

IN THE SUPREME COURT OF OHIO

STATE OF OHIO <i>ex rel.</i>	)	
RESPONSIBLE OHIO <i>et.al.</i> ,	)	
<i>Relators,</i>	)	Case No. 2015-1411
v.	)	
	)	Expedited Election Case
OHIO BALLOT BOARD and	)	Pursuant to S.C.R.P. 12.03
JON HUSTED, SECRETARY OF	)	
STATE OF OHIO	)	
<i>Respondents</i>	)	

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BRIEF OF AMICUS CURIAE OHIO FARM BUREAU FEDERATION  
IN SUPPORT OF RESPONDENTS OHIO BALLOT BOARD AND JON HUSTED,  
SECRETARY OF STATE OF OHIO

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES .....	iv
I. STATEMENT OF CASE AND FACTS.....	1
II. INTEREST OF THE AMICUS CURIAE .....	1
III. ARGUMENT .....	2
A. Ballot language shall not be held invalid unless it will mislead, deceive or defraud voters.....	2
1. The ballot title and language allows the voter to fully know and understand what he or she is voting upon.....	3
2. No persuasive language was used by the Secretary in drafting the ballot title, nor the Ballot Board in drafting language.....	8
3. There are no cumulative technical effects which threaten the validity of the ballot.....	10
IV. CONCLUSION .....	11
CERTIFICATE OF SERVICE .....	13

## TABLE OF AUTHORITIES

### Cases

<i>Beck v. Cincinnati</i> , 162 Ohio St. 473, 124 N.E.2d 120 (1955) .....	9
<i>Jurcisin v. Cuyaboga County Bd. of Elections</i> , 35 Ohio St.3d 137, 141, 519 N.E.2d 347 (1988).....	3, 8
<i>State ex rel. Bailey et al. v. Celebrezze, Secy. of State, et al.</i> , 67 Ohio St.2d 516, 426 N.E.2d 493 (1981).....	3
<i>State ex rel. Cincinnati for Pension Reform v. Hamilton Cty. Bd. of Elections</i> , 137 Ohio St. 3d 45, 2013-Ohio-4489, 997 N.E.2d 509.....	5, 6, 8, 9, 10
<i>State ex rel. Comm'rs of Sinking Fund v. Brown</i> , 167 Ohio St. 71, 74, 146 N.E.2d 287, 289 (1957).....	9
<i>State ex rel. Kilby v Summit Cty. Bd. of Elections</i> , 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590.....	8, 9

### Ohio Constitutional Provisions

Ohio Constitution, Article XVI, Section 1 .....	2, 5, 6
---	---------

### Ohio Statutes

R.C. 3505.05.....	10
R.C. 3505.06.....	9
R.C. 3519.21.....	5, 10

### Other Authorities

54A Am. Jur. 2d <i>Monopolies, Restraints of Trade, and Unfair Trade Practices</i> Section 781 (1996).....	3-4
<i>Black's Law Dictionary</i> , "Monopoly", (10 <sup>th</sup> Ed.2014).....	3

Greenberg, *Oregon celebrates with free weed as recreational marijuana becomes legal* (July 1, 2015) available at <http://www.washingtonpost.com/news/morning-mix/wp/2015/07/01/oregon-celebrates-with-free-weed-as-recreational-marijuana-becomes-legal/>..... 7-8

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Merriam-Webster, “Monopoly,” <http://www.merriam-webster.com/dictionary/monopoly> (accessed September 5, 2015)..... 3

Merriam-Webster, “Recreational Drug”, available at <http://www.merriam-webster.com/dictionary/recreational%20drug>..... 7

Merriam-Webster, “Recreational”, available at <http://www.merriam-webster.com/dictionary/recreational> (accessed September 5, 2015) ..... 7

Ohio Farm Bureau Federation, “Farm Bureau opposes marijuana measure,” July 17, 2015 available at <http://ofbf.org/media-and-publications/news-room/773/> (accessed September 6, 2015)..... 2

Ohio Farm Bureau Federation, 2015 State Policies, Policy 123: Political Education, at 7, Lines 1-2 (2014) available at <http://ofbf.org/policy-and-politics/policy-development>..... 1-2

Ohio Farm Bureau Federation, 2015 State Policies, Policy 271: Law Enforcement, at 31, Line 60 (2014) available at <http://ofbf.org/policy-and-politics/policy-development>..... 2

Quinnipiac University Poll, *Florida, Ohio, Pennsylvania voters back marijuana, Quinnipiac University swing state poll finds; Toomey up in Pennsylvania; Strickland leads in Ohio.*, (April 6, 2015) available at [http://www.quinnipiac.edu/images/polling/sw/ps04062015\\_Spg72ho.pdf](http://www.quinnipiac.edu/images/polling/sw/ps04062015_Spg72ho.pdf) (accessed September 8, 2015)..... 7

## **I. STATEMENT OF CASE AND FACTS**

Amicus the Ohio Farm Bureau Federation accepts and fully incorporates herein the statement of case and facts as stated by Respondents the Ohio Ballot Board and Secretary of State Jon Husted.

## **II. INTEREST OF THE AMICUS CURIAE**

The Ohio Farm Bureau Federation (“OFBF”) is Ohio’s largest general farm organization, representing nearly 200,000 member families. The Ohio Farm Bureau is a federation of 86 member-county Farm Bureaus, representing Ohio’s 88 counties. Farm Bureau members in every county of the state serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio’s citizens in general. Many members are involved in farm and agribusiness activities, including crop and livestock production, food processing, commodity processing, conditioning and handling, biofuel production, and greenhouse operations. Members of the Farm Bureau run the gamut from large to small businesses.

Since 1919, Ohio Farm Bureau members have led the way in public policy information and issue education. Today is no different, as Farm Bureau members frequently engage in conversations covering the gamut of subjects such as governmental efficiency, taxation, environmental issues, and energy. In Farm Bureau’s storied 96-year history, members have annually engaged in the practice of developing policies which are used to inform the advocacy positions of the organizations. One theme that has persisted through each of those years is a quest for good government that adequately and efficiently represents and serves the people. Member-developed policy encourages farmers to become involved in the political workings of our state, both as engaged and educated voters, and as candidates for elected offices. Ohio Farm Bureau Federation, 2015 State Policies, Policy 123:

Political Education, at 7, Lines 1-2 (2014) available at <http://ofbf.org/policy-and-politics/policy-development>. OFBF has consistently taken positions on issue campaigns and ballot initiatives over the years in line with the policies passed by OFBF members. In this election year, OFBF became one of the first organizations to announce its opposition to what is now known as Issue 3, the ResponsibleOhio proposal which is at issue in this case. Ohio Farm Bureau Federation, “Farm Bureau opposes marijuana measure,” July 17, 2015 available at <http://ofbf.org/media-and-publications/news-room/773/> (accessed September 6, 2015). OFBF members particularly are concerned about the monopolizing effect of the proposal which limits the ability to produce a product to only one group of people and enshrines that right into the Ohio Constitution. As a supporter of having clear information to aide educated voters to cast their best choice, OFBF stands in support of the Ohio Ballot Board and Secretary of State Jon Husted’s choice of wording for the ballot, and particularly Secretary Husted’s chosen language for the ballot title.

In addition, OFBF member policy opposes the cultivation, sale, or use of illegal marijuana in the state of Ohio. Ohio Farm Bureau Federation, 2015 State Policies, Policy 271: Law Enforcement, at 31, Line 60 (2014) available at <http://ofbf.org/policy-and-politics/policy-development>. As marijuana remains illegal under federal law as a schedule 1 drug, OFBF opposes the state taking an inconsistent approach to legalize the drug for recreational and medicinal uses.

### **III. ARGUMENT**

#### **A. Ballot language shall not be held invalid unless it will mislead, deceive or defraud voters**

Ohio Constitution, Article XVI, Section 1 provides that ballot language “shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.” The Court has developed a set of three guiding principles in reviewing ballot language: (1) The voter has a right to know what he or

she is being asked to vote upon, (2) Language which is used in the nature of a persuasive argument, in favor or against, is strictly prohibited, and (3) The determining issue is whether the cumulative effect of any technical defects in the ballot language is harmless or fatal to the validity of the ballot. *State ex rel. Bailey et al. v. Celebrezze, Secy. of State, et al.*, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 (1981). The Court extended the use of these guiding principles to review the validity of the ballot title in *Jurcisin v. Cuyahoga County Bd. of Elections*, 35 Ohio St.3d 137, 141, 519 N.E.2d 347 (1988).

**1. The ballot title and language allows the voter to fully know and understand what he or she is voting upon.**

The title as authored by Secretary of State Husted and ballot language by the Ballot Board summarizes a long and technical constitutional amendment into a succinct statement and set of bullet points which describes the intent, substance and effect of ResponsibleOhio's proposed amendment. ResponsibleOhio rejects the Secretary's title, and the ballot language, as misleading because it utilizes the word "monopoly" to describe the business scheme which has been proposed by the constitutional amendment. However, the common definition of the word "monopoly," according to Merriam-Webster's Dictionary includes: (1) exclusive ownership through legal privilege, command of supply, or concerted action; (2) exclusive possession or control; (3) a commodity controlled by one party; and (3) one that has a monopoly. Merriam-Webster, "Monopoly," <http://www.merriam-webster.com/dictionary/monopoly> (accessed September 5, 2015). "[A] monopoly exists when all, or so nearly all, of an article of trade or commerce within a community or district, is brought within the hands of one person or **set of persons**, as practically to bring the handling or production of the commodity or thing within such single control to the exclusion of the competition or free traffic therein." *Black's Law Dictionary*, "Monopoly", (10<sup>th</sup> Ed.2014) quoting 54A

Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* Section 781, at 107 (1996)(emphasis added.)

These definitions clearly describe the bedrock principle of ResponsibleOhio's proposal and the base upon which the entire scheme relies. The growing of marijuana by one set of persons who will completely control the supply of a commodity (marijuana) is at its core what the proposed ballot amendment is asking voters to approve. While ResponsibleOhio may prefer to put all focus upon the "rest" of the story in hopes to persuade voters, the beginning and basis of the entire amendment is that a small and exclusive group of growers will control the supply of a product through legal privilege (i.e. rights enshrined in the Ohio Constitution) brought about by concerted action (i.e. ResponsibleOhio).

ResponsibleOhio argues that the title is incorrect because the manufacturing of marijuana **products** will not be limited to the ten growers, but rather to the number requirements in the proposal, and puts forth a similar argument as to retail distribution. Relators are attempting to play the very language game of which they are accusing others, by attempting to confuse voters through use of the word "production." While ResponsibleOhio wishes the word "production" to mainly refer to the production of marijuana products, common agricultural nomenclature has always referred to the activity of raising plants generally as "production agriculture." The common understanding of "production," particularly when referring to the marijuana plant itself, must mean the growth and cultivation. The proposed amendment does, in fact, limit the "production" of the marijuana plant to only a very small group at only a very limited amount of sites of that group's choosing. What ResponsibleOhio is attempting to use "production" to refer to is actually what agriculturalists would refer to as the "processing" of the marijuana plant into sub-products or other consumables.

Furthermore, the title and ballot language must convey to the common electorate the effect of the proposed amendment. The title and language clearly convey that one group will be permitted to grow marijuana which will supply an industry of medicinal and recreational marijuana products. While ResponsibleOhio would rather focus on other portions of the proposal that might be more persuasive in their favor, the Secretary is charged with creating a title that is a true and impartial statement of the measures in the language. R.C. 3519.21. The Ballot Board is similarly charged under Ohio Constitution, Article XVI, Section 1. The Secretary's title and the ballot board's language clearly convey the full purpose and effect of the proposed amendment in a factual and accurate manner. By stating that a monopoly will be created, the title and language convey that only one group will be permitted to grow marijuana for commercial sale. By stating the "sale of marijuana" will be "for recreational and medicinal purposes," the title clearly conveys that members of the public will have an opportunity to buy marijuana for either recreational use or medicinal use of their choosing.

ResponsibleOhio also argues throughout the complaint that the ballot language and title utilize words not present in the actual proposed amendment itself. As this court stated in *State ex rel. Cincinnati for Pension Reform v. Hamilton Cty. Bd. of Elections*, 137 Ohio St. 3d 45, 2013-Ohio-4489, 997 N.E.2d 509, ¶52, there is and can be no requirement that only words present in actual proposed issue text be allowed present on the ballot itself. "A strict requirement that boards cannot draft ballot language using nouns or verbs that do not appear in the proposed amendment would unduly restrict a board's discretion as it carries out its duties." *Cincinnati for Pension Reform* at ¶ 52. Similarly, no such requirement can sensibly be placed upon the Secretary and his duty to draft a ballot title. Such a duty can be herculean, as ballot issues often span paragraphs and pages and the Secretary is

tasked with summing up voluminous points, principles and procedures into a concise, understandable and representative title.

The Secretary fulfilled his duty by authoring a short statement, which will relay to the voter the meaning of and accurately describe the proposed amendment. Because the ballot title is an accurate description of the proposed amendment, and does not mislead or deceive voters, the writ should be denied and the Secretary's chosen title remain on the ballot.

Similarly, the Ballot Board sufficiently summarized the important points of the proposal into the ballot language so that the voter is well-informed of the purpose and effects of the proposal. "The ballot need not contain the full text nor a condensed text of the proposal." Ohio Constitution, Article XVI, Section 1. Rather, the Ballot Board should provide a descriptive summary to inform the voter what they are voting upon when they arrive at the polls. Though ResponsibleOhio makes numerous complaints about the ballot language, one which Farm Bureau finds particular concern with is ResponsibleOhio's attack of the word "recreational." ResponsibleOhio argues "recreational" is not the correct word because it is not utilized in the proposed amendment itself and because the term "recreational" is not used in relation to the exercise of other traditional rights enshrined in the Constitution. As previously stated, there is and can be no requirement that only words present in actual proposed issue text be allowed present on the ballot itself. *Cincinnati for Pension Reform*, 137 Ohio St. 3d 45, 2013-Ohio-4489, 997 N.E.2d 509 at ¶54.

While it is true that it is not common to reference "recreationally" with respect to the exercise of one's religion or any another fundamental right, the use of marijuana is not within the same class of fundamental rights as those cited by ResponsibleOhio. Furthermore, the use of marijuana has for many years, been referred to as a "recreational drug," and therefore its use has been referred to as "recreational." Merriam-Webster's even identifies one of the definitions of

“recreational” as “of or relating to recreational drugs or their use.” Merriam-Webster, “Recreational”, available at <http://www.merriam-webster.com/dictionary/recreational> (accessed September 5, 2015). And, “recreational drug” is defined as: “a drug (as cocaine, **marijuana**, or methamphetamine) used without medical justification for its psychoactive effects often in the belief that occasional use of such a substance is not habit-forming or addictive.” Merriam-Webster, “Recreational Drug”, available at <http://www.merriam-webster.com/dictionary/recreational%20drug> (emphasis added.) Once again, ResponsibleOhio attempts to utilize a language game to avoid what is the known reference for non-medicinal uses of marijuana. While the word “personal” may be used in the amendment, possibly because ResponsibleOhio may feel better about the polling data, it does not accurately describe the two types of uses that will be legalized under the proposed amendment. See Higgs, *Ohio voters favor legalizing marijuana, huge majority supports medical use, poll finds*, (April 6, 2015) available at [http://www.cleveland.com/open/index.ssf/2015/04/ohio\\_voters\\_favor\\_legalizing\\_m.html](http://www.cleveland.com/open/index.ssf/2015/04/ohio_voters_favor_legalizing_m.html) (accessed September 6, 2015)(citing bare majority may favor “personal use” by Ohio citizens.); Quinnipiac University Poll, *Florida, Ohio, Pennsylvania voters back marijuana, Quinnipiac University swing state poll finds; Toomey up in Pennsylvania; Strickland leads in Ohio.*, (April 6, 2015) available at [http://www.quinnipiac.edu/images/polling/sw/ps04062015\\_Spg72ho.pdf](http://www.quinnipiac.edu/images/polling/sw/ps04062015_Spg72ho.pdf) (accessed September 8, 2015) (finding majority of Ohio citizens would not utilize marijuana if it was legalized for recreational use.). “Personal” use does not allow for differentiation from medicinal use, as “personal” use could mean “medicinal” as well. Instead, the everyday citizen of Ohio—and likely this country—refers to marijuana as a drug utilized for either medicinal purpose (i.e. to treat a condition or ailment) or recreational (i.e. for the enjoyment of the use of the drug). See e.g. Greenberg, *Oregon celebrates with free weed as recreational marijuana becomes legal*, (July 1, 2015) available at

<http://www.washingtonpost.com/news/morning-mix/wp/2015/07/01/oregon-celebrates-with-free-weed-as-recreational-marijuana-becomes-legal/>. For these reasons, the ballot language and title fully inform the voter and the writ should be denied.

**2. No persuasive language was used by the Secretary in drafting the ballot title, nor the Ballot Board in drafting language.**

The second guiding principle states that persuasive language, which might sway the voter either for or against, is strictly prohibited. In authoring the ballot title and language, the Secretary and Ballot Board did not utilize persuasive language and instead used words which accurately convey the meaning of an incredibly long proposal into a succinct, expressive line.

ResponsibleOhio argues that the word “monopoly” is persuasive against Issue 3 and will result in voters being influenced to vote against their initiative. However, as discussed above, the word “monopoly” is the clear description and name for what would be created under the proposed amendment. It is also the only word in common lexicon that can be used to accurately describe the planned structure of the marijuana “industry” that would be created by ResponsibleOhio.

Furthermore, it would be nearly impossible to create a ballot title that would not hold some persuasive effect for any one person in the entire state of Ohio. Given the court’s precedent, this is also not the charge required of those writing language that will appear on the ballot. Instead, those authoring the language must present factual information and not overtly create arguments for or against in their ballot language. See *Cincinnati for Pension Reform*, 137 Ohio St. 3d 45, 2013-Ohio-4489, 997 N.E.2d 509, ¶49; *State ex rel. Kilby v Summit Cty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590, ¶24; *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 141-142, 519 N.E.2d 347.

ResponsibleOhio refers to *Beck v. Cincinnati*, 162 Ohio St. 473, 124 N.E.2d 120 (1955), as proof that factually accurate statements may still be considered inappropriate persuasive language. But *Beck* did not represent a definitively accurate statement added to the ballot title. The Court ruled in *Beck* that while the statement removed from the ballot described a situation that was possible or even likely if the initiative passed, it did not describe something that **would definitely happen** through the proposed initiative. *Beck*, 162 Ohio St. at 475, see also *State ex rel. Kilby* at ¶22; *State ex rel. Comm'rs of Sinking Fund v. Brown*, 167 Ohio St. 71, 74, 146 N.E.2d 287, 289 (1957). Instead, the statement included in *Beck* was speculation regarding a mere promise of the city council to not collect an unrelated tax in two future years which was not included within the language or a part of the initiative at hand. *Beck*, 162 Ohio St. at 475. The Court recognized in *Beck* that the statement that an income tax would not be collected was not binding upon the city and therefore was not factually accurate but only an inducement for the voters. *Id.*, see also *Cincinnati for Pension Reform* at ¶40. As stated in *State ex rel. Comm'rs of Sinking Fund v. Brown*, 167 Ohio St. at 74, “[t]he clear distinction between [*Beck*] and the instant case is that the statement there disapproved [in *Beck*] was mere unauthorized speculation and coercive argumentation.” Unlike *Beck*, the language utilized by the Secretary and the Ballot Board do not represent speculation or coercive argument, but are actual points derived directly from the text of the proposal that will occur if the measure is passed by the voters.

Additionally, in *Beck*, the Court was not faced with the ballot issue’s title or language, but rather an addition to the caption which pointed out an unrelated effect of the proposed issue. *Cincinnati for Pension Reform* at ¶41. The caption, under R.C. 3505.06(D) must describe plainly and accurately the basic effect of the issue and the vote percentage needed to have its effect only. No such issue is at play in this case. Issue 3 will have a caption which clearly identifies that Issue 3 is a

proposed amendment to the Ohio Constitution, created through voter initiative. In contrast, the title, which the secretary is charged with authoring under R.C. 3505.05(H), *see also* R.C. 3519.21, must convey the substance of the initiative in a ballot title. There is no speculation within the language chosen by the Secretary for the ballot title. The issue will, in fact, create a monopoly. It will, in fact, allow for that monopoly to produce marijuana. It will, in fact, allow that marijuana to enter the stream of commerce. And, it will, in fact, allow for that marijuana entered into the stream of commerce to be utilized either recreationally or medicinally by consumers. Therefore, the language chosen by the Secretary “did not introduce a new subject that was outside the terms of the proposed amendment. And there is nothing factually inaccurate about the descriptive language.” *Cincinnati for Pension Reform* at ¶ 49. The ballot language similarly does not include persuasive language, but instead plainly describes important points about the initiative that the voter should be aware of when they cast their vote. Because neither the ballot title nor ballot language utilizes words in the nature of a persuasive argument and only present an accurate description of the proposed amendment, the writ should be denied and the Secretary’s chosen title and the Ballot Board’s language remain on the ballot.

**3. There are no cumulative technical effects which threaten the validity of the ballot.**

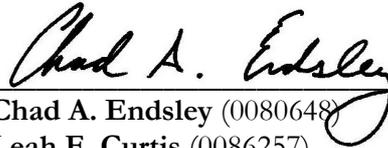
The final principle looks to whether the cumulative effects of technical inaccuracies results in the invalidity of the ballot itself. Because the Secretary’s title and the Ballot Board’s language does not create any opportunity to mislead voters, and provides an accurate description of the proposed amendment, there are no technical defects to threaten the ballot’s validity. Instead, the title and language properly identify the substance of the amendment and inform the voters to cast their vote. Because the ballot title and language do not suffer from inaccuracies to create an effect of invalidity,

the writ should be denied and the Secretary's chosen title and Ballot Board's language remain on the ballot.

#### **IV. CONCLUSION**

The language which accompanies the presentation of an issue on the ballot is of utmost importance. While it is understandable that the proponents of those issues would wish to utilize only their own chosen language, they are not entitled to utilize that language on the ballot. To do so would result in misleading, persuasive ballots for each and every issue. The framers of the Ohio Constitution and the Ohio legislature saw fit to task the Ballot Board with writing ballot language and the Secretary with authoring the ballot title, rather than simply allowing the proponents of an issue to write these pieces themselves. But it is also true that words have meaning and there is no such word of any substance that is purely "neutral" and that will have no persuasive effect on any single person in the citizenry. Instead, the Secretary and the Ballot Board are tasked with drafting accurate, informative and descriptive language to provide the voters a succinct understanding of the issues presented. As the Secretary and the Ballot Board fully complied with law in carrying out their duties to create ballot text, the writ should be denied and the language and title remain on the ballot.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

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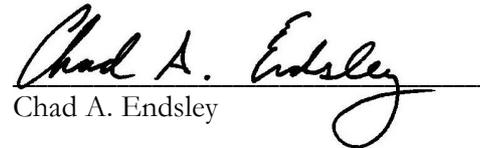
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