

IN THE SUPREME COURT OF OHIO

STATE EX REL. VOTERS FIRST

545 E. Town St.
Columbus, Ohio 43215,

STATE EX REL. ANN HENKENER

3711 Olentangy Blvd.
Columbus, Ohio 43214,

STATE EX REL. SAMUEL GRESHAM, JR

2491 Waterfall Lane
Columbus, Ohio 43209,

STATE EX REL. ELLIS JACOBS

131 E. Davis St.
Yellow Springs, Ohio 45387,

STATE EX REL. RICHARD GUNTHER

40 W. Stafford Avenue
Worthington, Ohio 43085,

STATE EX REL. DAN TOKAJI

2645 Fairfax Dr.
Columbus, Ohio 43220,

Relators,

-v-

THE OHIO BALLOT BOARD

180 East Broad Street, 16th Floor
Columbus, Ohio 43215

HON. JON HUSTED

OHIO SECRETARY OF STATE

180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Respondents.

CASE NO.

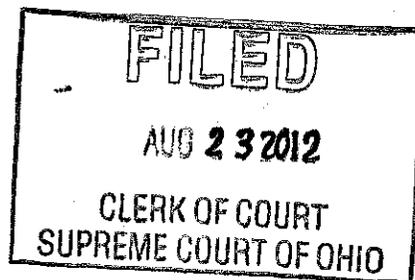
12-1443

**ORIGINAL ACTION PURSUANT TO
ARTICLE XVI, SECTION 1,
OF THE OHIO CONSTITUTION**

**ORIGINAL ACTION
IN MANDAMUS**

**EXPEDITED ELECTION CASE
PURSUANT TO S.CT. PRAC. R. X, § 9**

**ALTERNATIVE AND PEREMPTORY
WRITS REQUESTED**



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

This action is brought in the name of the State of Ohio on the relation of Voters First, Ann Henkener, Samuel Gresham, Jr., Ellis Jacobs, Richard Gunther, and Dan Tokaji (“Relators”), who are petitioning this Court for an order declaring invalid the ballot language prescribed by the Ohio Ballot Board.

NATURE OF THE ACTION AND JURISDICTION

1. This is an original action commenced pursuant to this Court’s original and exclusive jurisdiction under Section 1, Article XVI of the Ohio Constitution, which grants the Court “original, exclusive jurisdiction over all cases challenging the adoption or submission of a proposed constitutional amendment to the electors.”
2. The Court possesses jurisdiction over the subject matter of this action and over Respondents pursuant to Article IV, § 4.02(B) of the Constitution of the State of Ohio and Ohio Revised Code § 2731.02.
3. This is an election proceeding governed by the provisions of Supreme Court Practice Rule X, § 9.
4. Relators seek an order, judgment, and/or writ from this Court declaring invalid the ballot language adopted by the Ohio Ballot Board for a state ballot issue proposing amendments to the Ohio Constitution on legislative redistricting to be submitted to the electors at the November 6, 2012 General Election (“Proposed Amendment”). In addition, Relators seek an order, judgment, and/or writ ordering the Ballot Board to reconvene to adopt

language which properly describes the Proposed Amendment, or, alternatively, to either adopt the ballot language proposed to the Ballot Board by the Petitioners/Relators or for this Court to prescribe language which properly describes the Proposed Amendment.

5. Relators affirmatively allege 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. Specifically, the action has been timely filed in advance of the 64th day before the November 6, 2012 general election in accordance with Sec. 1, Art. XVI, of the Ohio Constitution, *i.e.*, September 3, 2012.
6. Relators lack any other relief than an order or judgment from this Court declaring the prescribed ballot language to be invalid.

PARTIES

7. Relator Voters First is an unincorporated association of individuals responsible for the supervision, management, and/or organization of the signature gathering effort to certify a proposed constitutional amendment to the November 6, 2012 General Election ballot and to support its passage by the electors.
8. Relators Ann Henkener, Samuel Gresham, Jr., Ellis Jacobs, Richard Gunther, and Dan Tokaji are residents and electors of the State of Ohio and are the members of the committee designated to represent the petitioners of the Proposed Amendment pursuant to Ohio Rev. Code 3519.02.

9. Respondent Ohio Ballot Board is the entity required by the Ohio Constitution to prescribe the ballot language for a constitutional amendment proposed to the electors. The Chairman of the Ohio Ballot Board is Secretary of State Jon Husted. The other members of the Ballot Board are: Fred Strahorn, Vice Chair; State Senator Keith Faber; Mark Griffin; and William N. Morgan.
10. Respondent Ohio Secretary of State Jon Husted is the Ohio Secretary of State, the Chief Elections Officer of the State of Ohio. The Secretary of State is a member of the ballot board, has a legal duty to cause the ballot language adopted by the Ohio Ballot Board to be placed upon the ballots to be voted at the election.

ALLEGATIONS SUPPORTING CLAIMS FOR RELIEF

11. On August 6, 2012, Respondent Husted determined that the petitioners seeking to place the Proposed Amendment on the November 6, 2012 General Election ballot had collected enough valid signatures to do so.
12. Sec. 1g, Art. II, of the Ohio Constitution provides, in part:

“The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution.”
13. Sec. 1, Art. XVI, of the Ohio Constitution provides, in part:

“The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall

properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.”

14. Further, Ohio Rev. Code 3505.062(B) sets forth as among the duties of the ballot board to,

“Prescribe the ballot language for constitutional amendments proposed by the general assembly to be printed on the questions and issues ballot, which language shall properly identify the substance of the proposal to be voted upon”

15. On August 8, 2012, Respondent Secretary of State announced that a meeting of the Ohio Ballot Board (“Ballot Board”) had been called for August 15, 2012 for the purpose of considering and certifying ballot language for the Proposed Amendment.
16. On August 15, 2012 the Ballot Board met for the purpose of considering and certifying ballot language for the Proposed Amendment.
17. Relators’ counsel appeared before the Ballot Board and offered proposed ballot language on behalf of the petitioners. Further, Relators’ counsel provided the Ballot Board with a memorandum of law setting forth the legal standards for ballot language as set forth in the Ohio Constitution and by this Court.
18. Counsel for Protect Your Vote, the Committee organized to oppose the Proposed Amendment, also appeared and offered proposed language to the Ballot Board.

19. The Ballot Board considered the language offered by the petitioners, the committee opposing the Proposed Amendment, and language prepared by Respondent Husted's staff, *i.e.*, the Husted Language. Upon motion to adopt the Husted Language, the appointed members of the Ballot Board voted 2-2 and Respondent Husted voted in favor. Accordingly, the Husted Language was adopted ("Ballot Language").
20. The Ballot Language, adopted 3-2 by the Ballot Board, does not properly identify the substance of the proposal to be voted upon and thus is such as to mislead, deceive, or defraud the voters. [See Sec. 1, Art. XVI, Ohio Constitution.] The 211 word Ballot Language for the 3492 word Proposed Amendment is fatally defective through material omissions, inaccuracies, and argumentative language. Accordingly, Relators are entitled to a holding by this Court that the Ballot Language is invalid.
21. With respect to ballot language, this Court has held that "a voter has the right to know what it is he is asked to vote upon." [*State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 (1981); *citing State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St.2d 34, 37 (1966).]
22. The Ballot Language adopted by the Ohio Ballot Board does not inform voters of what they are asked to vote upon. There are several material omissions. Indeed, while the Ballot Language makes multiple, prejudicial, references to funding for the commission that would be established by the Proposed Amendment, the Ballot Language does not contain a single

reference to the name of the commission, *i.e.*, the Ohio Citizens Independent Redistricting Commission. Further, while the Ballot Language provides that the Proposed Amendment would “change the standards and requirements in the Constitution for drawing legislative and congressional districts,” it makes no reference to any of the seven standards that are mandated by the Proposed Amendment, namely community preservation, competitiveness, representational fairness, compactness, contiguousness, population, and compliance with Federal and Ohio law.

23. In addition to failing to provide the name of the proposed Commission, and the factors the Commission would be required to utilize in the redistricting process, the very core of the proposal, the Ballot Language fails to inform the voters of other key elements of the Proposed Amendment. These material omissions include the failure to inform the voters that the Proposed Amendment provides that:

- Redistricting plans could not be adopted with the intent of favoring or disfavoring a political party, incumbent officeholder or candidate;
- Members of the commission must be persons with the relevant skills and a capacity for impartiality.
- Certain persons would not be eligible to serve on the commission, including office holders, candidates, political party officials, paid lobbyists, and certain public employees and family members.

24. Second, this Court has held, “use of language which is ‘in the nature of a persuasive argument in favor of or against an issue * * *’ is prohibited. [*State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 (1981); *citing Beck v. Cincinnati*, 162 Ohio St. 473, 474-75 (1955).] To this point, this Court has recognized that “effective arguments can be made just as easily by what is left unsaid, or implied.” [*State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 520 (1981).]
25. Paragraph 1 of the Ballot Language states that the Proposed Amendment would “remove the authority of elected representatives and grant new authority to appointed officials to establish congressional and state legislative district lines.” This is false in two respects. Nine of the 12 final Commission members are chosen by lot from a pool of qualified candidates who were selected by elected judges of the state Courts of Appeals. Therefore, it is incorrect to refer to the Commissioners as “appointed” officials or describe the process as removing authority from elected representatives. Indeed, under present law, the Ohio Apportionment Board, which sets state legislative districts is not necessarily composed all of elected representatives. Further, the phrasing and placement of this lead off statement is done for argumentative purposes and is such as to mislead, deceive, or defraud the voters.
26. Paragraph 2 of the Ballot Language repeats the false statement of Paragraph 1 that the new Commission is composed of “appointed officials” and adds that

they are appointed from a “limited pool of applicants” to “replace the aforementioned [elected representatives].” This language suffers from the same defects as that in Paragraph 1 and is further prejudicial by referring to a “limited pool” without explaining how the pool is developed and is such as to mislead, deceive, or defraud the voters.

27. Paragraph 5 of the Ballot Language provides that the Proposed Amendment would “mandate the General Assembly to appropriate all funds as determined by the Commission ...” This is both prejudicial and false. In fact, the Proposed Amendment provides that “the general assembly shall make appropriations *necessary to adequately fund* the activities of the commission ...” [Sec. 1(D), Art. XI, Proposed Amendment (emphasis supplied).] There is no “mandate” that the General Assembly “appropriate all funds as determined by the (unnamed) Commission.” The implication that the Proposed Amendment provides the commission with a blank check is patently false and is such as to mislead, deceive, or defraud the voters.

28. Paragraph 5 of the Ballot Language also claims that the General Assembly would be mandated to appropriate funds to compensate “staff, consultants, legal counsel, [and] Commission members.” These four classes of individuals are set forth in the Ballot Language as a numbered sub-list, the only such list contained in the Ballot Language, in order to draw special attention to them. The Proposed Amendment would authorize the Commission to use funds appropriated by the General Assembly to compensate the following

individuals: Commission members; “necessary staff” experts; legal counsel; and the independent auditor. [Sec. 1(D), Art. XI, Proposed Amendment.] The word “consultants” does not appear in the text of the Proposed Amendment and is a much broader class of potential individuals to compensate than “experts” and/or the independent auditor. The implication that the Commission is authorized to make unlimited hires, including individuals who are not experts, is false and is such as to mislead, deceive, or defraud the voters.

29. Further, by setting forth these classes of individuals as a separate, numbered, sub-list to Paragraph 5, the Ballot Board seeks to highlight this one provision of the Proposed Amendment above all other provisions. It is designed to persuade voters against adoption of the Proposed Amendment by visually persuading voters that the Commission would be permitted to spend unlimited state funds (*i.e.*, “all funds”). Indeed, although the Proposed Amendment contains only one provision regarding funding in its 79 paragraphs, the Ballot Board has chosen to discuss funding in 2 of the 5 paragraphs of the Ballot Language. Accordingly, the ballot Language is false and is such as to mislead, deceive, or defraud the voters.

30. Paragraph 3 of the Ballot Language provides that the Proposed Amendment would:

Require new legislative and congressional districts be immediately established by the Commission to replace the most recent districts adopted by elected representatives, which districts shall not be challenged except by court order until the next federal decennial

census and apportionment. In the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission.

The statement “require new legislative and congressional districts be immediately established ... , *which districts shall not be challenged except by court order* until the next federal decennial census and apportionment” is nonsensical and inaccurate. First, the Ballot Language is nonsensical in that it fails to contain a comma after the word “order.” Second, the Ballot Language is inaccurate because: (1) it provides that no challenge could be brought against the first redistricting plan under the proposed Amendment until the next federal decennial census; and (2) it implies that the new districts established immediately following the adoption of the Proposed Amendment would be the only redistricting plan that could be challenged, but, in fact, the Proposed Amendment provides that a legal challenge may be brought to any redistricting plan adopted by the Commission, whether the challenge pertains to the first districts adopted following the passage of the Proposed Amendment or districts adopted in future years. Accordingly, the Ballot Language is false and is such as to mislead, deceive, or defraud the voters.

31. Further, Paragraph 3 of the Ballot Language provides, “in the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission.” This is false. The Proposed Amendment provides that if the

Commission is not able to establish a plan by October 1 of the year prior to the year in which elections are held in the new districts, an action may be initiated in this Court and this Court “shall select from among the plans submitted to or considered by the Commission and shall adopt the plan that most closely meets the requirements of this article and complies with the rules and measures established by the Commission under Section 1(E) and (G) of this Article.” [Sec. 13(C), Art. XI, Proposed Amendment.] The Ballot Language statement that the Supreme Court may select from all plans submitted to the commission without qualifying that the Supreme Court *shall* select the plan which most closely meets the standards contained in the Proposed Amendment renders the Ballot Language false and such as to mislead, deceive, or defraud the voters.

32. The cumulative effect of the defects in the Ballot Language is fatal to the validity of the ballot. [*State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 (1981); *citing State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 19 (1977).]
33. The Ballot Language adopted by Respondent Ballot Board at its August 15, 2012 is invalid.
34. Respondents have a clear legal duty to adopt ballot language consistent with the Ohio Constitution and standards established by this Court.
35. Relators have a clear legal right to ballot language which complies with the Ohio Constitution and standards established by this Court.

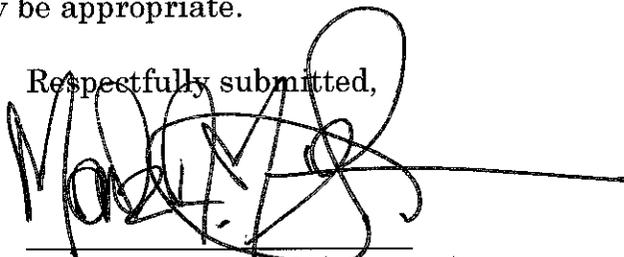
36. Relators lack an adequate remedy in the ordinary course of law.

Prayer for Relief

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

- A. Issue an Order, Judgment, and or Writ of Mandamus finding the Ballot Language adopted by Respondent Ohio Ballot Board at its August 15, 2012 meeting is invalid.
- B. Issue an Order, Judgment, and/or Writ of Mandamus ordering the Ohio Ballot Board to reconvene, forthwith, and adopt ballot language which properly describes the proposed constitutional amendment in order that such may appear on the ballot at the forthcoming general election; or, alternatively, to issue an Order, Judgment, and/or Writ of Mandamus ordering Respondent Secretary of State to cause the ballots to be printed with the Ballot Language proposed by the petitioners; and/or to Issue an Order, Judgment, and/or Writ of Mandamus ordering Respondent Secretary of State to cause the ballots to be printed with ballot language prescribed by this Court which properly describes the proposed constitutional amendment in order that such may appear on the ballot at the forthcoming general election
- C. Grant a peremptory writ of mandamus ordering the relief set forth above after the filing of Answers to the Complaint.
- D. Assess the costs of this action against Respondents;
- E. Award Relators their attorneys' fees and expenses; and
- F. 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
545 East Town Street
Columbus, Ohio 43215

Tel: (614) 263-7000
Fax: (614) 263-7078

Counsel for Relators

AFFIDAVIT

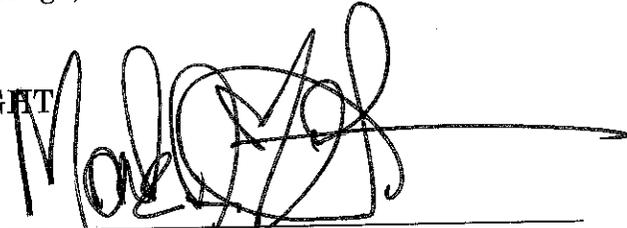
Franklin County

/ss

State of Ohio

I, Mark A. McGinnis, having been duly sworn and cautioned according to law, depose and state that I have read the foregoing Complaint and attached Exhibits, are true based on my personal knowledge, and that I am competent to testify to same.

FURTHER AFFIANT SAYETH NAUGHT



Mark A. McGinnis

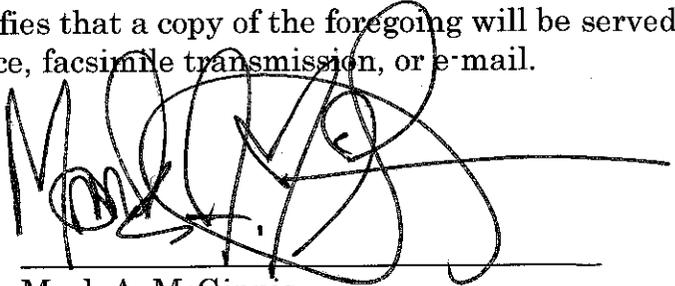
Sworn to and subscribed before me this 23 day of August, 2012.



Notary Public DONALD J. MCTIGUE, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing will be served on the date of filing by personal service, facsimile transmission, or e-mail.

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

Mark A. McGinnis

Exhibit A

Full Text of Proposed
Amendment

Full Text of Proposed Amendment

(Proposed new language is in bold type. Current language that would be repealed is in italicized, non-bold type and inside brackets. Current language that is not changed is in non-italicized, non-bold type.)

Be it Resolved by the People of the State of Ohio that Article XI, Sections 1, 3, 4, 6, 7, 9, 10 and 13 of the Ohio Constitution be amended, Article XI, Sections 8 and 14 of the Ohio Constitution be repealed and Article XI, Section 16 of the Ohio Constitution be adopted as follows:

Article XI, Section 1. Ohio Citizens Independent Redistricting Commission

[Repeal Current Section 1 - The governor, auditor of state, secretary of state, one person chosen by the speaker of the house of representatives and the leader in the senate of the political party of which the speaker is a member, and one person chosen by the legislative leaders in the two houses of the major political party of which the speaker is not a member shall be the persons responsible for the apportionment of this state for members of the general assembly.]

Such persons, or a majority of their number, shall meet and establish in the manner prescribed in this Article the boundaries for each of ninety-nine house of representatives districts and thirty-three senate districts. Such meeting shall convene on a date designated by the governor between August 1 and October 1 in the year one thousand nine hundred seventy-one and every tenth year thereafter. The governor shall give such persons two weeks advance notice of the date, time, and place of such meeting.

The governor shall cause the apportionment to be published no later than October 5 of the year in which it is made, in such manner as provided by law.]

(A) In order to provide for the fair and effective representation of the citizens of Ohio, there is hereby created the Ohio Citizens Independent Redistricting Commission, which shall meet and establish in the manner prescribed in this article the boundaries for each of Ohio's state legislative and congressional districts.

(B) The Commission shall be established upon the approval of this amendment to the Ohio Constitution by the voters of Ohio and again following each federal decennial census.

(C) The Commission shall consist of twelve members, selected as follows:

1. Any Ohio citizen shall be eligible to serve as a member of the Commission, unless disqualified by subparagraph two.
2. The following persons shall not be eligible to serve as members of the Commission:
 - a. Within the ten years preceding the date of application, the person, or a member of his or her immediate family:
 - i. Served as a federal or state elected official;
 - ii. Was a paid employee of the Ohio Legislature, the United States Congress, or the office of a federal or state elected official;
 - iii. Was the director of a state department or agency; or
 - iv. Was a paid lobbyist, as defined under federal or state law.

For purposes of this paragraph, "immediate family" means spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

- b. Within the five years preceding the date of application, the person:

- i. Was a candidate for federal or state office;
 - ii. Was a paid employee or paid consultant of the campaign for a political candidate or for a political committee as defined by federal or state law;
 - iii. Was an official or paid employee of any political party organization; or
 - iv. Made monetary contributions to political campaigns or political parties that exceed a total of \$5,000 during a two year period, which amount shall be adjusted consistent with the consumer price index in future years;
 - c. Any person who has not voted in at least two of the previous three general elections conducted in even numbered years.
3. On or before January 1 of the year that the decennial census is conducted, the Chief Justice of the Supreme Court of Ohio shall select by lot a panel consisting of eight judges of the courts of appeals of Ohio, no more than four of whom may be members of the same political party. This panel of judges shall be responsible for selecting potential members of the Commission. On or before April 1 of the year that the decennial census is conducted, this panel of judges shall appoint an independent auditor who shall assist the judges in determining the eligibility of potential members of the Commission.
 4. Eligible persons may submit applications for membership on the Commission to the Secretary of State by May 1 of the year that the decennial census is conducted. The Secretary of State shall make available an appropriate application form designed to help determine the eligibility and qualifications of applicants and shall publicize the application process. The Secretary of State shall provide the panel of judges with the applications and any other records necessary to determine eligibility of the applicants.
 5. On or before August 1 of the year that the decennial census is conducted, the panel of eight judges described in subparagraph three shall select from the applicants forty-two individuals to serve as potential members of the Commission. The judges, after adopting a selection procedure, shall select applicants who have the relevant skills and abilities, including a capacity for impartiality, and who reflect the diversity of Ohio. These shall include the fourteen most qualified applicants affiliated with each of the two largest political parties, and the fourteen most qualified applicants who have been unaffiliated with either of these political parties during the prior five years. The selection of potential members shall require the affirmative vote of at least five of the eight judges. The two largest political parties shall be determined based on the votes received by the candidates for Governor in the most recent gubernatorial election.
 6. On or before August 15 of the year that the decennial census is conducted, the speaker of the Ohio House of Representatives and the highest ranking member of the House not of the same political party as the speaker may each respectively eliminate up to three of the fourteen potential members affiliated with the largest political party, up to three of the fourteen potential members affiliated with the second largest political party, and up to three of the fourteen potential members not affiliated with either of these parties. This shall result in a final pool of not less than twenty-four potential members of the Commission.

7. From the final pool of potential members, the panel of eight judges, or their designee, shall choose by lot, and in public, three individuals affiliated with each of the two largest political parties and three individuals not affiliated with either of these parties to serve as members of the Commission. On or before October 1 of the year that the decennial census is conducted, these nine members shall meet to select from the final pool of potential members three additional members, which shall include one member affiliated with the largest political party, one member affiliated with the second largest political party, and one member not affiliated with either of these parties. In selecting the final three members, the members of the Commission shall seek a total commission membership that reflects the diversity of Ohio and that has the relevant skills and abilities, including a capacity for impartiality, which will allow the Commission to fulfill its responsibilities. The nine members selected by lot and the three additional members selected by the original nine members shall comprise the full Commission.
 8. Upon the approval of this amendment to Ohio's Constitution, the Chief Justice of the Supreme Court of Ohio shall immediately select by lot a panel consisting of eight judges of the courts of appeals of Ohio, in the manner described in subparagraph three. The remaining time frames set forth in this paragraph shall be adjusted by this panel of judges, as necessary to accomplish the selection of commission members in time for the Commission to establish new districts for use in the next state or federal election.
 9. In the event that Ohio becomes legally required to modify district boundaries that were established by a Commission at any time prior to the next succeeding decennial census, the Commission, as previously established, shall reconvene to establish new district boundaries.
 10. In the event that any member of the Commission is unable to complete his or her service on the Commission, the remaining members of the Commission shall select a new member from the final pool of potential members. The total membership of the Commission shall consist of twelve members, which shall include a total of four members affiliated with the largest political party, four members affiliated with the second largest political party, and four members not affiliated with either of these parties.
 11. No member of the Commission shall be subject to removal by the general assembly or any member of the executive branch.
 12. Members of the Commission shall be ineligible to be elected or appointed to the State Legislature for any districts that were established or modified by that Commission.
- (D) The Commission is authorized to hire necessary staff, experts, and legal counsel and use the services of existing state employees in order to fulfill the Commission's responsibilities. The general assembly shall make appropriations necessary to adequately fund the activities of the Commission including, but not limited to, funds to compensate Commission members; pay for necessary staff, office space, experts, legal counsel and the independent auditor, and purchase necessary supplies and equipment.
- (E) All meetings of the Commission shall be open to the public. The Commission shall adopt rules for its operation and to guide its application of the redistricting factors.

- (F) All records, communications, and draft plans of the Commission, its individual members, or staff that are related to the establishment or possible modification of any Ohio congressional or state legislative district boundaries are public records.
- (G) The Commission shall make available to the public in a timely fashion all information that is available to any member of the Commission and that may be used for preparing or evaluating redistricting plans or maps, including the measures to be used in evaluating community preservation, politically balanced districts, representational fairness, and compactness in accordance with section 7(C) of this article, as well as the consideration to be given to all factors.
- (H) The Commission shall provide a reasonable opportunity for the public to submit proposed redistricting plans, and the Commission shall give full and fair consideration to plans submitted by the public.
- (I) All proposed redistricting plans and maps shall be made available to the public for a reasonable period of time before being approved by the Commission, and a reasonable opportunity shall be provided for the public to testify about proposed plans or maps prior to their being approved.
- (J) The affirmative vote of at least seven members of the Commission shall be required to adopt any plan.
- (K) The Commission shall establish and publish the new district boundaries no later than October 1 of the year prior to the year elections shall be held in the new districts. In the event that the Commission fails to establish district boundaries by this date, an action may be initiated in the Supreme Court of Ohio for the adoption of district boundaries. The Supreme Court shall select from among the plans submitted to or considered by the Commission and shall adopt the plan that most closely meets the requirements of this article and complies with the rules and measures established by the Commission under paragraphs (E) and (G) of this section.

Article XI, Section 3.

The population of each house of representatives district shall be substantially equal to the ratio of representation in the house of representatives; as provided in section 2 of this Article, and in no event shall any house of representatives district contain a population of less than ninety-~~five~~eight per cent nor more than one hundred ~~five~~two per cent of the ratio of representation in the house of representatives, except in those instances where reasonable effort is made to avoid dividing a county in accordance with section 9 of this Article.

Article XI, Section 4.

The population of each senate district shall be substantially equal to the ratio of representation in the senate, as provided in section 2 of this Article, and in no event shall any senate district contain a population of less than ninety-~~five~~eight per cent nor more than one hundred ~~five~~two per cent of the ratio of representation in the senate as determined pursuant to this Article.

Article XI, Section 6.

Upon the approval of this amendment to the Ohio Constitution, new district boundaries shall be established for Ohio's state legislative and congressional districts. The new district boundaries

shall be used in the next regularly scheduled federal and state elections that are held more than one year after the adoption of this amendment. Thereafter, ~~(D)~~district boundaries established by the Ohio Citizens Redistricting Commission pursuant to this Article or by the Ohio Supreme Court pursuant to section 1(K) of this Article shall not be changed until the ensuing federal decennial census and the ensuing apportionment ~~for~~ except as provided in section 13 of this Article, notwithstanding the fact that boundaries of political subdivisions or city wards within the district may be changed during that time. District boundaries shall be created by using the boundaries of political subdivisions and city wards as they exist at the time of the federal decennial census on which the apportionment is based, or such other basis as the general assembly has directed.

Article XI, Section 7

~~[Repeal Current Section 7-- (A) Every house of representatives district shall be compact and composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line. To the extent consistent with the requirements of section 3 of this Article, the boundary lines of districts shall be so drawn as to delineate an area containing one or more whole counties.~~

~~(B) Where the requirements of section 3 of this Article cannot feasibly be attained by forming a district from a whole county or counties, such district shall be formed by combining the areas of governmental units giving preference in the order named to counties, townships, municipalities, and city wards.~~

~~(C) Where the requirements of section 3 of this Article cannot feasibly be attained by combining the areas of governmental units as prescribed in division (B) of this section, only one such unit may be divided between two districts, giving preference in the selection of a unit for division to a township, a city ward, a city, and a village in the order named.~~

~~(D) In making a new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the requirements of section 3 of this Article.]~~

(A) Any plan adopted by the Commission shall comply with all applicable Ohio and federal constitutional provisions and all applicable federal statutory provisions, including, but not limited to, those dealing specifically with the protection of minority voting rights.

(B) Every state legislative and congressional district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line and must be in compliance with all other requirements of this article.

(C) The Commission shall adopt the redistricting plan that, in its judgment, most closely meets the following four factors, without violating paragraphs A and B of this section:

- 1. Community preservation - minimizes the number of governmental units that must be divided between different districts, by combining the areas of whole governmental units giving preference in the order named to counties, municipalities, contiguous townships, and city wards.**
- 2. Competitiveness - maximizes the number of politically balanced districts. A "politically balanced district" is a district where the average political party indexes, determined using actual election results from recent representative statewide elections, does not lean toward one party by more than five percent.**
- 3. Representational fairness - balances the number of districts leaning toward each political party so that the number of districts leaning toward each party closely corresponds to the preferences of the voters of Ohio, as determined using actual election results from recent representative statewide elections.**

4. Compactness - creates districts that are compact.

(D) The Commission shall make publicly available with each proposed redistricting plan a report that identifies the following information for each district: boundaries, population, racial and ethnic composition, compactness measure, governmental units that are divided, and political party indexes. The Commission shall also make publicly available statewide totals of the number of governmental units of each type that are divided, the number of politically balanced districts, and the number of districts that lean toward each political party. The Commission shall use this information in evaluating each plan and shall adopt the plan that most closely meets the requirements of this section.

(E) No plan shall be drawn or adopted with intent to favor or disfavor a political party, incumbent, or potential candidate.

Article XI, Section 8.

[Repeal Current Section 8 - A county having at least one house of representatives ratio of representation shall have as many house of representatives districts wholly within the boundaries of the county as if has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district.]

The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation for the house of representatives determined under section 2 of this Article.]

Article XI, Section 9.

In those instances where the population of a county is not less than ninety-five per cent nor more than one hundred ~~(an)~~ five per cent of the ratio of representation in the house of representatives, reasonable effort shall be made to create a house of representatives district consisting of the whole county.

Article XI, Section 10.

The standards prescribed in sections 3, 7, 8, and 9 of this Article shall govern the establishment of house of representatives districts, which shall be created and numbered in the following order to the extent that such order is consistent with the foregoing standards:

(A) Each county containing population substantially equal to one ratio of representation in the house of representatives, as provided in section 2 of this Article, but in no event less than ninety-five per cent of the ratio nor more than one hundred five per cent of the ratio shall be designated a representative district.

(B) Each county containing population between ninety and ninety-five per cent of the ratio or between one hundred five and one hundred ten per cent of the ratio may be designated a representative district.

[Repeal Current Divisions C and D of Section 10 - (C) Proceeding in succession from the largest to the smallest, each remaining county containing more than one whole ratio of representation shall be divided into house of representatives districts. Any remaining territory within such county containing a fraction of one whole ratio of representation shall be included in one representative district by combining it with adjoining territory outside the county.]

(D) *The remaining territory of the state shall be combined into representative districts.]*

Article XI, Section 13.

[Repeal Current Section 13 - The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this Article. In the event that any section of this Constitution relating to apportionment

or any plan of apportionment made by the persons responsible for apportionment, by a majority of their number, is determined to be invalid by either the supreme court of Ohio, or the supreme court of the United States, then notwithstanding any other provisions of this Constitution, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment in conformity with such provisions of this Constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next regular apportionment in conformity with such provisions of this Constitution as are then valid.

Notwithstanding any provision of this Constitution or any law regarding the residence of senators and representatives, a plan of apportionment made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election.

The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

- A. The Supreme Court of Ohio shall have exclusive, original jurisdiction in all cases arising under this Article.
- B. In the event that the district boundaries for any of Ohio's state legislative or congressional districts are determined to be invalid by either the Supreme Court of Ohio or the federal courts, the Ohio Citizens Redistricting Commission shall establish new boundaries in conformity with this article.
- C. If at any time it becomes necessary for any court to establish any district boundaries, it shall select from among the plans submitted to or considered by the Commission and shall adopt the plan that most closely meets the requirements of this article and complies with the rules and measures established by the Commission under Section 1(E) and (G) of this Article. In the event that a court invalidates any district boundaries established by the Commission and establishes new district boundaries, the Commission shall reconvene in accordance with section 1(C)(9) of this article to establish new boundaries. The boundaries established by the court shall not remain in effect for longer than one election cycle.
- D. Notwithstanding any provision of this Constitution or any law regarding the residence of state senators and representatives, a redistricting plan made pursuant to this Article shall allow thirty days for persons to change residence in order to be eligible for election.

Article XI, Section 14.

[Repeal Current Section 14 - The boundaries of house of representatives districts and senate districts, from which representatives and senators were elected to the 107th general assembly shall be the boundaries of house of representatives and senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.]

Article XI, Section 16.

All sections of this article shall also apply to the establishment or modification of Ohio's congressional districts, except as otherwise required to comply with applicable federal law.

Exhibit B

Ballot Language Adopted by
Ohio Ballot Board

Issue 2

[TITLE HERE]

Proposed Constitutional Amendment

Proposed by Initiative Petition

To add and repeal language in Sections 1, 3, 4, 6, 7, 9 and 13 of Article XI, repeal Sections 8 and 14 of Article XI, and add a new Section 16 to Article XI of the Constitution of the State of Ohio

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

1. Remove the authority of elected representatives and grant new authority to appointed officials to establish congressional and state legislative district lines.
2. Create a state funded commission of appointed officials from a limited pool of applicants to replace the aforementioned. The Commission will consist of 12 members as follows: four affiliated with the largest political party, four affiliated with the second largest political party and four not affiliated with either of the two largest political parties. Affirmative votes of 7 of 12 members are needed to select a plan.
3. Require new legislative and congressional districts be immediately established by the Commission to replace the most recent districts adopted by elected representatives, which districts shall not be challenged except by court order until the next federal decennial census and apportionment. In the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission.
4. Change the standards and requirements in the Constitution for drawing legislative and congressional districts.
5. Mandate the General Assembly to appropriate all funds as determined by the Commission including, but not be limited to, compensating:
 1. Staff
 2. Consultants
 3. Legal counsel
 4. Commission members

If approved, the amendment will be effective thirty days after the election.

	YES	SHALL THE AMENDMENT BE APPROVED?
	NO	

Exhibit C

Ballot Language
Proposed to Ohio Ballot
Board by Petitioners

PROPOSED CONSTITUTIONAL AMENDMENT

To Establish the Ohio Citizens Independent Redistricting Commission

Proposed by Initiative Petition To amend Article XI of the Constitution of the state of Ohio

A majority yes vote is necessary for passage

Under the proposed amendment:

1. The Ohio Citizens Independent Redistricting Commission would be established to draw the boundaries for Ohio's state legislative and congressional districts, once following approval of this amendment and then once every ten years following the federal census. Under current law, a state board determines state legislative districts and the General Assembly determines congressional districts.
2. Redistricting plans could not be adopted with the intent of favoring or disfavoring a political party, incumbent officeholder or candidate.
3. The Ohio Citizens Independent Redistricting Commission would be balanced to not favor any political party and to reflect the diversity of Ohio. It would be composed of 12 citizens of the state: 4 affiliated with the largest political party in the state, 4 affiliated with the second largest political party in the state and 4 who are not affiliated with either political party.
4. Members of the commission must be persons with the relevant skills and a capacity for impartiality.
5. Certain persons would not be eligible to serve on the commission, including office holders, candidates, political party officials, paid lobbyists, and certain public employees and family members.
6. The commission would be required to adopt state and federal redistricting plans that most closely meet the following four factors: community preservation, competitiveness, representational fairness and compactness.
7. Legislative districts must be comprised of contiguous territory and be relatively equal in population and comply with the Ohio and United States Constitutions and federal law.
8. The public could submit proposed redistricting plans to the commission and the commission would be required to give full and fair consideration to such plans.
9. The commission would be required to make relevant data available to the public, make publicly available all proposed plans, allow public comment before adopting a plan, and conduct all its business in meetings open to the public.
10. Any eligible Ohioan could apply to be a commission member. From all applicants, a bipartisan panel of eight Ohio appellate judges would select 42 persons (14 affiliated with

the largest political party, 14 affiliated with the second largest political party and 14 not affiliated with either party) to form three pools. Three persons each may then be removed from each pool by the Speaker of the Ohio House of Representatives and by the leader in the House of the opposite political party. From those remaining, three members would be randomly selected from each pool. These nine members would then select the final three members, one from each of the two major political parties and one not affiliated with either party.

11. The affirmative vote of 7 of the 12 commission members would be required to adopt a redistricting plan. In the event that the commission is not able to agree on a plan by October 1st of the year following the census, an action may be initiated in the Ohio Supreme Court and the court would be required to adopt from among all plans submitted to the commission the plan that most closely meets all of the factors described above.

If approved, the amendment will become effective thirty days after the election.

YES

SHALL THE THE AMENDMENT BE APPROVED?

NO

Exhibit D

Memorandum of Law Regarding Ballot
Language Standards Provided to Ohio Ballot
Board by Petitioners



McTigue & McGinnis LLC
ATTORNEYS AT LAW

TO: Ohio Ballot Board

MEMORANDUM

FROM: McTigue & McGinnis LLC, on behalf of Voters first

DATE: August 15, 2012

RE: *Ballot Language Standards*

The Ohio Constitution, Article II §1(g) states, in part:

The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution.

The Ohio Constitution, Article XVI §1 states, in part:

The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal.

Ballot 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. [*Markus v. Board of Elections* (1970), 22 Ohio St.2d 197, 259 N.E.2d 501, paragraph four of the syllabus].

A voter has the right to know what he or she is being asked to vote on. [*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. [*Beck v. Cincinnati* (1955), 162 Ohio St. 473, 474-75].

See cases analyzing the ballot language using the factors above: *State ex rel. Bailey v. Celebreeze* (1981), 67 Ohio St.2d 516; *State ex rel. Williams v. Brown* (1977), 52 Ohio St.2d 13, 19; *State ex rel. Foreman v. Brown* (1967), 10 Ohio St.2d 139, 150; *State ex rel. Commrs. of the Sinking Fund v. Brown* (1957), 167 Ohio St. 71.

Exhibit E

Proposed Ballot Language Provided
to Ohio Ballot Board by Protect Your
Vote Ohio

To create and finance a new state commission appointed by appellate court judges to draw state and federal legislative maps

Proposed by Initiative Petition to Amend Article XI of the Ohio Constitution by amending Sections 1, 3, 4, 6, 7, 9, 10, and 13, repealing Sections 8 and 14, and adopting Section 16.

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

1. Remove the power of redistricting from the public's elected representatives and create a new appointed state commission selected by appellate court judges, which will be responsible for drawing boundaries of districts for members of the Ohio Senate, Ohio House of Representatives, and Ohio's delegates to the United States House of Representatives.
2. Require the Ohio General Assembly to provide any and all funds necessary to finance operations of the commission, including funds for commissioner and staff salaries, attorneys, an independent auditor, office space, supplies and equipment and fees for expert consultants.
3. Establish eligibility requirements for serving on the commission.
4. Permit commission members to determine their own salaries.
5. Require that four of the commission members be of one of the two major political parties, that four members be of the other major political party, and that four of the members be unaffiliated with either of the two major political parties.
6. Grant to leaders of the General Assembly's political caucuses the power to veto as many as twelve applicants to the commission.
7. Provide that no commission member can be removed by the General Assembly or Executive Branch for any reason.
8. Require the commission to establish new state and federal legislative districts for the 2014 elections, and to do so again in 2020 and every ten years thereafter.
9. Require seven affirmative votes of commission members to establish legislative maps.
10. Establish guidelines for resolution of disputes related to the legislative maps.
11. Replace the requirement that all state legislative and congressional districts be compact with the requirement that they comply with all Ohio and federal constitutional provisions

and all federal statutory provisions, including those dealing with the protection of minority voting rights.

If approved, the amendment will be effective thirty days after the election.

SHALL THE AMENDMENT BE APPROVED?