

IN THE SUPREME COURT OF OHIO

**STATE EX REL. RESPONSIBLE OHIO,
et al.**

Relators,

- v -

THE OHIO BALLOT BOARD, et al.

Respondents.

Case No. 15-1411

**AFFIDAVIT IN SUPPORT OF COMPLAINT
PURSUANT TO S.Ct.Prac.R. 12.02(B)**

A F F I D A V I T

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

FILED
AUG 27 2015
CLERK OF COURT
SUPREME COURT OF OHIO

Now comes Larry H. James and after duly being sworn according to law, deposes and says:

1. That he makes this Affidavit pursuant to S.Ct.Prac.R. 12.02(B) in support of the Complaint filed in the above-captioned matter (the "Complaint"), which is incorporated by reference herein.
2. That he is competent to testify to all matters stated herein.
3. That he is an attorney-at-law in good standing and registered in the State of Ohio.
4. That he maintains his office at the law firm of Crabbe, Brown & James, located at 500 S. Front Street, Suite 1200, Columbus, Ohio 43215.
5. That he has been retained by Responsible Ohio as one of its attorneys with regard to a proposed amendment to the Ohio Constitution to legalize marijuana in the State of Ohio (the "Proposed Amendment").
6. That on March 3, 2015, the Relators herein, seeking to place the Proposed Amendment on the November 3, 2015 General Election ballot, submitted a written petition to approve a summary of the Proposed Amendment to Ohio Attorney General Mike DeWine. This written petition contained (1) a copy of the full text of the Proposed Amendment (Exhibit 1 to the Complaint), and (2) a summary of the Proposed Amendment (Exhibit 2 to the Complaint).

7. That on March 13, 2015, Attorney General DeWine certified that the summary of the Proposed Amendment submitted by the petitioners is a fair and truthful statement of the constitutional amendment (Exhibit 3 to the Complaint).
8. That, in furtherance of his representation of Responsible Ohio, the undersigned was called upon to appear before the Ohio Ballot Board (“Board”) on August 18, 2015. The Board met to decide what language should be placed on ballots to be cast at the November 3, 2015 election with regard to the Proposed Amendment.
9. That the night before the Ballot Board met, Respondent Husted’s staff provided to Relators’ counsel, via email, draft ballot language to be submitted by the Secretary to the Ballot Board, i.e., the Husted Language (Exhibit 4 to the Complaint).
10. That Relators’ counsel, including the undersigned, appeared before the Ballot Board, submitted written objections, offered proposed ballot language on behalf of the petitioners (Exhibits 5 and 6 to the Complaint), and addressed the Board at the meeting, providing public comments and answering questions from Board members. 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.
11. That after receiving public comment, the Ballot Board substantially revised the Husted Language and upon motion to adopt the revised-Husted Language, the members of the Ballot Board voted 3-2 in favor of the revised language. The revised-Husted Language as adopted (“Ballot Language”) is attached to the Complaint as Exhibit 7. Counsel for Relators were not given a copy of Exhibit 7 before it was adopted by the Board.
12. That the Ballot Language, adopted 3-2 by the Ballot Board, does not properly identify the substance of the proposal to be voted upon, and contains false and material omissions, inaccuracies, and argumentative language as detailed in the Complaint.
13. That, in particular, three provisions of the Ballot Language stand out as failing to properly identify the substance of the proposal to be voted upon so as to mislead, deceive, or defraud voters: (1) the provision which falsely represents that the Proposed Amendment will allow persons to purchase and transport over one-half pound of marijuana; (2) the provision which falsely represents that the Proposed Amendment will permit a marijuana operation to be located within 1,000 feet of a house of worship, publicly owned library, public or chartered non-public elementary or secondary school, day-care center, or playground; and (3) the provision which makes the serious and prejudicial omission that any and all marijuana retail stores must first have local approval of the voters before being located in any precinct.

14. That, with respect to the purchase and/or transport of marijuana, the Ballot Language asserts that the Proposed Amendment will “[a]llow each person, 21 years of age or older, to purchase, grow, possess, use, transport and share over one-half pound of marijuana * * * .” (Emphasis added). This language was adopted by the Ballot Board after a recess during which Ballot Board members, but not Relators’ counsel, were provided with revised language.
15. That the Proposed Amendment does not permit persons to purchase or transport over one-half pound of marijuana. On the contrary, the Proposed Amendment would make it lawful for persons 21 years of age or older to purchase, possess, transport, use and share with another person 21 years of age or older one ounce or less of marijuana or its equivalent in marijuana-infused products. The Proposed Amendment would only allow persons 21 years of age or older to grow, cultivate, use, possess and share homegrown marijuana in an amount not to exceed four flowering marijuana plants and eight ounces of usable homegrown marijuana at a given time, but does not allow for that greater amount of homegrown marijuana or plants to be sold or transported.
16. That “transport” was inserted deliberately as evidenced by the comments of Senator Faber, set forth in the transcript of the Ballot Board meeting at page 101, lines 3, 4 and 5 where the Senator says: “. . . but when you look at the definition, you then need to add transport to that as well because it is also in their definition.”
17. That Senator Faber, and the other members of the majority on the Board, knew, or should have known, that there is no definition in the Proposed Amendment for the word “transport” and that the words “purchase” and “transport” are only used in the Proposed Amendment in connection with one ounce or less of marijuana – not over one-half pound or one-half pound of marijuana.
18. That, with respect to the location of marijuana operations, the Proposed Amendment expressly provides that “[n]o marijuana establishment may be within 1,000 feet of a house of worship, a publicly-owned library, playground, an elementary or secondary school, or a state-licensed child day-care center.
19. That the Proposed Amendment makes limited exceptions to this general prohibition, namely, for structures built (a) after January 1, 2015 in the case of a marijuana cultivation, growth, and extraction (MCGE) facility; or (b) after the date of an applicant’s first application for a license in the case of a marijuana product manufacturing (MPM) facility, retail marijuana store, or not-for-profit medical marijuana dispensary.
20. That the Ballot Language misleadingly emphasizes the exceptions over the rule, representing to voters that the Proposed Amendment “[p]ermits marijuana growing, cultivation and extraction facilities, product manufacturing facilities, retail marijuana stores and not-for-profit medical marijuana dispensaries to be within 1,000 feet of a house of worship; a publicly owned library; a public or chartered non-public elementary or secondary school; or a child day-care center, or playground that is built

after January 1, 2015 or after the date the marijuana operation applies for a license to operate.”

21. That, with respect to the establishment of licensed retail marijuana stores, the Proposed Amendment provides, in pertinent part, that “no such license shall be issued to a store unless the electors of the precinct where the store will be located have approved the use of the location for such purpose at a local option election.”
22. That the Ballot Language states that the Proposed Amendment would “[p]ermit retail sale of recreational marijuana at approximately 1,100 locations statewide.” The exclusion of any reference to the prerequisite of a local option election constitutes a material omission that fails to properly identify the substance of the proposal and has the effect of misleading, deceiving, or defrauding voters.
23. That the Ballot Language contains a number of other false and material omissions, inaccuracies, and argumentative language as detailed in the Complaint. As a result, the Ballot Language does not properly identify the substance of the proposal to be voted upon, and is such as to mislead, deceive, or defraud the voters of the State of Ohio.
24. Further affiant sayeth naught.


Larry H. James

Sworn to and subscribed in my presence this 26th day of August, 2015.




Notary Public **CAROL A. STEWART**
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06/28/2019