

Case No. _____

In the
Supreme Court of Ohio

12-0070

HEALTHY FAMILIES OHIO, INC., et al.,
Relators,

v.

OHIO BALLOT BOARD, et al.,

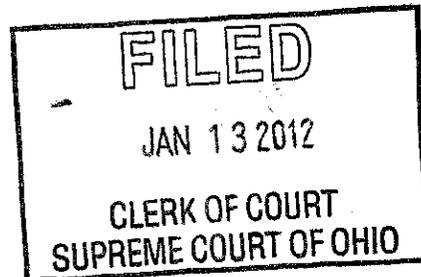
Respondents.

*Original Action Under Sec. 1g, Art. II, Ohio Constitution
Original Action in Prohibition and Mandamus*

**AFFIDAVIT OF RELATOR GARRETT M. DOUGHERTY IN
SUPPORT OF CHALLENGE/COMPLAINT**

Donald J. McTigue (0022849)
Mark A. McGinnis (0076275)
J. Corey Colombo (0072398)
MCTIGUE & MCGINNIS LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
mmcginnis@electionlawgroup.com
ccolombo@electionlawgroup.com

Counsel for Relators



AFFIDAVIT OF GARRETT M. DOUGHERTY

I, GARRETT M. DOUGHERTY, having been duly sworn and cautioned according to law, hereby state based on my personal knowledge as follows:

1. I am a Relator in this action. I am the Treasurer of Healthy Families Ohio, Inc., and a qualified elector of the State of Ohio.
2. Respondent Personhood Ohio seeks through a statewide 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. I have acted with the utmost diligence in bringing the instant action, there has been no unreasonable delay or lapse of time in asserting Relators' rights herein and, further, there is no prejudice to Respondents. This action is being filed well before the 95th day before the November 6, 2012 general election in accordance with Sec. 1g, Art. II, of the Ohio Constitution.
4. Relators lack relief other than an order or judgment from this Court declaring 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.

5. 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.
6. 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.
7. Respondent Personhood Ohio a political action committee that is responsible for the supervision, management, and/or organization of the signature gathering effort which is 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.
8. On December 21, 2011, the Petitioners filed a copy of an initiative petition containing the Proposed Amendment and the proposed

summary with the Attorney General for examination pursuant to Ohio Rev. Code 3519.01.

9. 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.”
10. On December 27, 2011, Healthy Families Ohio transmitted a letter, through counsel, to the Attorney General asserting grounds upon which Petitioners’ summary was defective.
11. 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.

12. On January 4, 2011, Secretary Husted issued notice of the ballot board hearing.
13. On January 9, 2011, the Ohio Ballot Board held hearing, on the record, following notice thereof, whereupon it heard testimony from counsel for Healthy Families Ohio relating to whether or not the Proposed Amendment contains only one constitutional amendment. 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.
14. 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.
15. Based on the Attorney General's determination that the summary is fair and truthful, and 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. Indeed, Petitioners have produced an Initiative Petition and disseminated it on the PersonhoodOhio website.

16. The Proposed Amendment fails to set forth the text of the existing constitutional provision, Article I, Section 1, although it would amend that section.
17. 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.
18. Relators have no adequate remedy in the ordinary course of law.
19. The Petition's 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.”

20. The summary of the Proposed Amendment states that it would 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” 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.

21. 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. 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.

22. Further, the 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.

23. 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.
24. 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.

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."

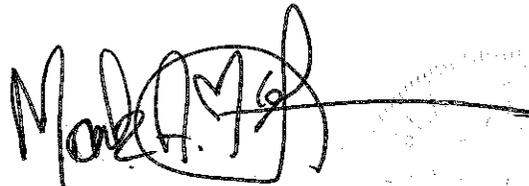
Thus, the Petition seeks to accomplish the amendment of two separate sections of the Ohio Constitution while setting forth the text of only one and referring to the other through the legislative shorthand of cross-reference. In fact, the word "men" does not even appear in Article I, Section 16, yet that 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. Accordingly, the Proposed Amendment should be split into two amendments to enable the voters to vote on each proposal separately.

25. 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.
26. 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.
27. I am competent to testify to the facts alleged in the Complaint and in this affidavit and I have personally read the Complaint and all Exhibits appended thereto filed with the Court in this case and hereby state that the facts alleged therein are true.

FURTHER AFFIANT SAYETH NAUGHT


GARRETT M. DOUGHERTY

Sworn to and subscribed before me this 13TH day of January 2012.



Notary Public

MARK ALAN MCGINNIS
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03