

Case No. 2015-1411

In the
Supreme Court of Ohio

STATE EX REL. RESPONSIBLEOHIO, et al.,
Relators,

v.

OHIO BALLOT BOARD, et al.,
Respondents.

*Original Action Challenging Ballot Language
Under Art. XVI, Sec. 1 and Ballot Title
and Original Action in Mandamus
Expedited Election Case, S.Ct.Prac.R. 12.08*

RELATORS' MERIT BRIEF

Andy Douglas (0000006)
Larry H. James (0021773)
CRABBE, BROWN & JAMES, LLP
500 South Front Street
Suite 1200
Columbus, Ohio 43215
Phone: (614) 228-5511
Facsimile: (614) 228-4559
ADouglas@CBJLawyers.com
LJames@CBJLawyers.com

Donald J. McTigue (0022849)
Mark A. McGinnis (0076275)
J. Corey Colombo (0072398)
Derek S. Clinger (0092075)
McTIGUE MCGINNIS & COLOMBO LLC

Zachary P. Keller (0086930)
Jordan S. Berman (0093075)
Ryan L. Richardson (0090382)
OHIO ATTORNEY GENERAL MIKE DEWINE
30 E. Broad St., 16th Floor
Columbus, Ohio 43215
Phone: (614) 466-2872
Facsimile: (614) 728-7592
zachery.keller@ohioattorneygeneral.gov
jordan.berman@ohioattorneygeneral.gov
ryan.richardson@ohioattorneygeneral.gov

*Counsel for Respondents Ohio Ballot Board
and Ohio Secretary of State Jon Husted*

545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
mmcginnis@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

Counsel for Relators

TABLE OF CONTENTS

I. STATEMENT OF FACTS	1
II. LAW AND ARGUMENT	3
A. THE BALLOT LANGUAGE.....	3
1. THE LEGAL STANDARD FOR BALLOT LANGUAGE CHALLENGES.....	3
2. IN SEVERAL INSTANCES, THE BALLOT LANGUAGE ADOPTED BY THE BALLOT BOARD IS WHOLLY INACCURATE ABOUT THE CONTENTS OF THE PROPOSED AMENDMENT.....	10
a. THE AMOUNT OF MARIJUANA THAT CAN BE PURCHASED AND TRANSPORTED.....	10
b. THE 1,000 FOOT LIMITATION.....	15
c. MARIJUANA GROWTH, CULTIVATION, AND EXTRACTION FACILITIES.....	17
3. THE BALLOT LANGUAGE HAS NUMEROUS MATERIAL OMISSIONS, DEPRIVING VOTERS OF CORE COMPONENTS OF WHAT THEY ARE BEING ASKED TO VOTE UPON.....	21
a. LOCAL OPTION ELECTION AND LICENSING OF STORES.....	21
b. MEDICAL MARIJUANA.....	23
c. THE NUMBER OF MARIJUANA RETAIL STORES.....	26
d. ZONING LAWS.....	27
e. SPECIAL TAX RATES.....	28
f. REVENUES FROM THE SPECIAL TAXES.....	29
g. MARIJUANA RESEARCH FACILITIES.....	31
4. THE BALLOT LANGUAGE ADOPTED BY THE BALLOT BOARD CONTAINS PREJUDICIAL LANGUAGE.....	32
a. POWER OF THE GENERAL ASSEMBLY.....	33
b. REGULATORY AUTHORITY.....	34
c. “RECREATIONAL”.....	37
d. “ENDOW”.....	38
5. THE CUMULATIVE EFFECT.....	38
B. THE BALLOT TITLE	39
1. THE LEGAL STANDARD FOR BALLOT TITLES.....	39
2. THE BALLOT TITLE IS MYOPICALLY WRONG.....	40

3. THE BALLOT TITLE CONTAINS WHOLLY INACCURATE INFORMATION ABOUT THE PROPOSED AMENDMENT.....	41
a. THERE IS NO MONOPOLY ON COMMERCIAL GROWTH/PRODUCTION OF MARIJUANA.....	42
b. THERE IS NO MONOPOLY ON MARIJUANA PRODUCT MANUFACTURING.....	43
c. THERE IS NO MONOPOLY ON THE COMMERCIAL SALE OF MARIJUANA.....	43
d. THERE IS NO MONOPOLY ON THE SALE OF COMMERCIAL MEDICAL MARIJUANA.....	44
e. THERE IS NOTHING IN THE PROPOSED AMENDMENT THAT WOULD ALLOW THE PRODUCERS OR SUPPLIERS OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS TO ACT JOINTLY TO SET PRICE AND OUTPUT.....	44
4. THE BALLOT TITLE CREATES PREJUDICE AGAINST THE PROPOSED AMENDMENT.....	44
5. THE BALLOT TITLE VIOLATES VOTERS' FIRST AMENDMENT RIGHTS.....	45
C. MANDAMUS	46
D. RESPONDENTS' LACHES DEFENSE	46
III. CONCLUSION	48
CERTIFICATE OF SERVICE	50
APPENDIX	
Sec. 1g, Art. II, Ohio Constitution	Appendix 3
Sec. 1, Art. XVI, Ohio Constitution	Appendix 5
Ohio Rev. Code 3501.05	Appendix 7
Ohio Rev. Code 3519.02	Appendix 13
Ohio Rev. Code 3519.21	Appendix 14

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Alexander v. Toledo</i> , 168 Ohio St. 495, 156 N.E.2d 315 (1959)	7
<i>Beck v. Cincinnati</i> , 162 Ohio St. 473, 124 N.E.2d 120 (1955)	6, 7, 9, 10
<i>Jurcisin v. Cuyahoga County Bd. of Elections</i> , 35 Ohio St. 3d 137, 519 N.E.2d 347 (1988)	40
<i>Markus v. Bd of Elections</i> , 22 Ohio St. 2d 197 (1970)	8, 9
<i>Schnoerr v. Miller, Clerk</i> , 2 Ohio St.2d 121, 206 N.E.2d 902 (1965)	4
<i>State ex re. Bailey v. Celebrezze</i> , 67 Ohio St.2d 516, 426 N.E.2d 493 (1981)	6, 7, 32, 38, 40
<i>State ex rel. Cincinnati for Pension Reform v. Hamilton County Bd. of Elections</i> , 137 Ohio St.3d 45, 2013-Ohio-4489.....	21, 26, 32, 38, 46
<i>State, ex rel. Commr. of Sinking Fund, v. Brown</i> , 167 Ohio St. 71, 146 N.E.2d 287 (1957)	7
<i>State ex rel. Minus v. Brown</i> , 30 Ohio St.2d 75, 79, 283 N.E.2d 131 (1972)	9, 21
<i>State ex rel Voters First v. Ohio Ballot Bd.</i> , 133 Ohio St.3d 257, 2012-Ohio-4149, 978 N.E.2d 119.....	4, 21, 24, 32, 46, 47
<i>Suture Exp., Inc. v. Cardinal Health 200, LLC</i> , 963 F. Supp. 2d 1212 (D. Kan. 2013)	41
STATUTES/OTHER	PAGE(S)
Sec. 1g, Art. II, Ohio Constitution	5
Sec. 1, Art. XVI, Ohio Constitution	<i>passim</i>
Ohio Rev. Code 3501.05	39

Ohio Rev. Code 3519.02	1, 2
Ohio Rev. Code 3519.21	39
Phillip E. Areeda & Herbert Hovenkamp, <i>Antitrust Law</i> (3d ed. 2007)	41

I. STATEMENT OF FACTS

“The ballot board majority had an obligation to voters to put aside their views and ensure that the language met the test of fairness and accuracy. The final language indicates that they fell short of the standard.”

–Akron Beacon Journal Editorial Board, August 21, 2015

Relator ResponsibleOhio is an unincorporated association of individuals responsible for the supervision, management and/or organization of the signature gathering effort to submit a proposed constitutional amendment to the November 3, 2015 General Election ballot, proposing the legalization of the use of medical marijuana and the use of marijuana and marijuana-infused products for personal use by individuals 21 years of age or older (“Proposed Amendment”), and to support its passage by the electors. (Complaint ¶ 7.) Relators Taylor Deutschle, Barbara Gould, Robert J. Letourneau, Patrick T. McHenry, and Rosemary Robinson 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 the Ohio Rev. Code 3519.02. (Complaint ¶ 8.)

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: Ohio Senate President Keith Faber; State Representative Kathleen Clyde; former State Senator Nina Turner; and William N. Morgan. (Complaint ¶ 9.) 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 and 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 and the duty to properly create a Ballot Title that is in keeping with the Proposed Amendment. (Complaint ¶ 10.)

On March 3, 2015, petitioners, 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 containing the signatures of 3,164 electors. (Complaint ¶ 11.) This written petition contained (1) a copy of the full text of the Proposed Amendment (Relators' Exhibit 1), and (2) a summary of the Proposed Amendment (Relators' Exhibit 2). (Complaint ¶ 11.) On March 13, 2015, pursuant to Ohio Rev. Code 3519.01(A), 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. (Complaint ¶ 12; Relators' Exhibit 3.)

On August 12, 2015, Respondent Husted certified that the petitioners had collected 320,267 valid signatures and that the petitioners had met the constitutional and legal requirements to place the issue on the November 3, 2015 General Election ballot. (Complaint ¶ 13.)

On August 13, 2015, Respondent Secretary of State announced that a meeting of the Ohio Ballot Board ("Ballot Board") had been called for August 18, 2015 for the purpose of considering and certifying ballot language for the Proposed Amendment. (Complaint ¶ 16.) The night before the Ballot Board met, Respondent Husted's staff provided, via email, Relators' counsel with draft ballot language to be submitted by

the Secretary to the Ballot Board, *i.e.*, the Husted Language. (Complaint ¶ 17; Relators' Exhibit 4.)

On August 18, 2015, the Ballot Board met for the purpose of considering and certifying the ballot language for the Proposed Amendment. (Complaint ¶ 18.) Relators' counsel appeared before the Ballot Board and submitted written objections, offered proposed ballot language on behalf of the petitioners, and addressed the Board at the meeting providing public comments and answering questions from Board members. (Complaint ¶ 19; Relators' Exhibits 5 and 6.) 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. (*Id.*)

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 ("Ballot Language"). (Complaint ¶ 20; Relators' Exhibit 7.) Counsel for Relators were not given a copy of the Ballot Language before it was adopted by the Board. (Relators' Exhibit 8.)

II. LAW AND ARGUMENT

"But if thought corrupts language, language can also corrupt thought."
-George Orwell, 1946.

A. The Ballot Language

1. The Legal Standard For Ballot Language Challenges

Although a voter will not be able to discern such from the ballot language approved by Respondents, the Proposed Amendment to the Ohio Constitution that the voters are being asked to vote upon represents a dramatic change in Ohio law, a historic change to the State's criminal enforcement policies with ramifications extending throughout the entire country. The proposal being submitted to the voters by more than 320,000 qualified electors makes detailed proposals governing the use and production of medical marijuana and marijuana. Yet, no one reading the approved Ballot Language would know or be able to consider the extent of the changes being proposed.

Where fundamental law is being made, as in the case of the proposed constitutional amendment before this Court, not by representatives of the people, but by the voters directly, it is imperative that the voters be provided with ballot language that adequately informs them of what they are being asked to vote upon. Indeed, this is more than an aspiration – this is the minimum standard. As this Court observed:

In the larger community, in many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot.

(State ex rel. Voters First v. Ohio Ballot Bd., 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶29, quoting Schnoerr v. Miller, Clerk, 2 Ohio St.2d 121, 125, 206 N.E.2d 902 [1965].) Reasonable people may have differences of opinion regarding the Proposed Amendment. Indeed, two members of the Ballot Board have spoken publicly of their strong opposition to it. In fact, Respondent Husted has publicly referred to

the Proposed Amendment as offensive and the worst idea he has ever heard, and has promised to “vigorously” ask Ohio voters to defeat it. (Borchardt, *Republican Officials Oppose Marijuana Legalization, Auditor Dave Yost Quips Constitution Could Allow Monopoly on ‘Whorehouses’ If Voters Approve*, Cleveland Plain Dealer [Jan. 29, 2015].) A second member of the Ballot Board, Senator Faber, similarly described the Proposed Amendment as a “wacky idea,” and told Ohioans to be “wary” of the proposal. (Grieshop, *Legalization of Pot May Be on November Ballot*, The Daily Standard [Mar. 27, 2015].) But any such opposition to the Proposed Amendment by Ballot Board members cannot be permitted to corrupt the language, either through the omission of that which is material or the use of inaccurate or prejudicial terminology or emphasis so as to create prejudice. To hold otherwise is to permit the Ballot Board to potentially corrupt the ultimate outcome of the expression of the people’s will.

The operative claim herein is that the Ballot Language, adopted 3-2 by the Ballot Board, does not properly or fairly identify the substance of the proposal to be voted upon and thus is such as to mislead, deceive, or defraud the voters. (Complaint ¶ 21; *see, also*, Sec 1. Art. XVI, Ohio Constitution.) The Ballot Language 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.

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.

Sec. 1, Art. XVI, of the Ohio Constitution provides, in part:

The ballot language shall properly identify the substance of the proposal to be voted upon. . . .

. . . The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Where the ballot board fails to prescribe language that properly identifies the substances of the proposal to be voted upon, the Ohio Constitution provides for original jurisdiction in this Court and sets forth the standard for the invalidation of such language. (Sec. 1, Art. XVI, Ohio Constitution.)

In cases arising under Sec. 1, Art. XVI, of the Ohio Constitution, this Court has not applied an abuse of discretion standard even where it has accorded relief in mandamus. (*See, e.g., State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 426 N.E.2d 493 [1981].) Rather, this Court has formulated the following standard for testing whether the ballot language properly describes the proposed amendment:

Because of the relative uniqueness of each case and the necessarily subjective nature of any synopsis of a given statute or constitutional amendment, it is difficult to establish firm criteria against which the decisions of the ballot board may be measured. Nevertheless, such criteria do exist and it is appropriate to state that the following are generally applicable to cases of this nature. **First, a voter has the right to know what it is he is being asked to vote upon.** *State, ex rel. Burton, v. Greater Portsmouth Growth Corp.* (1966), 7 Ohio St. 2d 34, 37. **Second, 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, 474-475. **And, third, "the determinative issue * * * is whether the cumulative effect of these**

technical defects [in ballot language] is harmless or fatal to the validity of the ballot." *State, ex rel. Williams, v. Brown* (1977), 52 Ohio St. 2d 13, 19; *State, ex rel. Commrs. of the Sinking Fund, v. Brown* (1957), 167 Ohio St. 71.

(*State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 [1981].)

Ballot language describing a constitutional amendment must be fair, honest, clear and complete and contain the essential and salient features of the amendment. Particularly, nothing printed on or omitted from the officially certified, and to the voter, therefore, presumably accurate, ballot should mislead the voter. (Compare *Beck v. Cincinnati*, 162 Ohio St. 473, 124 N.E.2d 120 [1955]; followed in *Alexander v. Toledo* [1959], 168 Ohio St. 495, 156 N.E.2d 315; *State, ex rel. Commrs. Of Sinking Fund, v. Brown, Secy. of State* [1957], 167 Ohio St. 71 [Taft, J., concurring, 75 and 76; Herbert, J., dissenting, 78 to 80] 146 N.E.2d 287.) That text will often provide the voter with his only chance to obtain knowledge of the proposal. (*State, ex rel. Commr. of Sinking Fund, v. Brown*, 167 Ohio St. 71, 80, 146 N.E.2d 287 [1957] [Herbert, J., dissenting].)

Ballot language need not restate the entire proposal. Indeed, the summary of the Proposed Amendment contained on the face of the Initiative Petition which was approved as a "fair and truthful summary" of the proposal by the Attorney General, summarized the proposal into 28 points. (See, Complaint ¶¶11-12; Exhibit 2.) A summary of the salient points appropriate to appear on the ballot could be even less; for example, Section 12(A) of the Proposed Amendment contains a shorter summary of the Proposed Amendment. (See, Complaint ¶96; Proposed Amendment, Section 12(A).) Indeed, it is not how many words or points are used to summarize the proposal

that is determinative of the validity of the ballot language; it is whether the words used, and those omitted, correctly and adequately inform the voter of the material provisions of the Proposed Amendment.

The issue before this court is whether the proposed ballot language “is such as to mislead, deceive, or defraud the voters.” (Sec. 1, Art. XVI, Ohio Constitution.) In order to pass constitutional muster, “[t]he text of a ballot statement * * * must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected.” (*Markus v. Bd. of Elections*, 22 Ohio St. 2d 197, paragraph four of the syllabus [1970].)

In *Markus*, local ballot language concerning a proposed zoning change merely asked “shall the following described premises be amended from residential to business and commercial” without describing the fact that the proposed change would only affect the part of the property that was not already zoned as commercial. (*Markus v. Bd. of Elections*, 22 Ohio St. 2d 197, 202 [1970].) In holding the condensed text on the ballot to be insufficient, ambiguous and misleading to the average citizen who might be affected thereby, the trial judge stated:

The ballot must be complete enough to convey an intelligent idea of the scope and import of the amendment. It ought not to be clouded by undue detail as not to be readily understandable. It ought to be free from any misleading tendency, whether of amplification, or omission. It must in every particular be fair to the voter to the end that intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot. * * * The ballot should be in proper form so that the voter may have at hand some means for making up his mind whether to approve or disapprove the issue.

(*Markus v. Bd. of Elections*, 22 Ohio St. 2d 197, 202-03 [1970].) In affirming that decision, this Court found that the ballot language:

is crucial to the integrity of the constitutional safeguard of [the proposal]. It is only from the ballot statement that the ultimate deciders of the question can arrive at an efficacious and intelligent expression of opinion. The ballot 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. Bd. of Elections*, 22 Ohio St. 2d 197, 203 [1970].)

In reviewing ballot language concerning a proposed constitutional amendment, this Court observed “this court can only discern the meaning of the proposed amendment from the *language actually used*.” (*State ex rel. Minus v. Brown*, 30 Ohio St.2d 75, 79, 283 N.E.2d 131 (1972) [emphasis in original].) Further, “the basic premise of R.C. 3505.06 is that the electorate have the right to know what it is that they are being asked to vote upon.” (*Id.* [citations omitted].) “R.C. 3505.06 serves to inform and protect the voter and presupposes a condensed text which is fair, honest, clear and complete, and from which no essential part of the proposed amendment is omitted.” (*Id.* [emphasis added].)

Even statements contained in ballot language which may be factually accurate can be superfluous or worded in a manner so persuasive as to invalidate the language. In *Beck*, this Court upheld a post-election invalidation of a tax levy vote in the City of Cincinnati where the ballot language provided that if the levy passes “there will be no city income tax in 1955 or 1956.” Though the statement was perhaps factually accurate, the Court expressed concern that the ballot would include statements that are essentially “dicta, in the nature of a persuasive argument in favor of or against

the issue.” (*Beck v. City of Cincinnati*, 162 Ohio St. 473, 474-75, 124 N.E.2d 120 (1955) [citing trial court decision].) “If argumentation, promises, misrepresentations or coercive statements should be permitted on the face of the ballot, one could not predict the limits of such practice and the confusion which may ensue.” (*Id.*)

2. In Several Instances, The Ballot Language Adopted By The Ballot Board Is Wholly Inaccurate About The Contents Of The Proposed Amendment

There are many deficiencies in the language passed by the Ballot Board. Many of these are set forth *infra* and alleged as separate violations of the constitutional mandate to be adhered to by the Ballot Board.

a. The Amount Of Marijuana That Can Be Purchased And Transported

A fundamental precept of the proposed marijuana legalization amendment, which the language of the Proposed Amendment makes crystal clear, is that individuals, age 21 years or older, would be able to legally purchase and transport marijuana in amounts of one ounce or less. However, Respondents egregiously – and seemingly intentionally – drafted incorrect ballot language that misleads, deceives, and defrauds voters as to the amount of marijuana that can be legally purchased and transported under the Proposed Amendment. The text of the Ballot Language and the actual text of the Proposed Amendment provide:

<u>Ballot Language</u>	<u>Amendment</u>	<u>Amendment</u>
<p>The proposed amendment would:</p> <p>Allow each person, 21 years of age or older, to purchase, grow, possess, use, transport and share over one-half pound of marijuana</p> <p>(Exhibit 7 [emphasis added].)</p>	<p>It is 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. . .</p> <p>(Proposed Amendment, Section 12(D) [emphasis added].)</p>	<p>It is lawful for persons 21 years of age or older to grow, cultivate, use, possess, and share with another person 21 years of age or older homegrown marijuana in an amount not to exceed four flowering marijuana plants and eight ounces of usable homegrown marijuana at a given time</p> <p>(Proposed Amendment, Section 12(D) [emphasis added].)</p>

Pursuant to the actual language of the Proposed Amendment, it would only be lawful to purchase and/or transport one ounce or less of marijuana, and implicit therein is that it is unlawful to purchase and/or transport more than one ounce of marijuana. Yet, the Ballot Language incorrectly and intentionally states that a person 21 years of age or older could purchase and/or transport “over one-half pound” of marijuana.

The history of the Ballot Language demonstrates that these egregious inaccuracies were intentional. The initial language drafted by Respondent’s Husted staff and first considered at the August 18, 2015 Ballot Board meeting stated that the Proposed Amendment would:

Allow each person over the age of 21 to purchase, grow, possess, and share over one-half pound of marijuana” (Emphasis added) (Exhibit 4.)

Although this language did not yet include the word “transport,” it did incorrectly state that a person could purchase “over one-half pound” of marijuana. To place the word “purchase” in Respondent Husted’s original submission to the Ballot Board was clearly intentional and fraudulent as no place in the actual language of the Proposed Amendment is there any language that supports the notion that any more than a single ounce of marijuana can be purchased by the designated person or persons.

After extended comments by legal counsel for the Petitioners pointing out this glaring inaccuracy to the Ballot Board members,¹ the Secretary of State/Board Chair then declared a 15-minute recess. (Complaint ¶ 33; Page 99, lines 8-10 of Exhibit 9.) Upon conclusion of the recess, the Chair of the Board then brought the Board back to order. (Complaint ¶ 34; Page 99, lines 12 and 13 of Exhibit 9.) The Chair then immediately called on Senator Faber (Ballot Board member) “to review some revisions to the initial petition language that was being – ballot language that was being considered.” (Complaint ¶ 35; Page 99, lines 14, 15 and 16 of Exhibit 9.) Senator Faber then said:

“I would move the amendments to the Secretary’s proposed constitutional amendment language, and I’ll go through them in turn.

¹ See, Transcript, Page 61, Lines 12-23 (“The way the language currently reads is this: Allow a person over the age of 21 to purchase, grow, possess, and share over one half pound of marijuana, okay. That is incorrect because the purchasing of marijuana can only be done at a marijuana retail store. And the amendment specifically limits that to one ounce. One ounce not half a pound. And this language attempts to basically kind of scare some people, some voters into thinking that people can now go out and buy a half pound of marijuana. That’s not what the amendment does” [emphasis added.]; Transcript, Page 105-106, Lines 22 to 2 (“All purchasing under this amendment by its expressed terms has to be done at a retail store which is the one ounce. So this problem has not been fixed because this says to the voter I can go and purchase a half pound of marijuana, and that’s just not true”); Written Objections, attached as Exhibit 10, Paragraph 4 (“The draft conflates the purchase of marijuana at retail stores with home grown marijuana to create a distortion as to the limitation on the amount of marijuana. The amendment specifically limits the purchase of marijuana at retail stores to one ounce, not ‘over one-half pound.’” [emphasis added]).

They are in front of the members.” (Emphasis added.) (Complaint ¶ 36; Page 99, lines 19-22 of Exhibit 9.)

Counsel for Relators were not provided with a copy of the proposed revisions until after the Ballot Board meeting. (Complaint ¶ 36; Exhibit 8.) The amended proposal was subsequently adopted as the Ballot Language. Bullet Point 4 of the Ballot Language provides, in pertinent part:

Allow each person, 21 years of age or older, to purchase, grow, possess, use, transport and share over one-half pound of marijuana

(Exhibit 7 [emphasis added].)

Accordingly, the blatant inaccuracy in Exhibit 4 (one-half pound) was exacerbated by including, in Exhibit 7, the word “transport”. Any fair-minded reader cannot lay the pertinent parts of Exhibits 1 and 7 side-by-side and arrive at the gross inaccuracies found in Exhibit 7, the adopted ballot language. This could not have occurred through mistake, inadvertence, or accident.

The Ballot Language intentionally conflates and distorts the Proposed Amendment’s distinct provisions regarding the purchase/transportation of marijuana from retail stores with the provisions allowing for homegrown marijuana to create a distortion as to the limitation on the amount of marijuana that could legally be purchased and transported. No place in the Proposed Amendment do the words “transport” and/or “purchase” appear in connection with homegrown marijuana. The actual language in the Amendment regarding homegrown marijuana consciously leaves out the words “purchase” and “transport.” The Proposed Amendment provides

only for the “transport” and/or “purchase”² of one ounce or less of marijuana at licensed retail stores. Respondents misleadingly combined the one-ounce limitation on the purchase and transportation of marijuana from retail stores with the eight-ounce limitation on homegrown marijuana to falsely state in the Ballot Language that individuals will be able to purchase and transport “over one-half pound” of marijuana.³

The Secretary and the majority of the Ballot Board intentionally seek to deceive the voters by falsely portraying that the Proposed Amendment permits persons to purchase and transport “over one-half pound of marijuana” when the exact opposite is true. Given the clear wording of the Proposed Amendment, the words “over one-half pound of marijuana,” “transport,” and “purchase” were deliberately connected by the majority of the Ballot Board in order to mislead voters and provide “cover” for any opponent(s) to publish by way of written material, radio or television broadcasts that any person, 21 or over, would be able to legally purchase and then drive around with “over one-half pound of marijuana” in their automobile as though it was a rolling dispensary or store selling marijuana.

That this was deliberately done is further supported by the comments of Senator Faber during the August 18, 2015 Ballot Board hearing, when he said:

“ . . . but when you look at the definition, you then need to add transport to that as well because it also in their definition.”

² The Ballot Language’s use of “purchase over one-half pound of marijuana” also implies the right to legally “sell” over one-half pound of marijuana. This, too, is false as the Proposed Amendment is clear that a licensed Marijuana Retail Store can sell only up to one-ounce to an individual 21 years of age or older.

³ Not only is the combination a distortion of the Amendment’s provisions, but by combining the provisions, the Ballot Board majority is able to claim that the Amount is “over” half a pound – an open-ended amount that deceptively suggests that there are no limits at all.

(See, Transcript, Page 101, Lines 3-5.)

The Senator, and the other members of the majority on the Board, knew, or should have known, that the word “transport” is 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.⁴

The use of the words “transport” and “purchase” in connection with the phrase “over one-half a pound of marijuana” is a deliberate attempt to mislead, deceive, or defraud the voters. Average voters reading the Ballot Language would be led to incorrectly believe that any person 21 years of age or older could “purchase” and “transport” “over one-half pound” of marijuana which is flat out false. Accordingly, the Ballot Board’s language is invalid and all of the language proposed by the Ballot Board should be stricken.

b. The 1,000 Foot Limitation

“The ballot board majority exploited a gap in the proposal. It extended the logic to an extreme and inverted what ResponsibleOhio intends.”

-Akron Beacon Journal Editorial Board, August 21, 2015

The second glaring error in the Ballot Language is that it inverts a prohibition on the location of marijuana establishments within 1,000 feet of houses of worship, libraries, schools, day-care centers, and playgrounds into an authorization. Bullet Point 5 of the Ballot Language states that the Proposed Amendment would:

Permits [sic] 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

⁴ It is unclear what “definition” Senator Faber is referring to.

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.

(Exhibit 7 [emphasis added].)

The actual language of the Proposed Amendment provides:

(J) General Provisions and Specific Limitations

- 1) No marijuana establishment shall be located within 1,000 feet of the primary building structure used for any of the following: a house of worship exempt from taxation under the revised code; a publicly-owned library; a public or chartered non-public elementary or secondary school; or a state licensed child day-care center, or within 1,000 feet of any public playground or playground adjacent to any of the foregoing primary building structures, so long as such house of worship, library, playground, school or day-care center was in existence within the 1,000-foot zone on or before January 1, 2015 in the case of a MGCE facility or the date of an applicant's first application for a license in the case of a MPM facility, retail marijuana store, or not-for-profit medical marijuana dispensary.

(See, Complaint ¶ 45; Proposed Amendment, Section 12(A) & 12(J)(1).)

The language in the Proposed Amendment is a prohibition on where Marijuana Growth, Cultivation, and Extraction (“MGCE”) Facilities, Marijuana Product Manufacturing (“MPM”) Facilities, Marijuana Retail Stores (“MRS”), and not-for-profit medical marijuana dispensaries can be located. There is nothing in the Amendment that authorizes, i.e., “permits,” such facilities to be within 1,000 feet of houses of worship, libraries, schools, day-care centers, or playgrounds built after January 1, 2015 or after an application for a license is filed. Indeed, the General Assembly and the Ohio Marijuana Control Commission could adopt laws, regulations, and restrictions that prohibit any new MGCE Facility from being located within 1,000 feet of houses of worship, libraries, schools, day-care centers, or playgrounds.

Furthermore, any house of worship, library, school, day-care center, or playground built after January 1, 2015 that is built within 1,000 feet of a MGCE Facility and any house of worship, library, school, day-care center, or playground built after a marijuana establishment applies for a license would be a knowingly and voluntary decision on its part, but one which the State also could prohibit.⁵

The Ballot Language regarding the 1,000 foot restriction was deliberately twisted to give opponents of the Proposed Amendment the opportunity to claim that it allows marijuana establishments within 1,000 feet of churches and schools, when in fact the substance of the Proposed Amendment is the exact opposite. It is a prohibition on locating a MGCE facility within 1,000 feet of any house of worship, library, school, day-care center, or playground if the house of worship, library, school, day-care center, or playground was in existence on January 1, 2015 or, in the case of other marijuana establishments, the house of worship, library, school, day-care center, or playground was in existence before the marijuana establishment applies for a license.

By misstating the substance of the Proposed Amendment, the Ballot Language misleads, deceives, or defrauds voters.

c. Marijuana Growth, Cultivation, and Extraction Facilities

Regarding Marijuana Growth, Cultivation, and Extraction (“MGCE”) Facilities, Bullet Point 1 of the Ballot Language is almost entirely wrong. Bullet Point 1 in the Ballot Language states that the Proposed Amendment would:

⁵ Applications filed by marijuana establishments would be a matter of public record.

Endow exclusive rights for commercial marijuana growth, cultivation, and extraction to self-designated landowners who own ten pre-determined parcels of land in Butler, Clermont, Franklin, Hamilton, Licking, Lorain, Lucas, Delaware, Stark, and Summit Counties. One additional location may be allowed for in four years. (Exhibit 7.)

However, the actual text of the Proposed Amendment provides:

(F) Establishment of Marijuana Growth, Cultivation & Extraction Facilities

The growth and cultivation of marijuana and medical marijuana, and the extraction of cannabinoids from marijuana and medical marijuana, for sale and medical use within this state shall be lawful only at licensed MGCE facilities. Subject to the exceptions set forth herein, there shall be only ten MGCE facilities, which shall operate on the following real properties: . . .

* * *

. . . If an owner of one of the above-designated sites chooses not to apply for a provisional license within 90 days of the passage of this section, the [Ohio Marijuana Control] Commission may issue a license to operate a MGCE facility at a different site in lieu of that site so long as all other criteria set forth herein are met.

* * *

To ensure that the supply of regulated marijuana is adequate to meet consumer demand in this state, beginning in the fourth year following the adoption of this section, the Commission shall develop and make publicly available annual consumer demand metrics for marijuana and medical marijuana based in substantial part on total gross sales of each within the state in the previous year. If the Commission determines during its annual audits of the MGCE facilities that such facilities collectively failed to produce marijuana and medical marijuana sufficient to substantially meet the published consumer demand metrics for the previous year and cannot demonstrate that they are likely to do so in the ensuing year, the Commission may issue a license for an additional MGCE facility at a site other than what has been designated herein.

. . . If the Commission revokes a MGCE license for failure to remediate material noncompliance, the Commission may issue a license for a MGCE facility at a site other than what has been designated herein. If

a MGCE facility terminates or indefinitely suspends its operations, the Commission may relocate that facility or revoke the facility's license and issue a license for a MGCE facility at a site other than what has been designated herein.

(Emphasis added.)

(I) Ohio Marijuana Control Commission

* * *

Beginning in the second year following the adoption of this section, the Commission shall conduct an annual audit of each marijuana establishment to certify, at a minimum, that such marijuana establishment is in compliance with all applicable rules and regulations. * * * (See, Complaint ¶ 60; Proposed Amendment Section 12(F) & (I).)

Nearly every aspect of Bullet Point 1 is inaccurate. The text of the Proposed Amendment specifically provides that the provision limiting MGCE Facilities to the ten sites set forth in the amendment are subject to exceptions "set forth" in the amendment. (See, Proposed Amendment Section 12(F).) There are four such exceptions: a) If an owner of one of a designated site does not apply for a provisional license within 90 days after adoption of the amendment, the Commission may issue a license to operate a facility at a different site; b) if the Commission revokes a license for failure to remediate material noncompliance, it may issue a license for a facility at a different site; c) if a facility terminates or indefinitely suspends its operations, the Commission may relocate the facility or revoke its license and issue a license for a facility at a different site; and d) beginning in the fourth year after adoption of the amendment, the Commission must annually determine if consumer demand for medical marijuana and marijuana are being met by all Marijuana Growth, cultivation and Extraction Facilities based on the previous year's demand and, if not,

the Commission may issue a license for an additional site. (See, Proposed Amendment Section 12(F).)

The “self-designated landowners” of “pre-determined parcels of land” that the Ballot Language refers to are subject to applicable laws and regulations and can lose their licenses for noncompliance under the Proposed Amendment. (See, Proposed Amendment Section 12(F).) Additionally, new licenses can be granted to facilities at yet-to-be-determined sites not designated in the Proposed Amendment and expanded beyond ten sites for the reasons set forth in the amendment. (See, Proposed Amendment Section 12(F).) Therefore, by its own terms, the Proposed Amendment leaves open the possibility of different sites with different land owners for MGCE facilities. Thus, the “exclusive” rights for landowners of “ten pre-determined parcels of land” language in the Ballot Language is such as to mislead, deceive, or defraud the voters and contains material omissions.

The Ballot Language also incorrectly states that just “one additional location may be allowed for in four years.” The Proposed Amendment actually states that beginning in the fourth year, and continuing each year after, the Ohio Marijuana Control Commission can issue an additional license for a MGCE facility, based on annual audits and consumer demand in the previous year. (See, Proposed Amendment Section 12(F).) The Commission is required to conduct annual audits of all licensed MGCE facilities and starting in the fourth year could determine that, taken as a whole, such facilities are inadequate to meet consumer demand for medical

marijuana and marijuana and authorize an additional facility beyond whatever number are currently licensed. (See, Proposed Amendment Section 12(F).)

Bullet Point 1 of the Ballot Language is wholly inaccurate, and its phrasing and word choice mislead, deceive, or defraud the voters.

3. The Ballot Language Has Numerous Material Omissions, Depriving Voters Of Core Components Of What They Are Being Asked To Vote Upon

The Ballot Language approved by Respondents has numerous material omissions, affecting the fairness and the accuracy of the text of the Proposed Amendment and depriving voters of core components of what they are being asked to vote upon. This Court has held that “ballot language ought to be free from any misleading tendency, whether of amplification or omission.” (*State ex rel. Cincinnati for Pension Reform v. Hamilton County Bd. of Elections*, 137 Ohio St.3d 45, 54 [2013].) Further, this Court has held that if “the ballot board approves a condensed text of the proposed constitutional amendment, any omitted substance of the proposal must not be material, i.e., its absence must not affect the fairness or accuracy of the text.” (*State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 265 [2012]; *citing State ex rel. Minus v. Brown*, 30 Ohio St.2d 75, 81 [1972].)

a. Local Option Election and Licensing of Stores

The Ballot Language entirely omits the Proposed Amendment’s requirement that the voters decide whether to allow retail marijuana stores to open in their communities. Similar to how Ohio law treats retail liquor stores, the Proposed Amendment would require the specific location of any retail marijuana store to

receive the approval of the voters of the precinct in which the store would be located.

The Proposed Amendment provides:

(H) Establishment of Retail Marijuana Stores

* * *

. . . 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. Except for provisions unique to authorization of alcohol sales, including limits on resubmitting an issue to the voters, such elections shall be held and conducted by election authorities in the same manner as local option elections for the approval by the electors of a precinct of the sale of alcohol to the public at a specific location.

(Proposed Amendment, Sections 12(A) and (H).)

This provision is a core component of the Proposed Amendment. It gives communities the right to vote – a fundamental right – and approve sales of marijuana at a specific address with a specific owner. This is an important protection for neighborhoods that do not want marijuana sales in their boundaries. Yet, there is no mention of it in the Ballot Language. Without this provision in the Ballot Language, voters would be led to incorrectly believe that retail marijuana stores could open absolutely anywhere despite objections from local communities. The role of the local ballot option is a critical aspect of the Proposed Amendment, and its omission from the Ballot Language misleads, deceives, or defrauds the voters.

The Ballot Language also omits that, in addition to requiring the approval of the voters in the precinct in which the store would be located, all retail stores must be licensed by the Commission. (*See*, Proposed Amendment, Section 12(H).) This is another critical aspect of the Proposed Amendment that ensures the safety and

quality of retail stores' products, and will affect the ultimate number of retail stores statewide.

b. Medical Marijuana

The Ballot Language contains just two brief mentions of medical marijuana – one of the most crucial and primary components of the Proposed Amendment. Bullet Point 4 of the Ballot Language states, with emphasis added, that the Proposed Amendment would:

Allow each person, 21 years of age or older, to purchase, grow, possess, use, transport and share over one-half pound of marijuana or its equivalent in marijuana-infused products at a time (a total of 8 ounces of usable, homegrown marijuana for recreational use, plus 1 ounce of purchased marijuana for recreational use), plus 4 homegrown flowering marijuana plants. Authorize the use of medical marijuana by any person, regardless of age, who has a certification for a debilitating medical condition. (Exhibit 7.)

Bullet Point 5 states, with emphasis added, that the Proposed Amendment would:

Permits [sic] 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. (Exhibit 7.)

That is it.

In contrast, the Proposed Amendment provides:

(B) Use of Medical Marijuana for Debilitating Medical Conditions

It is lawful for patients with debilitating medical conditions to acquire, administer, purchase, possess, transport, and use, and for licensed caregivers to acquire, administer, purchase, possess, transport and transfer, medical marijuana pursuant to a valid medical marijuana certification. The state shall regulate the conduct of physicians in

issuing medical marijuana certifications in a manner similar to its regulation of medical prescriptions. A treating physician who has examined a patient and determined that he or she has a debilitating medical condition may issue a medical marijuana certification if: (1) a bona fide physician-patient relationship exists; (2) the physician determines the risk of the patient's use of medical marijuana is reasonable in light of the potential benefit; and (3) the physician has explained the risks and benefits of using medical marijuana to the patient. If the patient is younger than 18 years of age, treatment involving medical marijuana may not be provided without consent by at least one custodial parent, guardian, conservator, or other person with lawful authority to consent to the patient's medical treatment. * * *

(C) Establishment of Medical Marijuana Not-For-Profit Dispensaries

Medical marijuana shall only be dispensed and sold to patients and caregivers by not-for-profit medical marijuana dispensaries licensed under this section, in accordance with a medical marijuana certification issued by the patient's current treating physician, who shall exercise the same professional care, ethics and judgment in doing so as is required in issuing medical prescriptions. * * * (See, Complaint ¶ 65; Proposed Amendment Section 12(B)-(C).)

Despite the importance and prominence of medical marijuana in the Proposed Amendment, the Ballot Language gives short shrift and buries its two references to the use of medical marijuana. Indeed, the first two sections of the Proposed Amendment, following the Summary of the Proposed Amendment (Section 12(A)), are about the legalization and regulation of medical marijuana.

The Ballot Language's scant discussion of medical marijuana is also in stark contrast to the Ballot Language's multiple, prejudicial references to what the Ballot Board called "recreational" use of marijuana. Yet, the Proposed Amendment's provisions regarding medical marijuana are lengthy compared to its provisions regarding personal use of marijuana. (See, *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶49 ["Moreover, the

subject of the funding of the commission in the proposed constitutional amendment is not a major part of the proposal, comprising only two sentences appearing in over 20 new paragraphs, yet it appears in two of the five paragraphs in the ballot board's approved condensed ballot language.”].) Indeed, the Ballot Language makes no reference to the Proposed Amendment's important requirements that must be met before medical marijuana may be provided to persons with debilitating medical conditions, namely that the certification for its use must be from a licensed Ohio physician and that parental or legal guardian consent is required for patients under the age of 18. (See, Proposed Amendment Section 12(B).) The Ballot Language also omits any of the debilitating medical conditions that could be treated by medical marijuana (See, Proposed Amendment 12(L)(4)), yet Respondents went at length to provide examples of marijuana-infused products. (Exhibit 7, Bullet Point 3.) “Debilitating medical conditions” is precisely defined by the Amendment and limited in such a manner that no one physician can determine what is or is not a “debilitating medical condition.”⁶

⁶ Proposed Amendment, Section 12(L)(4) (“Debilitating medical condition’ means cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, sickle-cell anemia, ulcerative colitis, dementia, Alzheimer’s disease, or treatment for such conditions; a chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and which, in the professional opinion of the patient’s physician, foreseeably may be alleviated by the use of medical marijuana: cachexia, post-traumatic stress disorder, severe pain, severe nausea, seizures, including those that are characteristic of epilepsy, or persistent muscle spasms, including those that are characteristic of multiple sclerosis. The Commission shall establish and update the list of debilitating medical conditions for which medical marijuana certifications may be issued on an annual basis, consistent with current, peer-reviewed medical research.”)

The use and regulation of medical marijuana “strike at the very core of the proposed amendment,” (*State ex rel. Cincinnati for Pension Reform*, 137 Ohio St.3d at 56) and the omission of such information misleads, deceives, or defrauds the voters.

c. The Number of Marijuana Retail Stores

The Ballot Language is misleading regarding the number of Marijuana Retail Stores. Bullet Point 2 of the Ballot Language states that the Proposed Amendment would:

Permit retail sale of recreational marijuana at approximately 1,100 locations statewide. (Exhibit 7.)

However, the Proposed Amendment states:

(H) Establishment of Retail Marijuana Stores

* * *

The Commission may promulgate rules regarding the number of licenses within any precinct of the state; provided, however, that the number of stores statewide shall not exceed the ratio of one to ten thousand based on the state’s population as determined by the U.S. Census Bureau's Population Estimates Program (PEP) and revised annually according to either the PEP estimates or the decennial Census, and 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. . . .

(Complaint ¶53; Proposed Amendment Section 12(H) [emphasis added].)

The Ballot Language’s use of the number 1,100 is misleading because the Proposed Amendment does not establish a specific number of stores. Rather, the actual maximum number of stores is determined by a combination of total state population, local option approval and licensure. (See, Proposed Amendment, Section 12(H).) The actual number could, therefore, be far fewer than 1,100 and not

“approximately 1,100” and given the above required approvals, it is incorrect to state that the Proposed Amendment itself “permits” approximately 1,100 stores.

d. Zoning Laws

Through omissions, the Ballot Language incorrectly implies that no local or state laws, including zoning laws, can ever be applied to a marijuana establishment if it would result in prohibiting the development or operation of such establishment.

Bullet Point 6 of the Ballot Language states that the Proposed Amendment would:

Prohibit any local or state law, including zoning laws, from being applied to prohibit the development or operation of marijuana growth, cultivation, and extraction facilities, retail marijuana stores, and medical marijuana dispensaries unless the area is zoned exclusively residential as of January 1, 2015 or as of the date that an application for a license is first filed for a marijuana establishment.

However, the actual text of the Proposed Amendment provides:

(J) General Provisions and Specific Limitations

* * *

10) Marijuana establishments shall be subject to all applicable state and local laws and regulations related to health, safety and building codes, including signage. Notwithstanding the foregoing, no local zoning, land use laws, agricultural regulations, subdivision regulations or similar provisions shall prohibit the development or operation of marijuana establishments, provided that no such marijuana establishment shall be located in a district zoned exclusively residential as of January 1, 2015 for MGCE facilities, or as of the date that an application for a license is first filed by a MPM facility, retail marijuana store or not-for-profit medical marijuana dispensary.

The Proposed Amendment provides that local and state law would still apply to marijuana establishments, but that these laws cannot be used to single out such establishments. (See, Complaint ¶ 72; Proposed Amendment, Section 12(J)(9).)

Further, this portion of the Ballot Language fails to address that the Proposed Amendment *does* include limitations on where marijuana establishments can be located, including but not limited to the local option elections in which voters would decide whether – and subsequently, where – a retail store would be built in their community, and the Commission’s licensing powers which inherently include the power to regulate the location of marijuana establishments. (See, Complaint ¶ 65; Proposed Amendment, Section 12(H).) These omissions are prejudicial, detract from the actual text of the Proposed Amendment, and mislead, deceive, or defraud the voters.

e. Special Tax Rates

Through omissions, the Ballot Language incorrectly implies that marijuana establishments would pay lower tax rates than all other businesses. Bullet Point 7 of the Ballot Language states that the Proposed Amendment would:

Create a special tax rate limited to 15% [sic] on gross revenue of each marijuana growth, cultivation, and extraction facility and marijuana product manufacturing facility and a special tax rate limited to 5% on gross revenue of each retail marijuana store. . . .

(Exhibit 7.)

However, the Proposed Amendment provides:

(E) Taxation of Marijuana Revenue

The state shall levy and collect a special flat tax of 15% on all gross revenue of each MGCE facility and MPM facility, and 5% on all gross revenue of each retail marijuana store . . . Such facilities and stores shall also pay the state commercial activities tax and all other local taxes, assessments, fees and charges as apply to businesses in general. Such facilities and stores shall not receive any abatement, credit or deduction that is unavailable to other businesses. Dispensaries shall pay the same

taxes, assessments, fees and charges that other not-for-profit organizations are required to pay. No additional taxes, assessments, fees or charges shall be levied on the operations, revenue, or distributed income of a marijuana establishment, other than the license fees authorized under this section.

The Ballot Language omits that the special tax rate is *in addition to* all other taxes applicable to businesses. (See, Complaint ¶ 77; Proposed Amendment, Section 12(E).) The absence of this information, combined with the Ballot Language’s use of “limited,” incorrectly implies that marijuana establishments would actually – and unfairly – pay lower taxes than every other type of business. The Ballot Language must affirmatively provide that these establishments will pay all other taxes applicable to businesses, in addition to the “special tax rates.” Without such a balance, the Ballot Language misleads, deceives, or defrauds the voters.

f. Revenues From The Special Taxes

The Ballot Language omits that the revenues from the special taxes on marijuana establishments will be used for designated purposes. The Ballot Language states:

. . . Revenues from the tax go to a municipal and township government fund, a strong county fund, and the marijuana control commission fund.

(Exhibit 7.)

The Proposed Amendment provides:

(E) Taxation of Marijuana Revenue

* * *

One hundred percent of the revenues generated from the special tax shall be collected and distributed by the state for the following purposes (the “Purposes”):

- (1) 55% to a Municipal and Township Government Stabilization Fund with 100% of such funds being distributed to every municipality and township on a per capita basis, excluding, in the case of a township, population that is also within a municipality. Such funds shall be used for public safety and health, including police, fire and emergency medical services, road and bridge repair, and other infrastructure improvements;
- (2) 30% to a Strong County Fund with 100% of such funds being distributed to each county on a per capita basis. Such funds shall be used for public safety and health, including law enforcement, economic development, road and bridge repair, and other infrastructure improvements; and
- (3) 15% to a Marijuana Control Commission Fund with 100% of such funds being distributed in the following order for: (a) the reasonable and necessary costs of operating the Commission; (b) funding for the marijuana innovation and business incubator established hereunder; (c) to the extent the Commission so elects, the reasonable and necessary operating costs of the not-for-profit medical marijuana dispensaries established under this section, (d) mental health and addiction prevention and treatment programs and services; and (e) to the extent the Commission so elects, a program to provide low-cost medical marijuana to qualifying patients who are unable to afford the full cost.

(Complaint ¶77; Proposed Amendment, Section 12(E).)

The omission of the specific purposes or some description of them for which the revenues from the special taxes will be used affects the fairness and accuracy of the Ballot Language. It is not at all apparent from the text of the Ballot Language what the “municipal and township government,” “strong county,” and “marijuana control commission” funds are or what they would support. Nowhere in Bullet Point 7 or elsewhere in the Ballot Language are these terms defined or explained. Yet, a critical aspect of the Proposed Amendment is that revenues from the special taxes placed on marijuana establishments will go towards public safety and health and

infrastructure improvements, in the case of the Municipal and Township Government Stabilization Fund and the Strong County Fund, and towards the funding and operating costs of the Ohio Marijuana Control Commission and the marijuana innovation and business incubator established by the Proposed Amendment, mental health and addiction prevention and treatment programs and services, and to provide low-cost medical marijuana to qualifying patients who are unable to afford the full cost, in the case of the Marijuana Control Commission Fund.⁷ Without an explanation as to what these funds are, voters are left to guess as to the meaning of the Ballot Language.

How the revenue from the special taxes on marijuana establishments can be used is a critical aspect of the Proposed Amendment and important information to the average voter. The omission of such important information misleads, deceives, or defrauds the voters.

g. Marijuana Research Facilities

The Ballot Language omits that the facilities located near colleges and universities will be used for marijuana research. Bullet Point 8 of the Ballot Language provides that Proposed Amendment would:

Create a marijuana incubator in Cuyahoga County to promote growth and development of the marijuana industry and locate marijuana testing facilities near colleges and universities in Athens, Cuyahoga, Lorain, Mahoning, Scioto and Wood Counties, at a minimum.

⁷ Indeed, the Proposed Amendment's establishment of the Ohio Marijuana Control Commission and the marijuana innovation and business incubator is not mentioned in the Ballot Language until subsequent bullet points, further depriving the voter of any immediate context as to what a "marijuana control commission fund" could mean or entail.

However, the actual text of the Proposed Amendment provides that:

“Marijuana testing facility” means a facility or laboratory licensed by the Commission to acquire, possess, store, transfer, grow, cultivate, harvest, and process medical marijuana, marijuana and marijuana-infused products for the explicit and limited purposes of engaging in research related to, and/or certifying the safety and potency of, medical marijuana, marijuana and marijuana-infused products. . . .

(Proposed Amendment, Section 12(L)(12).)

The Ballot Language incorrectly states that these facilities would only “test” marijuana. The omission of the fact that these facilities would conduct research makes the purpose of such facilities’ proximity to colleges and universities in the designated counties unclear to the voters, and therefore, misleads, deceives, or defrauds the voters.

4. The Ballot Language Adopted By The Ballot Board Contains Prejudicial Language

The Ballot Language adopted by Respondents contains prejudicial language with the effect of persuading voters against the Proposed Amendment. This Court has held, “use of language in the nature of a persuasive argument in favor of or against the issue is prohibited.” (*State ex rel. Cincinnati for Pension Reform v. Hamilton County Bd. of Elections*, 137 Ohio St.3d 45, 50 [2013].) To this point, this Court has recognized that “effective arguments can be made [in proposed ballot language] as easily by what is left unsaid, or implied.” (*State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 269 [2012]; *citing State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 520 [1981].) Several aspects of the Ballot Language violate the prohibition against the use of prejudicial and persuasive language.

a. Power Of The General Assembly

The Ballot Language incorrectly and prejudicially states that the Proposed Amendment “limits” the ability of the General Assembly to regulate the marijuana industry. Bullet Point 9 of the Ballot Language states that the Proposed Amendment would:

Limits [sic] the ability of the legislature and local governments from regulating the manufacture, sales, distribution and use of marijuana and marijuana products.

(Exhibit 7 [emphasis added].)

The use of the word “limits” is prejudicial and misleading because the Proposed Amendment does not contain any provision that the General Assembly cannot pass laws. The only “limit” is that which always applies that the General Assembly cannot pass laws that contravene constitutional law. Further, the Amendment expressly provides for the passage of laws by the General Assembly:

(J) General Provisions and Specific Limitations

* * *

- 2) In no event shall a person consume marijuana, homegrown marijuana or marijuana-infused products in any public place, or in, or on the grounds of, a public or chartered non-public elementary or secondary school, a state licensed child day-care center, a correctional facility or community corrections facility, or in a vehicle, aircraft, train or motorboat. No person shall operate, navigate, or be in actual physical control of any vehicle, aircraft, train or motorboat while under the influence of medical marijuana, marijuana, homegrown marijuana or marijuana-infused products. . . . The general assembly shall pass laws for enforcing all of the preceding.
- 3) Other than for medical marijuana transferred or sold by a dispensary to a patient or caregiver, and for transfers between a patient and caregiver consistent with Commission regulations, it shall be

unlawful for any person to knowingly sell or transfer marijuana, homegrown marijuana, medical marijuana or marijuana-infused products to a person under the age of 21. The general assembly shall enact laws defining this conduct as child endangerment and shall enact enhanced penalties for violations of such laws.

* * *

(K) Self-Executing, Severability, Conflicting Provisions, and Enactment of Laws

All provisions of this section are self-executing except as specified herein, are severable, and, except where otherwise indicated in the text, shall supersede all conflicting state and local laws, charters and regulations or other provisions of this constitution. The general assembly may pass laws implementing the provisions of this section that are not in conflict with its provisions. Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

(Proposed Amendment, Sections 12(J)-(K) [emphasis added].)

This Bullet Point is wrong. The Proposed Amendment actually *authorizes* and *mandates* the General Assembly to regulate several key aspects of what would be a newly-created industry, as well as passing any laws or regulations that are otherwise not in conflict with the Proposed Amendment. The Ballot Language's incorrect and prejudicial phrasing misleads, deceives, or defrauds the voters.

b. Regulatory Authority

The Ballot Language incorrectly and prejudicially states that the Ohio Marijuana Control Commission would have mere "limited authority" to regulate Ohio's marijuana industry. Bullet Point 9 of the Ballot Language states that the Proposed Amendment would:

. . . Create a new state government agency called the marijuana control commission (with limited authority) to regulate the industry . . .

(Exhibit 7 [emphasis added].)

Again, the use of “limited authority” is an intentional misdirection because its authority is the same as any administrative agency, i.e. the scope of its subject matter. The Proposed Amendment does not contain language limiting the Commission, but instead contains lengthy language regarding its regulatory powers:

(D) Ohio Marijuana Control Commission

There is hereby established the Ohio Marijuana Control Commission, which shall regulate the acquisition, growth, cultivation, extraction, production, processing, manufacture, testing, distribution, retail sales, licensing and taxation of medical marijuana, marijuana and marijuana-infused products and the operations of marijuana establishments and home growing. . . .

The Commission shall adopt rules to facilitate this section’s implementation and continuing operation. The initial regulatory rules required to be adopted herein by specific dates shall be adopted by the Commission notwithstanding any other provision of law regarding promulgation of administrative rules, provided that the Commission shall offer an opportunity for public input. Regulatory rules shall not prohibit the operation of marijuana establishments or home growing, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include, but not be limited to: procedures for the application for, and the issuance, renewal, transfer, suspension, and revocation of, a license to operate a marijuana establishment or marijuana testing facility or qualify as a caregiver; a schedule of application, licensing and renewal fees to be deposited into the Marijuana Control Commission Fund, provided such fees shall not exceed \$50,000 for MGCE facilities, save for the \$100,000 provisional license fee required herein, \$25,000 for MPM facilities, \$10,000 for retail marijuana stores and marijuana testing facilities, and registration fees of \$50 for home growing, with this upper limit adjusted annually for inflation; qualifications for licensure that are directly and demonstrably related to marijuana establishment; registration requirements for home growing; regulations regarding debilitating medical conditions, medical marijuana certifications, caregiver qualifications; requirements to prevent the sale and diversion of medical marijuana, marijuana, homegrown marijuana and marijuana-infused products to persons

under the age of 21; requirements for testing the safety and potency of medical marijuana, marijuana and marijuana-infused products; labeling requirements for medical marijuana, marijuana and marijuana-infused products sold or distributed by a marijuana establishment; health and safety regulations for the acquisition, growth, cultivation, harvesting, processing, packaging, preparation, extraction, handling, distribution, transportation, manufacture, and production of medical marijuana, marijuana and/or marijuana-infused products; restrictions on the advertising and display of medical marijuana, marijuana and marijuana-infused products to persons under the age of 21; civil penalties for failure to comply with regulations made pursuant to this section, including enhanced civil penalties for repeat violations; and rules governing the allocation of resources from the marijuana innovation and business incubator established hereunder to third parties. The Commission shall also establish and implement a system for real-time tracking and monitoring of all marijuana, medical marijuana, and marijuana-infused products from the initial germination and/or extraction through the final consumer transaction.

Beginning in the second year following the adoption of this section, the Commission shall conduct an annual audit of each marijuana establishment to certify, at a minimum, that such marijuana establishment is in compliance with all applicable rules and regulations. To the extent it determines that a marijuana establishment is in material noncompliance with applicable rules and regulations, the Commission may order remedial action; and, to the extent that establishment fails to comply with the Commission's order within the reasonable time period set forth by that order, the Commission may suspend or revoke the establishment's license.

The Commission shall issue annual licenses to marijuana establishments, and register home growing applicants, no later than 90 days after receipt of the completed application unless the Commission finds the applicant is not eligible for a license or registration under applicable laws and regulations. Thereafter, licensees shall be entitled to have their licenses renewed pursuant to the Commission's rules, unless the Commission determines that the licensee has repeatedly failed to comply with its remedial orders. Such renewal shall be issued or denied prior to expiration of the current license. Ohio's administrative procedure statutes generally applicable to other licensing bodies not in conflict with this section shall apply to rulemaking, license denials, suspensions and revocations by the Commission.

* * *

The Commission shall employ necessary and qualified persons, including enforcement agents, and shall retain services of qualified third parties, including experts, to perform its duties.

(See, Complaint ¶ 92; Proposed Amendment, Section 12(I).)

The Ballot Language is wrong and turns the wording of the Amendment on its head just like the Ballot Language did to the 1,000 foot language. The actual language of the Proposed Amendment grants the Commission broad regulatory authority. Despite the actual text of the Proposed Amendment, the Ballot Language inserts the phrase “with limited authority” with respect to the Commission. Further, the Ballot Board, just to make sure voters saw the words “with limited authority,” draws attention to them and sets them apart by placing them in parentheses. Accordingly, the Ballot Language is false and this description of the Ohio Marijuana Control Commission misleads, deceives, or defrauds the voters.

c. “Recreational”

Bullet Points 2 and 3 of the Ballot Language incorrectly and prejudicially use the word “recreational” to describe personal, non-medical marijuana use. But this word appears nowhere in the Proposed Amendment. Instead, the Proposed Amendment uses the phrase “personal use” in reference to purchasing marijuana at licensed retail stores to place a legal limitation upon the purchase.

Amending the constitution does not create “recreational” rights and liberties, but personal rights and liberties. The Ohio Constitution does not provide for the mere “recreational” right to freedom of speech (*See*, Sec. 11, Art. I, Ohio Constitution), the mere “recreational” right to “worship Almighty God according to the dictates of their

own conscience,” (*See*, Sec. 7, Art. I, Ohio Constitution), or the mere “recreational” right of the people “to be secure in their persons, houses, papers, and possessions against unreasonable searches and seizures.” (*See*, Sec. 14, Art. I, Ohio Constitution). The term “recreational” is not used in law with respect to uses of other commodities, such as tobacco products, liquor products, or food. The term “recreational” as used in the Ballot Language is a prejudicial qualification on the right, granted by the Proposed Amendment, to the personal, non-medical use of marijuana.

d. “Endow”

Bullet Point 1 of the Ballot Language incorrectly uses the word “endow” in an attempt to insert prejudicial language into the Ballot Language. This word appears nowhere in the Proposed Amendment, and its phrasing and placement as the first word of the first bullet point in connection with inaccurate information contained in the first bullet point, discussed *supra*, is confusing, misleading, deceptive, and fraudulent. Endow, in the ordinary sense of the word, refers either to a grant of money providing for the continuing support or maintenance of, or to furnish with a dower. The Proposed Amendment does not provide for an endowment of any sort.

5. The Cumulative Effect

The cumulative effect of the defects in the Ballot Language is fatal to the validity of the ballot. (*State ex rel. Cincinnati for Pension Reform v. Hamilton County Bd. of Elections*, 137 Ohio St.3d 45, 50 [2013]; *citing State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 [1981].) Respondents have a clear legal duty to adopt Ballot

Language consistent with the Ohio Constitution, the Ohio Revised Code, and standards established by this Court.

B. The Ballot Title

On August 25, 2015, Respondent Secretary of State issued the ballot title for the Proposed Amendment (“Ballot Title”) as it would appear on each November 3, 2015 General Election ballot. (Complaint ¶ 101; Exhibit 11.) The Ballot Title states that the Proposed Amendment:

Grants a monopoly for the commercial production and sale of marijuana for recreational and medicinal purposes.

The Ballot Title does not give a true and impartial statement of the measures in the Proposed Amendment. Rather, the Ballot Title contains wholly inaccurate information about the Proposed Amendment, and focuses on just one aspect of its many provisions, i.e., commercial production and sale. Further, Respondent Husted used prejudicial language in the Ballot Title intended to persuade voters against the Proposed Amendment. For the reasons set forth below, Relators are entitled to a holding by this Court that the ballot title is invalid.

1. The Legal Standard For Ballot Titles

Ohio Rev. Code 3501.05(H) gives Respondent Secretary of State the authority to issue titles for statewide ballot initiatives. This provision states that the Secretary of State shall:

Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state.

Such duty is also provided for in Ohio Rev. Code 3519.21 which states, in part:

. . . the ballot title of all such propositions, issues, or questions shall be determined by the secretary of state in case of propositions to be voted upon in a district larger than a county . . . In preparing such a ballot title the secretary of state . . . **shall give a true and impartial statement of the measures in such language that the ballot title shall not be likely to create prejudice for or against the measure.** The person or committee promoting such measure may submit to the secretary of state . . . a suggested ballot title, which shall be given full consideration by the secretary of state . . . in determining the ballot title.⁸

In analyzing a ballot title for constitutional defects, this Court has also applied the three-step test set forth in *State ex rel. Bailey v. Celebrezze*, discussed *supra*. See, *Jurcisin v. Cuyahoga County Bd. of Elections*, 35 Ohio St. 3d 137, 141-42, 519 N.E.2d 347 (1988) (“Application of [the *Bailey*] test to the text of the ballot title and summary in the present case discloses no infirmities.”)

2. The Ballot Title Is Myopically Wrong

The Ballot Title is myopically wrong in its focus on just one aspect of one part of the Proposed Amendment. Respondent Husted’s Ballot Title characterizes the entire proposal based on his (incorrect) view of the number of entities involved with the production and sale of marijuana. However, the ballot title must “give a true and impartial statement of the measures” in the Proposed Amendment, and the number of entities involved with the production and sale of marijuana is just one tree in a large forest.

⁸ Counsel for Relators met with Respondent Secretary of State’s staff and offered a suggested ballot title, along with two versions of ballot language. (Complaint ¶ 100.) The suggested ballot title on both versions of suggested ballot language – and the title of the Proposed Amendment signed by the voters – was: “State Issue 3 – Marijuana Legalization Amendment.” (*Id.*)

Respondent Husted’s Ballot Title completely buries the breadth and scope of the Proposed Amendment in order to focus on his choice of the word “monopoly”. The proposal legalizes, regulates, and taxes marijuana and marijuana-infused products for personal and medical use. And it authorizes and regulates homegrown marijuana, which is not commercial production. It also establishes research and testing facilities across the state, and creates a business incubator to encourage innovation and job creation. To say that all the Proposed Amendment does is “grant a monopoly for the commercial production and sale of marijuana for recreational and medicinal purposes” is not just technically wrong because the Amendment does not “grant a monopoly,” but it is wrong because the Amendment does so much more than allow for the commercial production and sale of marijuana.

3. The Ballot Title Contains Wholly Inaccurate Information About The Proposed Amendment.

The Proposed Amendment does not “grant a monopoly.” A monopoly is commonly defined as control or advantage obtained by one supplier or producer over a commercial market, or a market condition existing when only one economic entity produces a particular product or provides a particular service. (*See*, 2B Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law*, Paragraph 403a, at 7 [3d Ed.2007] [a monopoly arises when a single firm “controls all or the bulk of a product’s output, and no other firm can enter the market, or expand output, at comparable costs” [*Suture Exp., Inc. v. Cardinal Health 200, LLC*, 963 F. Supp. 2d 1212, 1227 [D. Kan. 2013] [“it appears that most courts have rejected shared or joint monopoly arguments when analyzing § 2 [of the Sherman Act] claims, finding that such claims contradict the

basic concept that a monopoly is the domination of a market by a single firm.”) There is nothing in the Proposed Amendment that “grants” just one entity the ability to produce and/or supply all or most of the marijuana or marijuana-infused products. Moreover, there is nothing in the Proposed Amendment that authorizes, allows, or in any way permits the producers and suppliers of marijuana and marijuana-infused products to conspire together or act jointly to set price and output.

a. There Is No Monopoly On Commercial Growth/Production Of Marijuana.

The Proposed Amendment provides that, during the first four years, there will be, not one, but **ten** different commercial growers/producers of marijuana and medical marijuana and further provides that, beginning in the fourth year following the adoption of the Amendment and each year thereafter, the Ohio Marijuana Control Commission may annually issue an additional license for an additional MGCE facility at a site other than those designated in the Proposed Amendment, if the Commission determines that the total production from all existing licensed facilities during the prior year is not meeting consumer demand. (See, Proposed Amendment, Section 12(F).)

The Proposed Amendment empowers the Commission to regulate these ten-plus additional licensed commercial growers/producers of marijuana and medical marijuana. Sections F and I of the Proposed Amendment provide that the Commission shall ensure that the supply of regulated marijuana is adequate to meet consumer demand. The Commission can revoke a growing/production license or relocate a facility for failure to comply with its rules, as well as issue new licenses to

replace these facilities and ensure that consumer demand is met. (See, Proposed Amendment, Section 12(F) & (I).)

Ten is not a monopoly, and more than ten is not a monopoly.

b. There Is No Monopoly On Marijuana Product Manufacturing Facilities.

The Proposed Amendment establishes **no limit** on the number of Marijuana Product Manufacturing (“MPM”) facilities, which would produce marijuana-infused and medical marijuana-infused products. (See, Proposed Amendment, Section 12(G).) Licenses are to be issued by the Commission based on applications submitted by any qualified applicant. No one would say that the auto industry in Ohio—made up of just a few manufacturers—is a monopoly.

Establishing no limit is not “granting” a monopoly.

c. There Is No Monopoly On The Commercial Sale Of Marijuana.

The Proposed Amendment establishes **no specific number** of Retail Marijuana Stores. Rather, the Proposed Amendment establishes a maximum number of stores based on the state’s population, which Respondent Ballot Board’s approved ballot language pegs at 1,100. (See, Proposed Amendment, Section 12(H).) No one would say that liquor permit holders in Ohio are a monopoly.

1,100 is not a monopoly.

d. There Is No Monopoly On The Sale Of Commercial Medical Marijuana.

The Proposed Amendment establishes **no limit** on the number of not-for-profit medical marijuana dispensaries. These dispensaries are established by Section C of the Proposed Amendment, and regarding the number of such dispensaries, this provision provides that the Commission shall promulgate rules regarding the number of licenses for medical marijuana dispensaries within any political subdivision of the state. (See, Proposed Amendment, Section 12(C).) No one would say that the licensed pharmacies in Ohio are a monopoly.

Establishing no limit is not “granting” a monopoly.

e. There Is Nothing In The Proposed Amendment That Would Allow The Producers Or Suppliers Of Marijuana And Marijuana-Infused Products To Act Jointly To Set Price And Output.

Nothing in the Proposed Amendment authorizes, allows, or in any way permits the producers and suppliers of marijuana and marijuana-infused products to conspire together or act jointly to set price and output. As a result, the licensees will be subject to the default state and federal regimes that prohibit such conduct. Thus, if any of the producers or suppliers of marijuana and/or marijuana-infused products attempted to get together to conspire and set price or restrict output, they would be in violation of state and federal antitrust law and subject to prosecution.

4. The Ballot Title Creates Prejudice Against The Proposed Amendment

Respondent Husted intentionally and incorrectly used the word “monopoly” to create disfavor for Issue 3. The term “monopoly” is prejudicial because of its negative

connotation and association with controlling prices. The threat of a monopoly is that the monopoly can set any price it wants because it does not have a competitor. Thus, the use of the word “monopoly” in the Ballot Title would have a prejudicial effect on the minds of the public.

Respondent Husted’s intent to create disfavor for Issue 3 is even more apparent when viewed in context with Statewide Ballot Issue 2’s Ballot Title. On the same day that Respondent Husted issued the Ballot Title for the Proposed Amendment, he issued the Ballot Title for Statewide Ballot Issue 2 as the “Anti-monopoly amendment,” (Exhibit 11) a measure he personally favors. By titling Issue 2 the “Anti-monopoly amendment” and, in effect, titling Issue 3 as the “monopoly amendment,” Respondent Husted set up the ballot so that voters see Issue 2 as “good” and Issue 3 as “bad”. Thus, the Ballot Title is not only wrong and biased, but it is “likely to create prejudice against” the Proposed Amendment.

5. The Ballot Title Violates Voters’ First Amendment Rights

Respondent Husted’s Ballot Title is so egregiously unfair to voters and proponents of the Amendment that it rises to the level of a violation of the First Amendment. The issued Ballot Title is the State’s attempt to influence the results of the election, and thereby undermine the voters’ rights to association and rights to free and fair elections. Voters speak through their votes, and associate with each other by voting for or against ballot issues. The State, if it corrupts that process and does not allow for a free and fair election, violates the voters’ rights guaranteed by

the First Amendment and by the Ohio Constitution. Accordingly, Relators are entitled to a holding by this Court that the ballot title is invalid.

C. Mandamus

In addition to invoking this Court's exclusive, original jurisdiction under Sec. 1, Art. XVI, of the Ohio Constitution, Relators are seeking relief in mandamus and treatment as an expedited election case pursuant to S.Ct.Prac.R. 12.08. Because of the proximity of the November 3, 2015 general election, Relators lack an adequate remedy in the ordinary course of law. (*See, e.g., State ex rel. Cincinnati for Pension Reform et al. v. Hamilton County Bd. of Elections et al.*, 137 Ohio St. 3d 45, 2013-Ohio-4489, 997 N.E.2d 509, ¶¶20-21 [citations omitted].) Further, Respondents have a clear legal duty under the Ohio Constitution and laws of the state to adopt ballot language and a ballot title that comply with the Constitution and the standards enunciated by this Court. Relators have a clear legal right to ballot language and a ballot title for their Proposed Amendment that meets these standards.

D. Respondents' Laches Defense

Respondents' defense of laches is without merit. In *State ex rel Voters First v. Ohio Ballot Bd.*, this Court rejected the Ballot Board's and Secretary of State Husted's claim that an action challenging ballot language was rejected by laches:

Relators' filing of this action eight days after the August 15 ballot board decision approving the language they challenge was reasonable under the circumstances. Relators needed time to research and prepare their legal challenge to ballot language that they had not seen before the August 15 hearing.

In addition, relators filed this action in advance of the constitutional deadline of 64 days before the election. *See* Ohio Constitution, Article XVI, Section 1.

Moreover, the ballot boards' and the secretary of state's ability to prepare and defend against relators' mandamus claim has not been affected by relators' minimal delay. *See State ex rel. Owens v. Brunner*, 125 Ohio St.3d 130, 2010 Ohio 1374, 926 N.E.2d 617, ¶ 20. And respondents' evidence does not establish that any absentee-ballot deadline would have passed by the time briefing in this case was completed. Nor is there any evidence that the brief delay in filing this case was intentionally engineered by relators to obtain a strategic advantage. *Id.* at ¶ 22.

(*State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶¶ 16-19.)

Like the relators in *Voters First*, Relators herein acted with the utmost diligence in filing the instant action. The Ballot Language was not available until after it was adopted. Further, at the August 18, 2015 Ballot Board meeting, Respondent Husted announced that he would issue the Ballot Title by August 25, 2015. Respondent Husted subsequently issued the Ballot Title on August 25, 2015 (*See*, Complaint ¶101), and Relators filed the instant action just two days later on August 27, 2015. (*See*, Complaint.) Relators could not have filed a consolidated complaint prior to Respondent Husted's issuance of the Ballot Title; otherwise, Relators would have had to file two separate complaints for expedited election matters, which would have required more of the Court's time and resources. Additionally, Relators filed the instant action well before their constitutional deadline for doing so, *i.e.*, 64 days prior to the election or August 31, 2012, and only nine days after the adoption of the Ballot Language by the Ohio Ballot Board.

Moreover, Respondents' ability to prepare and defend against this Action has not been affected.

III. CONCLUSION

For all of reasons set forth above, Relators respectfully pray this Honorable 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 18, 2015 meeting and the Ballot Title promulgated by Respondent Secretary of State on August 25, 2015 are 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; or, alternatively, to issue an Order, Judgment, and/or Writ of Mandamus ordering Respondent Secretary of State to cause the ballot 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.
- C. Issue an Order, Judgment, and/or Writ of Mandamus ordering Respondent Secretary of State to re-issue a Ballot Title which properly identifies the proposed constitutional amendment; or, alternatively, to issue an Order, Judgment and/or Writ of Mandamus ordering Respondent Secretary of State to cause the ballot to be printed with the Ballot Title 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 a Ballot Title prescribed by this Court.
- 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,

/s/ Andy Douglas

Andy Douglas (0000006)
Larry H. James (0021773)
CRABBE, BROWN & JAMES, LLP
500 South Front Street
Suite 1200
Columbus, Ohio 43215
Phone: (614) 228-5511
Facsimile: (614) 228-4559
ADouglas@CBJLawyers.com
LJames@CBJLawyers.com

Donald J. McTigue (0022849)
Mark A. McGinnis (0076275)
J. Corey Colombo (0072398)
Derek S. Clinger (0092075)
MCTIGUE MCGINNIS & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Tel: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
mmcginnis@electionlawgroup.com
ccolombo@electionlawgroup.com
dclinger@electionlawgroup.com

Counsel for Relators

CERTIFICATE OF SERVICE

Pursuant to S.C.Prac.R. 12.08(C), I hereby certify that Relators' Merit Brief and Appendix have been sent via email this 4th day of September to the following:

Honorable Mike DeWine,
Ohio Attorney General
c/o Zachary P. Keller
Jordan S. Berman
Ryan L. Richardson
zachary.keller@ohioattorneygeneral.gov
jordan.berman@ohioattorneygeneral.gov
ryan.richardson@ohioattorneygeneral.gov

/s/ Andy Douglas

Andy Douglas

In the
Supreme Court of Ohio

STATE EX REL. RESPONSIBLEOHIO, et al.,
Relators,

v.

OHIO BALLOT BOARD, et al.,
Respondents.

*Original Action Challenging Ballot Language
Under Art. XVI, Sec. 1 and Ballot Title
and Original Action in Mandamus
Expedited Election Case, S.Ct.Prac.R. 12.08*

**RELATORS' APPENDIX OF CITED
CONSTITUTIONAL AND STATUTORY PROVISIONS**

<p>Andy Douglas (0000006) Larry H. James (0021773) CRABBE, BROWN & JAMES, LLP 500 South Front Street Suite 1200 Columbus, Ohio 43215 Phone: (614) 228-5511 Facsimile: (614) 228-4559 ADouglas@CBJLawyers.com LJames@CBJLawyers.com</p> <p>Donald J. McTigue (0022849) Mark A. McGinnis (0076275) J. Corey Colombo (0072398) Derek S. Clinger (0092075) McTIGUE MCGINNIS & COLOMBO 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 dclinger@electionlawgroup.com</p> <p><i>Counsel for Relators</i></p>	<p>Zachary P. Keller (0086930) Jordan S. Berman (0093075) Ryan L. Richardson (0090382) OHIO ATTORNEY GENERAL MIKE DEWINE 30 E. Broad St., 16th Floor Columbus, Ohio 43215 Phone: (614) 466-2872 Facsimile: (614) 728-7592 zachery.keller@ohioattorneygeneral.gov jordan.berman@ohioattorneygeneral.gov ryan.richardson@ohioattorneygeneral.gov</p> <p><i>Counsel for Respondents Ohio Ballot Board and Ohio Secretary of State Jon Husted</i></p>
---	---

Sec. 1g, Art. II, Ohio Constitution

§ 1g Initiative, supplementary, referendum petition; notice required; ballots.

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. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or the post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such

insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. 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 style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

Sec. 1, Art. XVI, Ohio Constitution

§ 1 How constitution to be amended; ballot; supreme court to hear challenges.

Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe.

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.

The supreme court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the general assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the general assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The general assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor

invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

Ohio Rev. Code 3501.05

§ 3501.05 Duties and powers of secretary of state.

The secretary of state shall do all of the following:

- (A) Appoint all members of boards of elections;
- (B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.
- (C) Prepare rules and instructions for the conduct of elections;
- (D) Publish and furnish to the boards from time to time a sufficient number of indexed copies of all election laws then in force;
- (E) Edit and issue all pamphlets concerning proposed laws or amendments required by law to be submitted to the voters;
- (F) Prescribe the form of registration cards, blanks, and records;
- (G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;
- (H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;
- (I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;
- (J) Except as otherwise provided in division (I)(2)(b) of section 3501.38 of the Revised Code, give final approval to ballot language for any local question or issue approved and transmitted by boards of elections under section 3501.11 of the Revised Code;
- (K) Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions;
- (L) Require such reports from the several boards as are provided by law, or as

the secretary of state considers necessary;

(M) Compel the observance by election officers in the several counties of the requirements of the election laws;

(N) (1) Except as otherwise provided in division (N)(2) of this section, investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws to the attorney general or prosecuting attorney, or both, for prosecution;

(2) On and after August 24, 1995, report a failure to comply with or a violation of a provision in sections 517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code, whenever the secretary of state has or should have knowledge of a failure to comply with or a violation of a provision in one of those sections, by filing a complaint with the Ohio elections commission under section 3517.153 of the Revised Code.

(O) Make an annual report to the governor containing the results of elections, the cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and other information and recommendations relative to elections the secretary of state considers desirable;

(P) Prescribe and distribute to boards of elections a list of instructions indicating all legal steps necessary to petition successfully for local option elections under sections 4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code;

(Q) Adopt rules pursuant to Chapter 119. of the Revised Code for the removal by boards of elections of ineligible voters from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct, which rules shall provide for all of the following:

(1) A process for the removal of voters who have changed residence, which shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, including a program that uses the national change of address service provided by the United States postal system through its licensees;

(2) A process for the removal of ineligible voters under section 3503.21 of the Revised Code;

(3) A uniform system for marking or removing the name of a voter who is ineligible to vote from the statewide voter registration database and, if applicable,

from the poll list or signature pollbook used in each precinct and noting the reason for that mark or removal.

(R) Prescribe a general program for registering voters or updating voter registration information, such as name and residence changes, by boards of elections, designated agencies, offices of deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers consistent with the requirements of section 3503.09 of the Revised Code;

(S) Prescribe a program of distribution of voter registration forms through boards of elections, designated agencies, offices of the registrar and deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers;

(T) To the extent feasible, provide copies, at no cost and upon request, of the voter registration form in post offices in this state;

(U) Adopt rules pursuant to section 111.15 of the Revised Code for the purpose of implementing the program for registering voters through boards of elections, designated agencies, and the offices of the registrar and deputy registrars of motor vehicles consistent with this chapter;

(V) Establish the full-time position of Americans with Disabilities Act coordinator within the office of the secretary of state to do all of the following:

(1) Assist the secretary of state with ensuring that there is equal access to polling places for persons with disabilities;

(2) Assist the secretary of state with ensuring that each voter may cast the voter's ballot in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;

(3) Advise the secretary of state in the development of standards for the certification of voting machines, marking devices, and automatic tabulating equipment.

(W) Establish and maintain a computerized statewide database of all legally registered voters under section 3503.15 of the Revised Code that complies with the requirements of the "Help America Vote Act of 2002," Pub. L. No. 107-252, 116 Stat. 1666, and provide training in the operation of that system;

(X) Ensure that all directives, advisories, other instructions, or decisions issued or made during or as a result of any conference or teleconference call with a board of elections to discuss the proper methods and procedures for conducting elections, to

answer questions regarding elections, or to discuss the interpretation of directives, advisories, or other instructions issued by the secretary of state are posted on a web site of the office of the secretary of state as soon as is practicable after the completion of the conference or teleconference call, but not later than the close of business on the same day as the conference or teleconference call takes place.

(Y) Publish a report on a web site of the office of the secretary of state not later than one month after the completion of the canvass of the election returns for each primary and general election, identifying, by county, the number of absent voter's ballots cast and the number of those ballots that were counted, and the number of provisional ballots cast and the number of those ballots that were counted, for that election. The secretary of state shall maintain the information on the web site in an archive format for each subsequent election.

(Z) Conduct voter education outlining voter identification, absent voters ballot, provisional ballot, and other voting requirements;

(AA) Establish a procedure by which a registered elector may make available to a board of elections a more recent signature to be used in the poll list or signature pollbook produced by the board of elections of the county in which the elector resides;

(BB) Disseminate information, which may include all or part of the official explanations and arguments, by means of direct mail or other written publication, broadcast, or other means or combination of means, as directed by the Ohio ballot board under division (F) of section 3505.062 of the Revised Code, in order to inform the voters as fully as possible concerning each proposed constitutional amendment, proposed law, or referendum;

(CC) Be the single state office responsible for the implementation of the "Uniformed and Overseas Citizens Absentee Voting Act," Pub. L. No. 99-410, 100 Stat. 924, 42 U.S.C. 1973ff, et seq., as amended, in this state. The secretary of state may delegate to the boards of elections responsibilities for the implementation of that act, including responsibilities arising from amendments to that act made by the "Military and Overseas Voter Empowerment Act," Subtitle H of the "National Defense Authorization Act for Fiscal Year 2010," Pub. L. No. 111-84, 123 Stat. 3190.

(DD) Adopt rules, under Chapter 119. of the Revised Code, to establish standards for determining when a board of elections shall be placed under the official oversight of the secretary of state, placing a board of elections under the official oversight of the secretary of state, a board that is under official oversight to transition out of official oversight, and the secretary of state to supervise a board of elections that is under official oversight of the secretary of state.

(EE) Perform other duties required by law.

Whenever a primary election is held under section 3513.32 of the Revised Code or a special election is held under section 3521.03 of the Revised Code to fill a vacancy in the office of representative to congress, the secretary of state shall establish a deadline, notwithstanding any other deadline required under the Revised Code, by which any or all of the following shall occur: the filing of a declaration of candidacy and petitions or a statement of candidacy and nominating petition together with the applicable filing fee; the filing of protests against the candidacy of any person filing a declaration of candidacy or nominating petition; the filing of a declaration of intent to be a write-in candidate; the filing of campaign finance reports; the preparation of, and the making of corrections or challenges to, precinct voter registration lists; the receipt of applications for absent voter's ballots or uniformed services or overseas absent voter's ballots; the supplying of election materials to precincts by boards of elections; the holding of hearings by boards of elections to consider challenges to the right of a person to appear on a voter registration list; and the scheduling of programs to instruct or reinstruct election officers.

In the performance of the secretary of state's duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.

In any controversy involving or arising out of the adoption of registration or the appropriation of funds for registration, the secretary of state may, through the attorney general, bring an action in the name of the state in the court of common pleas of the county where the cause of action arose or in an adjoining county, to adjudicate the question.

In any action involving the laws in Title XXXV of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on the secretary of state's motion, be made a party.

The secretary of state may apply to any court that is hearing a case in which the secretary of state is a party, for a change of venue as a substantive right, and the change of venue shall be allowed, and the case removed to the court of common pleas of an adjoining county named in the application or, if there are cases pending in more than one jurisdiction that involve the same or similar issues, the court of common pleas of Franklin county.

Public high schools and vocational schools, public libraries, and the office of a county treasurer shall implement voter registration programs as directed by the

secretary of state pursuant to this section.

The secretary of state may mail unsolicited applications for absent voter's ballots to individuals only for a general election and only if the general assembly has made an appropriation for that particular mailing. Under no other circumstance shall a public office, or a public official or employee who is acting in an official capacity, mail unsolicited applications for absent voter's ballots to any individuals.

Ohio Rev. Code 3519.02

§ 3519.02 Committee for petitioners.

The petitioners shall designate in any initiative, referendum, or supplementary petition and on each of the several parts of such petition a committee of not less than three nor more than five of their number who shall represent them in all matters relating to such petitions. Notice of all matters or proceedings pertaining to such petitions may be served on said committee, or any of them, either personally or by registered mail, or by leaving such notice at the usual place of residence of each of them.

Ohio Rev. Code 3519.21

§ 3519.21 Ballot title of propositions or issues.

The order in which all propositions, issues, or questions, including proposed laws and constitutional amendments, shall appear on the ballot and the ballot title of all such propositions, issues, or questions shall be determined by the secretary of state in case of propositions to be voted upon in a district larger than a county, and by the board of elections in a county in the case of a proposition to be voted upon in a county or a political subdivision thereof. In preparing such a ballot title the secretary of state or the board shall give a true and impartial statement of the measures in such language that the ballot title shall not be likely to create prejudice for or against the measure. The person or committee promoting such measure may submit to the secretary of state or the board a suggested ballot title, which shall be given full consideration by the secretary of state or board in determining the ballot title.

Except as otherwise provided by law, all propositions, issues, or questions submitted to the electors and receiving an affirmative vote of a majority of the votes cast thereon are approved.