

ORIGINAL

Case No. 2016-0614

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**IN THE SUPREME COURT OF OHIO**

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STATE EX REL. PAUL L. JACQUEMIN, et al.,  
*Relators,*

v.

UNION CTY. BD. OF ELECTIONS,  
*Respondent.*

*Original Action in Prohibition and Mandamus*

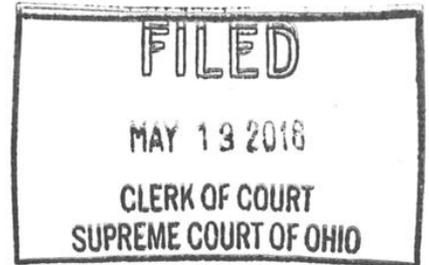
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**BRIEF OF AMICUS CURIAE THE OHIO HOME BUILDERS  
ASSOCIATION IN SUPPORT OF  
RELATOR PAUL L. JACQUEMIN, ET AL.**

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**I. INTERST OF AMICUS CURIAE**

The Ohio Home Builders Association (OHBA) is a 4,500 member trade association serving home builders, remodelers, land developers and associate members promoting affordable housing opportunities for all Ohioans. The association serves its membership through education and encouraging proactive involvement on state issues impacting the production of affordable housing. OHBA represents an industry that creates significant economic growth in Ohio.

As the only statewide association representing the residential construction and land development industry, OHBA has unique insight into the practical reality of the home building industry. OHBA can offer valuable perspective on the level of impact promoting certainty and predictability in the land development and building process can have on its membership and their ability to provide affordable housing opportunities in Ohio, as well as, the vital role the residential construction industry plays in the Ohio economy. The goal of our membership is to provide safe, quality, affordable housing to all of the citizens of this great state. With a strong building climate comes additional benefits, such as, an increased chance of business activity, more jobs, and greater prosperity.

The poor economic conditions that continue to persist in Ohio are aggravated by any uncertainty involved in the land development process; predictable laws and enforcement are essential.

The Union County Board of Elections ("Board") decision to deny Relators' protest was made without regard to evidence presented and in disregard of R.C. § 519.12(H). Allowing the Board to submit the question on the referendum in November given the material omissions and facial defects in the summary found on the Petition for Zoning

Referendum on Jerome Township Resolution 15-167 (“Referendum Petition”) would set dangerous precedent for future development. If after board of trustees’ approval of a rezoning request, petitioners have the support of local boards of elections in certifying Referendum Petitions that are misleading and inaccurate with petition summaries comprised of material omissions, and defects, the risk of rules changing in the middle of the game increases greatly. The lack of predictability and certainty in planning and regulation impacts the ability to provide affordable housing. Uncertainty results in significantly higher costs, and potentially no resulting development. As set forth in the Relators’ brief, the underlying protest raised serious issues concerning the failure of the Referendum Petition to comply with mandatory statutory provisions. If developers can no longer rely on plain words of the Ohio Revised Code, and unlawful referendum petitions are allowed to stand, thus being ordered to be included on the ballot, the door becomes wide open for both arbitrary and discriminatory development regulations. Allowing such impermissible practices would negatively impact the building industry, the purchaser and Ohio’s economy.

This case presents an important opportunity for this Honourable Court to uphold Ohio referendum law, and at the same time recognize the importance of certainty and predictability of our laws.

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

*Amicus Curiae* Ohio Home Builders Association refer to and accept the procedural and factual background as set forth in the Merit Brief filed by Relators Paul L. Jacquemin, et al. on May 13, 2016.

### III. ARGUMENT

*Amicus Curiae* Ohio Home Builders Association joins in support of the Relators' request for a writ of prohibition or writ of mandamus. The Respondent's failure to grant the Relator's protest of the Referendum Petition was an abuse of discretion and the Relators lack any adequate remedy for their injury.

Pursuant to Ohio Rev. Code § 519.12(H), requirements for a referendum petition include a "brief summary" of the zoning amendment resolution. "[I]f the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and the subject resolution will not be submitted for a vote." *State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections*, 109 Ohio St.3d 219 (2006). The summary offered in the Referendum Petition contained errors, inaccuracies and material omissions that would confuse an average person. The Relators protested the Referendum Petition citing 9 facial defects. From the Ohio Home Builders Association perspective the most crucial of these making the Referendum Petition summary ambiguous and misleading include (1) it omits that the Resolution imposed additional conditions on the applicant; and (2) it inaccurately describes the location of the land area.

In rejecting Relators' protest, the Respondent abused its discretion and neglected to adhere to the requirements found in Ohio Rev. Code § 519.12(H) that the referendum petition summary must be accurate and unambiguous, and not ambiguous, misleading, inaccurate, or contain material omissions.

The building industry is a vital participant in a healthy economy. Residential construction provides significant income and jobs for local workers. Home building generates important local economic activity, stimulating positive results for residents, as well as added

returns for local governments. The construction activity has an ongoing impact, rippling into new homes occupied by residents who pay taxes and buy goods and services in the area. Such rippling effects and ongoing benefits are essential in fully appreciating the positive impacts home building has on the economy. For example, NAHB estimates the one year local impacts of building 100 single family homes in a typical metro area include \$21.1 million in local income, \$2.2 million in taxes and other revenue for local governments and 324 local jobs.<sup>1</sup>

The ability to compete efficiently in the home building industry and optimally price a home depends on the degree to which overall costs are certain and predictable. Any exposure to developers and builders of increased risk of uncertainty, liability, and litigation expenses will be reflected in home prices. Mitigating increased risk and cost associated with continuously changing standards will aid in keeping prices more affordable.

**A. The Referendum Petition Summary is ambiguous and misleading because it omits that the Resolution imposed additional conditions on the applicant.**

Resolution 15-167 requires an applicant to (1) negotiate terms and conditions of any Joint Economic Agreements or Tax Incremental Financing agreements as needed; (2) enter into an agreement to reimburse Jerome Township for additional necessary costs incurred for the service of Fire and EMS protection for the proposed development; and (3) negotiate any other terms and conditions as necessary in the text of the Final Development Plan. These requirements are an important part of the resolution itself. Failure to provide this information in the summary would certainly add confusion in the mind of an average reader as to who would bear responsibility for the additional costs related to the proposed development, such as Fire and EMS

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<sup>1</sup> *The Local Impact of Home Building in a Typical Metro Area: Income, Jobs, and Taxes Generated*, NAHB Housing Policy Dept., <http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=35601>. June 2009.

protection. This ambiguity would mislead average readers into opposing the amendment and signing the Petition. As testified to by the developer's representative, the above conditions imposed by the Jerome Township Trustees made up an important portion of Resolution 15-167.

[See April 12, 2016 hearing transcript, p. 69](In hearing transcript pp. 69-70, 73-75, Mr. Hunter details the importance of the three conditions).

**B. Inaccurate description of the nearest intersection to the re-zoned land in the Referendum Petition's summary was materially misleading.**

The Referendum Petition summary states that the "nearest intersection [is] Hyland Croy Road and SR 161 - Post Road." However, the intersection of Hyland-Croy Road and SR 161 - Post Road is over a half-mile south of the re-zoned parcels, and there are several other parcels of land (and at least 50 acres) between that section of Hyland-Croy Road and the intersection of Hyland-Croy Road and Park Mill Drive.

This inaccurate description is significant because the property that is actually located at the corner of Hyland-Croy Road and SR 161 - Post Road is zoned differently and has been well known in the community for prior legal wrangling. The developer's representative Don Hunter testified that the property located at this intersection is known as the Wirchainski property and it has been in the paper a "great deal." [See April 12, 2016 hearing transcript, p. 62]. Jerome township Zoning and Development Committee member Jeffrey Rymer testified that the description was "misleading" and that the property at that intersection is a "sore spot for the community." [See April 12, 2016 hearing transcript, p. 132].

The description in the Referendum Petition's summary was inaccurate and materially misled the citizens of Jerome Township to believe that the re-zoned property was located at the notorious intersection of Hyland-Croy Road and SR 161 - Post Road, and

carrying all of the negative connotations that followed. When, in reality, the re-zoned property was located over half-mile north at low intensity intersection of Hyland-Croy Road and Weldon Road.

This mischaracterization and inaccurate description is another fatal flaw of the Referendum Petition. Respondent abused its discretion and acted in clear disregard of the Ohio Rev. Code § 519.12(H) requirements that the Referendum Petition summary must not be inaccurate, misleading, or contain material omission.

Taken together, the failure to properly describe the location of the property, and then absent ALL the property, there could be as much as a mile difference in the area/stretch where this zoning was to occur. Based on these descriptions, an average person could not specifically know where to point on a map. This is a material omission that Ohio law precludes because it would mislead the average petition signer.

**C. Predictability and consistent application of the laws is crucial to businesses involved in the land development process.**

As set forth in Relators' Merit Brief, Respondent Board abused its discretion and clearly disregarded applicable law by ruling Referendum Petition fulfilled statutory requirements in Ohio Rev. Code § 519.12. In addition to the two mentioned in the Ohio Home Builder Association's Amicus, the Relators' Merit brief appropriately sets out seven other facially defective aspects of the Referendum Petition summary. The petitioners selected portions of the zoning amendment, to be relied upon by electors, without duplicating the exact language of Resolution 15-167. Petitioners picked and chose certain aspects of the zoning amendment to include, while also omitting other significant information. The result is a summary with inaccurate and misleading information so as to

confuse the average person. Thus, the summary falls short of what is required by Ohio Rev. Code § 519.12(H), yet was allowed to stand by the Respondent Board.

When developing land, a development team looks at both the regulatory scheme, including any applicable statutory requirements that may impact the property. The breadth of regulation is largely invisible to the public, and even to the regulators, yet nevertheless has a profound impact on housing affordability and homeownership. While each individual regulation on its own may not be significantly onerous or problematic, builders and developers are often subject to the layering effect, where numerous regulations are stacked on top of one another. A 2016 study by NAHB estimates that, on average, regulations imposed by government at all levels account for **24.3 percent** of the final price of a new single-family home built for sale. Three-fifths of this 24.3 percent is attributable to regulations imposed prior to construction homes on the lots. *How Government Regulations Affects the Price of a New Home*, Special Studies, (May 2, 2016), <http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=250611&channelID=311>. With so much investment in the development process, predictability and consistent application of the laws is essential. Allowing a Referendum Petition summary to move forward with clear omissions and defects would set a dangerous precedent for those who rely on rezoning approvals and applicable referendum law.

#### **IV. CONCLUSION**

The facts produced at the Board of Elections hearing held April 12, 2016, revealed that the Referendum Petition summary was inaccurate and contained material omissions that would confuse or mislead an average person, in violation of Ohio Rev. Code § 519.12(H). For the reasons above, *Amicus Curiae* Ohio Home Builders Association

respectfully request that this Court issue a Writ of Prohibition prohibiting respondent from certifying the Referendum Petition and issue a Writ of Mandamus ordering Respondent to sustain Relator's protest.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served via electronic mail upon the following  
this 13th day of May, 2016:

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