David Daubenmire 50 Woody Knoll Drive Thornville, Ohio 43076	Tom Raddell 134 E. 212th Street Euclid, Ohio 44123
--	---	--	--

Please don't hesitate to contact us if you have any questions. We look forward to working with you.

Respectfully submitted,



David Daubenmire

Personhood Ohio, P.O. Box 126, Dresden, Ohio 43821, 740.453.9173

A-1

Petition: # \_\_\_\_\_

County: ATHENS 2

## INITIATIVE PETITION

Amendment to the Constitution

Proposed by Initiative Petition

To be submitted directly to the electors

### Amendment

Title: To define "person" and "men" in the Ohio Constitution to protect all unborn children

#### AMENDMENT SUMMARY

The Ohio Personhood Amendment would amend the Ohio Constitution to define the word "person" and "men" as those terms are used in Article I, Section 1, and Article I, Section 16, of the Ohio Constitution, to include every human being at every stage of biological development, including fertilization.

The proposed law would not

1. Affect genuine contraception that acts solely by preventing the creation of a new human being;
2. Affect human "eggs" or oocytes prior to the beginning of the life of a new human being;
3. Affect reproductive technology or IVF procedures that respect the right to life of newly created human beings.

#### CERTIFICATION OF THE ATTORNEY GENERAL

This certification of the Attorney General, pursuant to Ohio Revised Code Section 3519.01(A), will be inserted when it is provided. This initial petition must be submitted with at least one thousand (1,000) valid signatures of Ohio electors before the Attorney General will issue that certification.

#### COMMITTEE TO REPRESENT THE PETITIONERS

James Patrick Johnston  
5063 Dresden Court  
Zanesville, Ohio 43701

Frank Weimer  
4999 Bott Road  
Bellville, Ohio 44813

David Daubenmire  
50 Woody Knoll Drive  
Thornville, Ohio 43076

Tom Raddell  
134 E. 212th Street  
Euclid, Ohio 44123

PTHE NS

The Ohio Personhood Amendment Petition

NOTICE: Whoever knowingly signs this petition more than once; except as provided in section 3501.382 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.

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

Signature	County	Township	Rural Route or other Post-Office Address	Month/Day/Year
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(Voters who do not live in a municipal corporation should fill in the information called for by the headings printed above.)

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

Signature	County	City or Village	Street and Number	Ward Precinct	Month/Day/Year
1 Signature <i>[Handwritten Signature]</i> Print Name <i>Ronald G. Smith</i>	<i>[Handwritten]</i>	<i>[Handwritten]</i>	<i>186th Dayton Pickle</i>		<i>12/7/11</i>
2 Signature <i>Teresa Pollack</i> Print Name <i>Teresa Pollack</i>	<i>[Handwritten]</i>	<i>[Handwritten]</i>	<i>1 Harrison St</i>		<i>12/7/11</i>
3 Signature Print Name					
4 Signature Print Name					
5 Signature Print Name					
6 Signature Print Name					
7 Signature Print Name					
8 Signature Print Name					
9 Signature Print Name					

A-3

FULL TEXT OF AMENDMENT

Be it resolved by the people of the State of Ohio that Article 1, Section 16. of the Ohio Constitution be adopted and read as follows:

Redress in courts. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Insert: Article 1, Section 16(b). "Person" and "men" defined:

- (A) The words "person" in Article 1, Section 16, and "men" in Article 1, Section 1, apply to every human being at every stage of the biological development of that human being or human organism, including fertilization.
- (B) Nothing in this Section shall affect genuine contraception that acts solely by preventing the creation of a new human being; or human "eggs" or oocytes prior to the beginning of the life of a new human being; or reproductive technology or In Vitro Fertilization (IVF) procedures that respect the right to life of newly created human beings.

STATEMENT OF CIRCULATOR

I, JAMES P. JOHNSON, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of 2 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 the section 3501.382 of the Revised Code, and that the electors signing this petition did so with the knowledge of the contents of the 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.*)

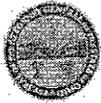
I further declare under penalty of election falsification in accordance with section 3501.38 of the Revised Code that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signed) James P. Johnson

(Address of circulator's permanent residence in this state) 5063 Dresden Ct. Zimball, OH 43701

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

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**MIKE DEWINE**

★ OHIO ATTORNEY GENERAL ★

Administration  
Office 614-466-4320  
Fax 614-466-5087

30 E. Broad Street, 17<sup>th</sup> Fl  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

December 30, 2011

VIA HAND DELIVERY & ELECTRONIC MAIL

Hon. Jon Husted  
Ohio Secretary of State  
180 E. Broad St.  
Columbus, OH 43215

RE: Re-submitted Personhood Ohio Constitutional Amendment

Dear Secretary Husted:

In accordance with the provisions of R.C. 3519.01(A), on December 21, 2011, I received a written petition proposing to amend the Ohio Constitution, and a summary of the measure to be referred. Pursuant to R.C. 3519.01(A), I must examine the summary and determine whether it is a fair and truthful statement of the measure to be referred. If I conclude that the summary is fair and truthful, I must certify that fact to your office within ten days of receiving it. In this instance, the tenth day falls on Saturday, December 31, 2011, and the first business day thereafter is January 3, 2012. Additionally, the petitioners must submit signatures from at least 1,000 registered voters. As of this date, our office has received verification of 1,268 signatures from local boards of election.

Having considered only the language of the summary submitted by the petitioners, I am of the opinion that the summary is a fair and truthful statement of the measure to be referred. I am therefore submitting the following certification to you as Secretary of State:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed constitutional amendment.

Very respectfully yours,

Mike DeWine  
Ohio Attorney General

cc: Elizabeth Schuster, by email

**B**

**FOR IMMEDIATE RELEASE**

Wednesday, January 4, 2012

**SECRETARY OF STATE HUSTED ANNOUNCES BALLOT BOARD MEETING**

*COLUMBUS* – Secretary of State Jon Husted has called a meeting of the Ohio Ballot Board for Monday, January 9, 2012, at 1:30 p.m. in the South Hearing Room of the Ohio Statehouse, located on the second floor of the Senate Building at 1 Capitol Square, Columbus, Ohio, 43215.

As required by Ohio law, the Ballot Board will meet to determine whether a proposed constitutional amendment regarding personhood consists of more than one amendment. The Ballot Board has 10 days from the date the certification is received from the Attorney General to complete this task.

If it is determined that there is more than one amendment, the Ballot Board will divide the initiative into individual petitions containing only one constitutional amendment so as to enable the voters to vote on each proposal separately and certify its approval to the attorney general. Petitioners would then need to resubmit summaries for each of the individual petitions to the attorney general for certification.

Petitioners will need to collect 385,245 signatures, which is equal to 10 percent of the total vote cast for Governor in 2010. As part of the total number of signatures needed to place the measure on the ballot, petitioners must also have collected signatures from at least 44 of Ohio's 88 counties, and within each of those counties, collected enough signatures equal to five percent of the total vote cast for governor in the most recent gubernatorial election, 2010.

Secretary Husted serves as chair of the Ballot Board and oversees the board's proceedings. Other members of the Ballot Board include: Fred Strahorn, Vice Chair; State Senator Keith Faber; Mark Griffin; and William N. Morgan. Ballot Board meetings are open to the public.

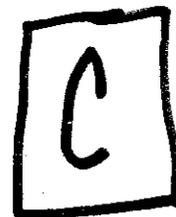
**Additional Information**

Procedure for a Citizen Initiated Constitutional Amendment

<http://www.sos.state.oh.us/sos/LegnAndBallotIssues/issues/initiatedamendment.aspx>

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*For more information, please contact Matt McClellan at 614-995-2168 or [mmcclellan@ohiosecretaryofstate.gov](mailto:mmcclellan@ohiosecretaryofstate.gov).*



# MEETING OF THE OHIO BALLOT BOARD

Pursuant to R.C. 3505.062

## Members:

Ohio Secretary of State Jon Husted, Chair

Mr. Fredrick W. Strahorn, Vice-Chair

Senator Keith Faber

Mr. Mark Griffin

Mr. William N. Morgan

**Monday, January 9, 2012**

1:30 P.M

South Hearing Room of the Ohio Statehouse  
1 Capitol Square, Columbus, Ohio, 43215

## AGENDA

- I. Call to Order
- II. Roll Call
- III. Examination of Personhood proposed constitutional amendment to determine whether it contains only one constitutional amendment
- IV. Adjournment

D

# The Ohio Ballot Board

**Members:**

Ohio Secretary of State Jon Husted, Chair  
Mr. Fredrick W. Strahorn, Vice-Chair  
Senator Keith Faber  
Mr. Mark Griffin  
Mr. William N. Morgan

January 9, 2012

The Honorable Mike DeWine  
Ohio Attorney General  
30 East Broad Street - 17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428

Re: Ballot Board Approval of Personhood proposed constitutional amendment as one constitutional amendment

Dear Attorney General DeWine:

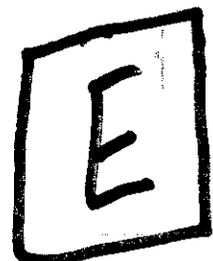
Acting pursuant to Ohio Revised Code 3519.01(A), on December 30, 2011 you transmitted to the Secretary of State, in his capacity as chairman of the Ballot Board, a proposed constitutional amendment entitled Personhood Amendment.

As Secretary of the Ohio Ballot Board, I hereby certify that a quorum of the board met in public session on January 9, 2012 for the purpose of examining and certifying the petition in accordance with the provisions of Ohio Revised Code 3505.062(A). I hereby further certify approval by the Ohio Ballot Board that the Personhood proposed constitutional amendment contains only one proposed constitutional amendment.

Sincerely,



Betsy Luper Schuster  
Secretary, Ohio Ballot Board  
180 E. Broad St., 15<sup>th</sup> Floor  
Columbus, Ohio 43215



# PersonhoodOHIO

## Personhood Ohio: Petition for Signatures

As of January 11, 2012:  
Signature-gathering has resumed

### IMPORTANT INSTRUCTIONS

#### PLEASE READ THIS FIRST

1. Only people who are registered to vote in Ohio may sign.
2. Each petition may have signatures from only **one county**.
3. **NEVER** sign your own petition.
4. Make sure signers include the address where they're registered to vote.  
Always leave the "ward/princt" line blank.
5. Keep three stapled pages of petition together.
6. Be sure you complete the Statement of Circulator, which is the last page.  
Leave the employer line blank. Be sure to sign it and include the address where you're registered to vote. For every completed signature page, you must sign one of these Statement of Circulator pages.
7. You **must** sign "circulator's statement" on back page for **EACH** signature page, and you must list the number of signers
8. No "dittos" under signatures - urge the signer to fill it out completely
9. Month, day, and year **must** be filled in (don't skip year)
10. After checking that these guidelines have been met, mail completed petitions to:  
**Personhood Ohio,**  
P.O. Box 126  
Dresden, Ohio 43821

Please mail petition **ONLY** after all of these guidelines have been met.

To print out petition click **HERE**.

- † Home
- † Press/News
- † Petition for Signatures
- † Register to Vote
- † I've Had an Abortion and Need Help
- † How You Can Help
- † Education
- † Contact
- † Donate
- † Endorsements



Click here to join  
**PersonhoodOhio**  
on Facebook!

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Petition: # \_\_\_\_\_

County: \_\_\_\_\_

## INITIATIVE PETITION

Amendment to the Constitution

Proposed by Initiative Petition

To be submitted directly to the electors

### Amendment

Title: To define "person" and "men" in the Ohio Constitution to protect all unborn children

#### AMENDMENT SUMMARY

The Ohio Personhood Amendment would amend the Ohio Constitution to define the word "person" and "men" as those terms are used in Article I, Section 1, and Article I, Section 16, of the Ohio Constitution, to include every human being at every stage of biological development, including fertilization.

The proposed law would not

1. Affect genuine contraception that acts solely by preventing the creation of a new human being;
2. Affect human "eggs" or oocytes prior to the beginning of the life of a new human being;
3. Affect reproductive technology or IVF procedures that respect the right to life of newly created human beings.

#### CERTIFICATION OF THE ATTORNEY GENERAL

"Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed constitutional amendment." Ohio Attorney General Mike DeWine (Dec. 30, 2011)

#### COMMITTEE TO REPRESENT THE PETITIONERS

James Patrick Johnston  
5063 Dresden Court  
Zanesville, Ohio 43701

Frank Weimer  
4999 Bott Road  
Bellville, Ohio 44813

David Daubenmire  
50 Woody Knoll Drive  
Thornville, Ohio 43076

Tom Raddell  
134 E. 212th Street  
Euclid, Ohio 44123

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**The Ohio Personhood Amendment Petition**

**NOTICE: Whoever knowingly signs this petition more than once; except as provided in section 3501.382 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.**

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

	Signature	County	Township	Rural Route or other Post-Office Address	Month/Day/Year
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(Voters who do not live in a municipal corporation should fill in the information called for by the headings printed above.)

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

	Signature	County	City or Village	Street and Number	Ward Precinct	Month/Day/Year
1	Signature Print Name					
2	Signature Print Name					
3	Signature Print Name					
4	Signature Print Name					
5	Signature Print Name					
6	Signature Print Name					
7	Signature Print Name					
8	Signature Print Name					
9	Signature Print Name					

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FULL TEXT OF AMENDMENT

Be it resolved by the people of the State of Ohio that Article 1, Section 16, of the Ohio Constitution be adopted and read as follows:

Redress in courts. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

*Insert:* Article 1, Section 16(b). "Person" and "men" defined:

- (A) The words "person" in Article 1, Section 16, and "men" in Article 1, Section 1, apply to every human being at every stage of the biological development of that human being or human organism, including fertilization.
- (B) Nothing in this Section shall affect genuine contraception that acts solely by preventing the creation of a new human being; or human "eggs" or oocytes prior to the beginning of the life of a new human being; or reproductive technology or In Vitro Fertilization (IVF) procedures that respect the right to life of newly created human beings.

STATEMENT OF CIRCULATOR

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 the section 3501.382 of the Revised Code, and that the electors signing this petition did so with the knowledge of the contents of the 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.*)

I further declare under penalty of election falsification in accordance with section 3501.38 of the Revised Code that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signed) \_\_\_\_\_

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

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

F-4

# McTigue & McGinnis LLC

ATTORNEYS AT LAW

545 EAST TOWN STREET  
COLUMBUS, OHIO 43215

TEL: (614) 263-7000 | FAX: (614) 263-7078

DONALD J. MCTIGUE  
MARK A. MCGINNIS  
J. COREY COLOMBO  
MICHAEL P. STINZIANO, Of Counsel

December 27, 2011

Via E-mail

Hon. Mike DeWine  
Ohio Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

**Re: "Ohio Personhood Amendment" Initiative Petition**

Dear Attorney General DeWine:

This firm represents Healthy Families Ohio, Inc., an Ohio 501(c)(4) non-profit corporation. We hereby submit comments challenging the legal sufficiency of the Summary for the "Ohio Personhood Amendment" Initiative Petition that was filed with your office on December 21, 2011. As explained further below, the Petition's Summary is not a "fair and truthful" statement of the proposed constitutional amendment as required by R.C. 3519.01(A). Therefore, the Attorney General should not certify the Summary.

The legal standards that apply to ballot language provide guidance as to the standards that should apply to a petition summary. A voter has the right to know what he or she is being asked to vote on [or sign]. *State ex rel. Burton v. Greater Portsmouth Growth Corp.* (1966), 7 Ohio St.2d 34, 37. The use of language which is in the nature of a persuasive argument in favor of or against the issue is prohibited. *See Beck v. Cincinnati* (1955), 162 Ohio St. 473, 474-75. Ballot [summary] language must fairly and accurately present a statement of the question or issue to be decided in order to assure a free, intelligent and informative vote by the average citizen affected. *See Markus v. Board of Elections* (1970), 22 Ohio St.2d 197.

The Petition's Summary's deficiencies include, but are not limited to, the following:

1. The Petition's Summary does not accurately explain the new definition being proposed for the terms "person" and "men." The Summary states that the proposed Amendment

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would define “person” and “men” to include “every human being at every stage of biological development, including fertilization.” However, the full text of the proposed Amendment states that “person” and “men” will be defined to include “every human being at every stage of biological development of that human being *or human organism*, including fertilization.” (Emphasis added).

The Petition Summary therefore does not accurately represent the text of the Amendment by failing to include “human organism” in the definitions for “person” and “men”. This is a material omission in the Summary. The proposed Amendment treats “human being” and “human organism” as being different – which they are – by listing them separately, but the Summary only references “human being.”

2. Next, the Summary states that the proposed Amendment would newly define the terms “person” and “men” in two separate sections of the Ohio Constitution: Article I, Section 1 and Article 1, Section 16. The Summary adds that the proposed Amendment will not affect “genuine contraception . . . ;” “human ‘eggs’ or oocytes . . . ;” and “reproductive technology or IVF procedures . . . .” In addition to the misleading nature of these so-called “exceptions” (which is discussed further below), the Summary misrepresents the actual text of the Amendment by overstating the reach of these “exceptions.”

The text of the proposed Amendment expressly limits the three “exceptions” to Section 16 of Article I by stating “(B) Nothing *in this Section* [Section 16] shall affect . . . .” [Emphasis added.] Therefore, the “exceptions” do *not* apply to Section 1 of Article I, as the Summary wrongly states. This is a critical flaw in the Summary, as Section 1 and Section 16 deal with entirely different subject matters. Article I, Sec. 16 relates to due process and access to courts, while Article 1, Sec. 1 relates to inalienable rights. Therefore, it is not fair and truthful for the Petition Summary to state that the so-called “exceptions” listed would apply to both Sections of the Constitution that are being newly amended.

3. The Summary is also not fair because it fails to provide would-be signers of the petition with any information regarding the subject matter of Sections 1 and 16 of Article I. It simply states that it the proposed Amendment would define the words “person” and “men” “as those terms are used” in those sections. But, how are voters to know how those words are used in those sections – or even what those sections are about? The Summary provides no context for voters to determine the import of the proposed definition. Furthermore, defining a term “as used” in a given section necessarily limits the definition to that section, and thus is not a change to the term as used throughout the Constitution. For that reason, it is that much more important to know the subject matter of the section that the new definition would be applied to.
4. Further, the petition Summary does nothing to actually explain the meaning of the numbered “exceptions.”

The first “exception” states, “The proposed law would not . . . [a]ffect genuine contraception that acts solely by preventing the creation of a new human being.” But, a

voter could interpret the term “genuine contraception” in several different ways, including to apply to common forms of hormonal birth control, such as “the pill” and/or IUDs. However, because the proposed Amendment would define “person” and “men” as “a human being at every stage of the biological development of that human being or organism, including fertilization,” the so-called “exception” in the proposed Amendment would *not* apply to these forms of hormonal birth control. This is because common forms of hormonal birth control can work in several different ways including by preventing implantation of a fertilized egg, which under the proposed Amendment would be a “person” or “m[a]n.” Thus, without a more accurate explanation of the reach of this exception, and in particular, what the exception would *not* reach, the petition Summary does not “assure a free, intelligent and informative vote by the average citizen affected,” *Markus v. Board of Elections* (1970), 22 Ohio St.2d 197.

The second “exception” in the Petition Summary states, “The proposed law would not . . . [a]ffect human ‘eggs’ or oocytes prior to the beginning of the life of a new human being.” This language is problematic for at least two reasons. First, the average voter does not know what an “oocyte” is. Moreover, because the proposed Amendment does not define when “the beginning of life” is (but rather proposes a new definition for “person” and “men”), and because when “life begins” may be interpreted differently by different voters depending on one’s political, religious, medical, and philosophical viewpoints, the petition Summary, at a minimum, should inform voters that the proposed Amendment does not define “when life begins” and will likely have to be construed by the courts.

The third “exception” in the petition Summary states, “The proposed law would not . . . [a]ffect reproductive technology or IVF procedures that respect the right to life of newly created human beings.” This language is also problematic for several reasons. First, because not all voters are familiar with the acronym “IVF,” the Petition Summary should instead use the terms “in vitro fertilization.” Second, in vitro fertilization almost invariably involves the destruction of some very early embryos. Voters should be made aware of this critical fact in order for them to truly understand the potential limitations of this “exception.” Moreover, the text of the proposed Amendment does not define what it means to “respect the right to life” – language that has different meaning for different people, including couples that choose to undergo in vitro fertilization treatment. Thus, voters should also be made aware of this fact, and that this language will likely have to be construed by the courts.

In conclusion, for each of the deficiencies listed above, the Petition’s Summary is not a “fair and truthful” statement of the Full Text of the Amendment. Again, we would request that the Attorney General not certify the Petition’s Summary as submitted. If you should have any questions, do not hesitate to contact me.

Sincerely,



Donald J. McTigue

MEMORANDUM

TO: The Ohio Ballot Board

FROM: Donald J. McTigue, Esq. 

DATE: January 9, 2012

RE: "Ohio Personhood Amendment" Initiative Petition

This firm represents Healthy Families Ohio, Inc., an Ohio 501(c)(4) non-profit corporation. We hereby submit arguments that the "Ohio Personhood Amendment" Initiative Petition ("Petition"), which Petition's summary language was certified by the Attorney General's Office on December 30, 2011, should be separated into two individual petitions. In short, the Petition contains more than one proposed constitutional amendment, and the Ballot Board should divide the Petition into individual petitions containing only one constitutional amendment each so as to enable the voters to vote on each proposal separately.

BALLOT BOARD STANDARD

As you are aware, the Ohio Ballot Board must determine, pursuant to R.C. 3505.062(A), whether the Petition "contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately." In *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315 (2010), the Ohio Supreme Court stated that

The constitutional mandate that multifarious amendments shall be submitted separately has two great objectives. The first is to prevent imposition upon or deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable. The second is to afford the voters freedom of choice and prevent 'logrolling' or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts.

*Id.* at ¶ 52 (quoting *State ex rel. Wilke v. Taft*, 107 Ohio St.3d 1 (2005), ¶ 28).

The Court in *Brunner* provided further guidance regarding this requirement:

Because this separate-petition requirement is comparable to the separate-vote requirement for legislatively initiated constitutional amendments under Section 1, Article XVI of the Ohio Constitution, our precedent construing the constitutional provision is instructive in construing the statutory requirement. In *State ex*

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*rel. Wilke v. Taft* . . . we set forth the test for determining satisfaction of the separate vote requirement.

[T]he applicable test for determining compliance with the separate-vote requirement of Section 1, Article XVI is that 'a proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single *general* object or purpose.' . . .

*Id.* at ¶¶ 41 and 42.

The rule derived from the antipathy toward the manner and means by which the General Assembly exercised its power to effectuate the purpose of passing special legislation. Special legislation could be assured passage in the General Assembly through this system of logrolling, *i.e.*, the practice of combining distinct legislative proposals that would assuredly fail to gain majority support if presented and voted on separately. By limiting bills enacted by the General Assembly to a single subject, "the one-subject rule strikes at the heart of logrolling by essentially vitiating its product." *In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777, ¶ 31.

- In *State ex rel. Hinkle v. Franklin Cty. Bd. Of Elections* (1991), 62 Ohio St.3d 145, the Court held that a bill mainly addressing the state judicial system, but also containing a provision concerning local option elections, violated the one subject rule.
- In *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, the Court held that provisions of a bill which concerned intentional torts and child actors were completely unrelated to workers' compensation and the employment relationship and thus violated the one subject rule.
- In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 497-98, the Court held that legislation involving matters such as the wearing of seat belts as well as employment discrimination claims made it "apparent that the commonality of purpose or relationship between [the subjects] becomes increasingly attenuated, and the statement of subject necessary to encompass them grows broader and more expansive, until finally any suggestion of unity of subject matter is illusory.

Indeed, the Ohio Supreme Court has expressly declared the rule to be mandatory, rather than directory, meaning that a violation of the rule will result in the invalidation of a legislative enactment. The Supreme Court has been willing to impose such a harsh penalty on enactments of the General Assembly and approved by the Governor even despite concerns over the proper accord due to respective branches of government. Such concerns are not even existent before the Ohio Ballot Board.

A finding by this body that the proposal encompasses multiple subjects does not result in its wholesale invalidation, nor prevent its proponents from seeking to place the issues on the ballot – they simply must do so as separate amendments. Application of the single subject rule is applied by this board early in the process of gaining ballot access, before the considerable time

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and expense of circulating the actual initiative petitions(s). Further, while the concern over the respect due coordinate branches of government is not present, the value which the single-subject rule seeks to protect is heightened given that the Petition before this body seeks to amend the Constitution, rather than enact a statutory law. The Constitution cannot be easily amended. To do so requires a lengthy and expensive process. Where the Supreme Court has articulated that a rule with respect to the enactment of legislation is mandatory subject to the penalty of invalidation, it would follow that the rule be given even greater respect when applied to a proposed amendment to the Ohio Constitution.

Accordingly, the power of the single subject rule would presumably be at its zenith when applied by this board where: (1) there is no concern over separation of powers; (2) an even greater concern over the effect of logrolling when amending the Ohio Constitution; and (3) the need for voters to clearly understand what they are being asked to approve, i.e., amendments to two different sections of the Constitution dealing with two different subject matters.

**THE PETITION PRESENTS TWO VASTLY DIFFERENT PROPOSALS AND THEREFORE  
SHOULD BE SEPARATED**

As an initial matter, the Petition seeks to “backdoor” a major amendment to the Ohio Constitution’s inalienable rights section through an amendment to the redress in courts section. The Petition contains the following language:

Be it resolved by the people of the State of Ohio that Article 1, Section 16, of the Ohio Constitution be adopted and read as follows:

Redress in courts. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

*Insert:* Article 1, Section 16(b). “Person” and “men” defined:

(A) The words “person” in Article 1, Section 16, and “men” in Article 1, Section 1, apply to every human being at every stage of the biological development of that human being or human organism, including fertilization.

(B) Nothing in this Section shall affect genuine contraception that acts solely by preventing the creation of a new human being; or human “eggs” or oocytes prior to the beginning of the life of a new human being; or reproductive technology or In Vitro Fertilization

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(IVF) procedures that respect the right to life of newly created human beings. [Emphasis added].

While the Petition's full text sets forth only the existing text of Article I, Section 16, of the Ohio Constitution, regarding Redress in Courts, it in fact also proposes an express amendment of a completely separate section, Article I, Section 1 of the Ohio Constitution, relating to a completely different subject matter. The petition, however, fails to set forth the existing text of Article I, Section 1, of the Ohio Constitution, which states:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Thus, the Petition seeks to accomplish the amendment of two separate sections of the Ohio Constitution while setting forth the text of only one and referring to the other through the legislative shorthand of cross-reference.

It is misleading, either intentionally or inadvertently, for Petitioners to include the proposed definition for the word "men" in Article I, Section 16, the "redress in courts" section, instead of where the definition belongs, i.e. in Article I, Section 1. In fact, the word "men" does not even appear in Article I, Section 16, yet that is where the Petition places the definition for the term. In fact, the proposed Amendment defines two terms, one of which appears only in Section 1 and the other only in Section 16. Neither section contains both terms. Each term relates to its own section.

Indeed, in addition to the requirement that separate amendments be presented separately, R. C. 3519.01 requires that "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." The clear purpose of this requirement is so that signers of the petition will be able to see exactly what is being changed. The present petition, however, contains only a naked definitional change without any context. Signers can only guess as to exactly what changing the definition of "men" as used in Article I, Section 1 affects. The citizens of this State deserve better than to risk fundamental changes to our most important legal document with far reaching consequences over their daily lives and the lives of their families made solely as a result of an out of context cross-reference to a wholly different part of the constitution.

Second, the proposed amendment asks voters to vote once on amending two sections of the constitution relating to two separate subjects: inalienable rights and redress in courts. "Inalienable rights" and "redress in courts" are two distinctly different legal concepts. The proposed major definitional change to the word "men" in Article I, Section 1 to encompass "every human being at every stage of the biological development of that human being or human organism, including fertilization" would alter the entire concept of the inalienable rights that belong to every Ohioan. Inalienable rights is defined as "Rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights; e.g., freedom of speech or religion, due process, and equal protection of the laws." Black's Law Dictionary, 6<sup>th</sup> Edition, p. 759.

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The Ohio Supreme Court stated that Article I, Section 1, regarding inalienable rights, “is a broad statement limiting the power of our state government to interfere with certain rights of individuals” and “is a statement of fundamental ideals upon which a limited government is created.” *State v. Williams*, 88 Ohio St.3d 513, 521, 523 (2000).

On the other hand, “redress” is defined as “satisfaction for an injury or damages sustained. Damages or equitable relief.” Black’s Law Dictionary, p. 1279. The Ohio Supreme Court has stated that Article I, Section 16, regarding redress in courts, “contains several distinct guaranties.” *Stetter v. R.J. Corman Derailment Services*, 125 Ohio St.3d 280, 287 (2010). “First, legislative enactments may restrict individual rights only ‘by due course of law,’ a guarantee equivalent to the *Due Process Clause of the Fourteenth Amendment to the United States Constitution*.” *Id.* (emphasis in the original). “Additionally, separate concerns are implicated by Section 16’s provisions that this state’s courts shall be open to every person with a right to a remedy for injury to his person, property, or reputation. ‘When the Constitution speaks of remedy and injury to person, property, or reputation, it requires an opportunity granted at a meaningful time and in a reasonable manner.’” *Id.*

R. C. 3519.01(A) requires that “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.” Clearly, the present petition does not do so. The Petition contains two separate and distinct subject matters – inalienable rights and redress in courts – which requires the issues to be voted upon separately by Ohio voters. A voter could be in favor of granting the fundamental ideals of inalienable rights to a human organism as early as fertilization, but not be in favor of opening the courts to all human organisms until such time as they are actually born. Nor can it be said that the Petition shares a common purpose simply because both amendments involve human organisms at every stage of the biological development, including fertilization. If this were the case, then all the amendments in the Constitution share a common purpose simply because, as they are today, they apply to born persons.

There is in fact precedent by this Board holding that when a proposed constitutional amendment in one section affects the scope of provisions in other sections, then more than one amendment is being proposed. On December 5, 2007, the Board voted to separate into three amendments a petition proposing an amendment to the Constitution to authorize a casino in Clinton County, Ohio. The new section proposed to be added to the Constitution also contained language directly affecting the scope of the legislative power of the General Assembly and the regulation of intoxicating liquors by state, both of which are subjects addressed in other sections of the Constitution. The Board voted unanimously that this represented three amendments. The Board so found even without an express cross reference in the proposed amendment to the other sections of the Constitution. A copy of the transcript of that meeting and the proposed casino amendment are attached. If anything, the present proposal is even more egregious. It contains an express cross-reference explicitly amending a second section of the Constitution.

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For the above reasons, we respectfully request that the Ohio Ballot Board rule that the petition proposes two separate amendments to the Constitution and must be separated into two petitions with separate summaries.

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