

Case No. _____

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* MARGARET DeBLASE,

and

STATE OF OHIO *ex rel.* JOHN GIROUX,

Relators,

v.

OHIO BALLOT BOARD,

and

FRANK LaROSE, Chairman, Ohio Ballot Board, and

THERESA GAVARONE, Member, Ohio Ballot Board, and

PAULA HICKS-HUDSON, Member, Ohio Ballot Board, and

WILLIAM N. MORGAN, Member, Ohio Ballot Board, and

ELLIOT FORHA, Member, Ohio Ballot Board, and

NANCY KRAMER, Member, Committee to Represent the Petitioners, and

AZIZA WAHBY, Member, Committee to Represent the Petitioners, and

DAVID HACKNEY, Member, Committee to Represent the Petitioners, and

JENNIFER McNALLY, Member, Committee to Represent the Petitioners, and

EBONY SPEAKES-HALL, Member, Committee to Represent the Petitioners,

Respondents.

Original Action in Mandamus

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

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**SUPREME COURT
OF THE STATE OF OHIO**

STATE OF OHIO *ex rel.* **MARGARET DeBLASE** : Case No. _____
% Curt C. Hartman, Legal Counsel :
7394 Ridgepoint Drive, Suite 8 :
Cincinnati, Ohio 45230, :
and :
STATE OF OHIO *ex rel.* **JOHN GIROUX** :
% Curt C. Hartman, Legal Counsel :
7394 Ridgepoint Drive, Suite 8 : **VERIFIED COMPLAINT**
Cincinnati, Ohio 45230, : **FOR WRIT OF MANDAMUS**
Relator, :
v. :
OHIO BALLOT BOARD :
% Frank LaRose, Chairman :
Office of the Ohio Secretary of State :
180 East Broad Street, 16th Floor :
Columbus, Ohio 43215 :
and :
FRANK LaROSE :
Chairman, Ohio Ballot Board :
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and :
THERESA GAVARONE :
Member, Ohio Ballot Board, :
1537 Cedar Lane :
Bowling Green, Ohio 43402 :
and :
PAULA HICKS-HUDSON :
Member, Ohio Ballot Board :
2633 Robinwood Avenue :
Toledo, Ohio 43610 :
and :

[continued on next page]

The STATE OF OHIO, by and through Relators MARGARET DeBLASE and JOHN GIROUX, brings this action in order to obtain the issuance of a writ of mandamus:

to compel Respondents OHIO BALLOT BOARD and the members thereof:

- (i) to vacate their decision and determination of March 13, 2023, that, with respect to the initiative petition purportedly seeking to propose an amendment to the Ohio Constitution entitled “The Right to Reproductive Freedom with Protections for Health and Safety,” said petition contains only one proposed constitutional amendment;

and, pursuant to R.C. 3505.062:

- (ii) to issue a determination that the foregoing initiative petition contains more than one proposed amendment to the Ohio Constitution;
- (iii) to divide the foregoing initiative petition into individual petitions, each containing only one proposed constitutional amendment; and
- (iv) to certify the approval of each of the individual petitions containing only one proposed constitutional amendment to the attorney general.

1. Relator MARGARET DeBLASE is a citizen and qualified elector of the State of Ohio, residing in Montgomery County.

2. Relator JOHN GIROUX is a citizen and qualified elector of the State of Ohio, residing in Hamilton County.

3. Respondent OHIO BALLOT BOARD is a body politic and corporate, mandated by Article XVI, Section 1 of the Ohio Constitution, and provided for by R.C. 3505.061.

4. Respondent FRANK LAROSE is the Ohio Secretary of State and, in such capacity, is one of the five members of the OHIO BALLOT BOARD, as well as serving as the chairman of the OHIO BALLOT BOARD.

5. Respondent THERESA GAVARONE is one of the five members of the OHIO BALLOT BOARD.

6. Respondent PAULA HICKS-HUDSON is one of the five members of the OHIO BALLOT BOARD.

7. Respondent WILLIAM N. MORGAN is one of the five members of the OHIO BALLOT BOARD.

8. Respondent ELLIOT FORHA is one of the five members of the OHIO BALLOT BOARD.

9. Respondent NANCY KRAMER is one of the five members of the Committee to Represent the Petitioners designated on the preliminary initiative petition at issue herein and, in such capacity, has or may claim an interest in the transaction that is the subject of this action and the disposition of the action may as a practical matter impair or impede her ability to protect that interest.

10. Respondent AZIZA WAHBY is one of the five members of the Committee to Represent the Petitioners designated on the preliminary initiative petition at issue herein and, in such capacity, has or may claim an interest in the transaction that is the subject of this action and the disposition of the action may as a practical matter impair or impede her ability to protect that interest.

11. Respondent DAVID HACKNEY is one of the five members of the Committee to Represent the Petitioners designated on the preliminary initiative petition at issue herein and, in such capacity, has or may claim an interest in the transaction that is the subject of this action and the disposition of the action may as a practical matter impair or impede his ability to protect that interest.

12. Respondent JENNIFER McNALLY is one of the five members of the Committee to Represent the Petitioners designated on the preliminary initiative petition at issue herein and, in

such capacity, has or may claim an interest in the transaction that is the subject of this action and the disposition of the action may as a practical matter impair or impede her ability to protect that interest.

13. Respondent EBONY SPEAKES-HALL is one of the five members of the Committee to Represent the Petitioners designated on the preliminary initiative petition at issue herein and, in such capacity, has or may claim an interest in the transaction that is the subject of this action and the disposition of the action may as a practical matter impair or impede her ability to protect that interest.

14. This Court possesses subject matter jurisdiction over this original action pursuant to Article IV, Section 2(B)(1)(b) of the Ohio Constitution.

Overview of role of OHIO BALLOT BOARD for an initiated constitutional amendment

15. Pursuant to Article II, Sections 1 & 1a of the Ohio Constitution, the people of the State of Ohio reserved unto themselves the power to proposed amendments to the Ohio Constitution through an initiative petition process.

16. Pursuant to R.C. 3519.01(A), those seeking to propose an amendment to the Ohio Constitution by initiative petition must, initially by a written preliminary initiative petition containing the signature of at least 1,000 registered voters in the State of Ohio, submit the proposed amendment and a summary thereof to the Ohio Attorney General.

17. Upon receipt of the foregoing preliminary initiative petition, the Ohio Attorney General is required to conduct an examination of the summary contained on the preliminary initiative petition in order to determine whether the summary is a fair and truthful statement of the proposed constitutional amendment.

18. If the Ohio Attorney General determines that the summary contained on the preliminary initiative petition is a fair and truthful statement of the proposed constitutional amendment, he shall then certify such determination and forward the petition to the OHIO BALLOT BOARD for its approval under R.C. 3505.062(A).

19. Pursuant to R.C. 3505.062(A), upon receipt of a preliminary initiative petition from the Ohio Attorney General, the OHIO BALLOT BOARD is tasked to make a legal determination of whether the petition proposes only one proposed constitutional amendment.

20. Pursuant to R.C. 3505.062(A), if the OHIO BALLOT BOARD determines that a preliminary initiative petition contains only one proposed constitutional amendment, it shall certify its approval thereof to the Ohio Attorney General.

21. Pursuant to R.C. 3505.062(A), if the OHIO BALLOT BOARD determines that a preliminary initiative petition contains more than one proposed constitutional amendment, the OHIO BALLOT BOARD is required to divide the petition into individual petitions each containing only one proposed constitutional amendment and, in turn, to certify its approval of each individual petition to the Ohio Attorney General.

22. And, if the OHIO BALLOT BOARD determines that a preliminary initiative petition contains more than one proposed constitutional amendment and, in turn, divides the petition into individual petitions each containing only one proposed constitutional amendment, then the petitioners advancing the initiative petition must resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the BOARD's division of the initiative petition for review and pursuant to R.C. 3519.01(A).

Factual Events

23. According to the website of the Ohio Attorney General, on March 2, 2023, Ohio Attorney General David Yost certified as a fair and truthful statement the summary contained within a *Preliminary Initiative Petition* submitted to him pursuant to R.C. 3519.01(A) and seeking to propose a constitutional amendment. The title of the proposed constitutional amendment was set forth as “The Right to Reproductive Freedom with Protections for Health and Safety Amendment”.

24. A true and accurate copy of the *Preliminary Initiative Petition* with the text and summary of the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety Amendment”, as published on the website of the Ohio Attorney General, is attached hereto as *Exhibit A*.¹

25. A true and accurate copy of a letter dated March 2, 2023, and issued by Ohio Attorney General David Yost, as obtained from the website of the Ohio Attorney General, setting forth the determination and certification of the Ohio Attorney General is attached hereto as *Exhibit B*.²

26. Respondents NANCY KRAMER, AZIZA WAHBY, DAVID HACKNEY, JENNIFER McNALLY, and EBONY SPEAKES-HALL are the five members of the Committee to Represent the Petitioners as designated on the *Preliminary Initiative Petition*.

27. According to the website of the Ohio Secretary of State, the OHIO BALLOT BOARD held a meeting on March 13, 2023.

¹ Published at <https://www.ohioattorneygeneral.gov/getattachment/cf27c10f-b153-4731-ae9e-e3555a326ed9/The-Right-to-Reproductive-Freedom-with-Protections-for-Health-and-Safety.aspx>.

² Published at <https://www.ohioattorneygeneral.gov/getattachment/565d7148-689a-4cd2-90e7-d80e5841eb75/The-Right-to-Reproductive-Freedom-with-Protections-for-Health-and-Safety.aspx>.

28. According to the agenda, as published on the website of the Ohio Secretary of State, for the meeting of the OHIO BALLOT BOARD held on March 13, 2023, the only substantive business was the examination of a proposed constitutional amendment, entitled “The Right to Reproductive Freedom with Protections for Health and Safety”, *i.e.*, the *Preliminary Initiative Petition* certified by the Ohio Attorney General on March 2, 2023, in order to determine whether it contains only one proposed amendment.

29. A true and accurate copy of the agenda for the meeting of the OHIO BALLOT BOARD held on March 13, 2023, as obtained from the website of the Ohio Secretary of State, is attached hereto as *Exhibit C*.³

30. An audiovisual recording of the meeting of the OHIO BALLOT BOARD held on March 13, 2023, is available from the website of *The Ohio Channel* at <https://ohiochannel.org/video/ohio-ballot-board-3-13-2023>.⁴

31. At the meeting of the OHIO BALLOT BOARD held on March 13, 2023, only two members of the general public spoke regarding the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety”, *viz.*, Donald J. McTigue and Relator JOHN GIROUX.

32. As indicated from the audiovisual recording of the meeting of the OHIO BALLOT BOARD held on March 13, 2023, there was *absolutely no discussion or debate whatsoever* by the members of the OHIO BALLOT BOARD as to whether the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive

³ Published at <https://www.ohiosos.gov/legislation-and-ballot-issues/ballot-board/>.

⁴ The meeting of the OHIO BALLOT BOARD conducted on March 13, 2023, was also transcribed by a court reporter. The Office of the Ohio Secretary of State has indicated that, as of Friday, March 17, 2023, the transcript of the meeting was not yet available.

Freedom with Protections for Health and Safety” actually contains only one proposed constitutional amendment.

33. The only comment made by any member of the OHIO BALLOT BOARD at the meeting on March 13, 2023, with respect to the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety” was by Respondent THERESA GAVARONE who wanted it “noted for the record” that she was pro-Life and that the issue before the BOARD was was she characterized as “procedural”.

34. Thus, there was no debate or discussion whatsoever by the members of the OHIO BALLOT BOARD at the meeting of March 13, 2023, as to whether the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety” actually contains only one proposed amendment.

35. Nonetheless, on the motion offered by Respondent FRANK LaROSE, the OHIO BALLOT BOARD determined the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety” contained only one proposed amendment.

36. On March 13, 2023, the Secretary of the OHIO BALLOT BOARD issued a letter to the Ohio Attorney General certifying the determination of the OHIO BALLOT BOARD that the *Preliminary Initiative Petition* with respect to the proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety” contained only one proposed amendment.

37. A true and accurate copy of the certification letter issued by the Secretary of the OHIO BALLOT BOARD to the Ohio Attorney General, as provided to undersigned counsel by the Office of the Ohio Secretary of State, is attached hereto as *Exhibit D*.

Legal requirements for a single proposed constitutional amendment

38. “In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 915 N.E.2d 1215, 2009-Ohio-5327 ¶9 (quoting *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 778 N.E.2d 32, 2002-Ohio-5923 ¶11). “This standard also applies when evaluating a ballot-board decision to divide a proposed constitutional amendment into separate ballot measures.” *State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶14; accord *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶30 (“[t]his standard is also appropriate for gauging the propriety of the ballot board’s determination here”).

39. The determination of the OHIO BALLOT BOARD and its members that the *Preliminary Initiative Petition, i.e., Exhibit A*, contained only one proposed amendment to the Ohio Constitution constitutes an abuse of discretion and/or an act in clear disregard of applicable legal provisions.

40. “Because this separate-petition requirement is comparable to the separate-vote requirement for legislatively initiated constitutional amendments under Section 1, Article XVI of the Ohio Constitution, [this Court’s] precedent construing the constitutional provision is instructive in construing the statutory requirement.” *State ex rel. Ohio Liberty Council v. Brunner*, 25 Ohio St. 3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶41.

41. “[A] proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single general object or purpose.” *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 836 N.E.2d 536, 2005 Ohio 5303 ¶34 (quoting *State ex rel. Roahrig v. Brown*, 30 Ohio St.2d 82, 84, 282 N.E.2d 584 (1972)).

The text of the Proposed Constitutional Amendment

42. As indicated in the *Preliminary Initiative Petition*, the *Proposed Constitutional Amendment*, in its entirety, reads as follows:

FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article I of the Ohio Constitution is amended to add the following Section:

Article I, Section 22. The Right to Reproductive Freedom with Protections for Health and Safety

A. Every individual has a right to make and carry out one’s own reproductive decisions, including but not limited to decisions on:

1. contraception;
2. fertility treatment;
3. continuing one’s own pregnancy;
4. miscarriage care; and
5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

1. An individual’s voluntary exercise of this right or
2. A person or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual’s health in accordance with widely accepted and evidence-based standards of care. However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient’s treating physician it is necessary to protect the pregnant patient’s life or health.

C. As used in this Section:

1. “Fetal viability” means “the point in a pregnancy when, in the professional judgment of the pregnant patient’s treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis.”
2. “State” includes any governmental entity and any political subdivision.

D. This Section is self-executing.

**The *Proposed Constitutional Amendment* improperly seeks to place
an “inherently different” and “unique act”
under in the same general category of “one’s own reproductive decisions”**

43. The *Proposed Constitutional Amendment* contains more than one proposed amendment and, thus, the OHIO BALLOT BOARD abused its discretion and/or acted in clear disregard of applicable legal provisions when it determined and certified that the *Preliminary Initiative Petition* contains and proposes a single constitutional amendment.

44. As developed below, the United States Supreme Court has: (i) recognized that abortion is “inherently different” than other intimate, personal rights (such as procreation or contraception), *see Roe v. Wade*, 410 U.S. 113, 159 (1973); and (ii) described abortion as a “unique act”, *see Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992). Thus, the effort within the *Proposed Constitutional Amendment* to include abortion, as well as a right of deciding whether to continue one’s own pregnancy, with other rights under the rubric of “one’s own reproductive decisions” does not and cannot relate to a single general object or purpose.

45. As abortion (or deciding not to continue one’s own pregnancy) is “inherently different” and a “unique act”, it cannot *ipse facto* relate to a single object or purpose of other matters concerning “one’s own reproductive decisions”.

46. In Section A, the *Proposed Constitutional Amendment* proposes to establish or create an individual constitutional right regarding “one’s own reproductive decisions” and, then, in turn, attempts to specifically establish various actions under this rubric, *i.e.*, contraception, fertility treatment, continuing one’s own pregnancy, miscarriage care, and abortion.⁵

⁵ Based on information and belief, those advancing the *Proposed Constitutional Amendment* have not, to date, provided any explanation of the distinction between a decision concerning “continuing one’s own pregnancy” versus concerning “abortion” even though the terms are used separately within the *Proposed Constitutional Amendment*. In light of such terms essentially being synonymous, references herein concerning “abortion” as used within the

47. Separately and distinctly from establishing an individual constitutional right, the *Proposed Constitutional Amendment* in Section C specifically engages in a separate legislative action, *i.e.*, line-drawing, with respect to “abortion” which is not limited to or constrained to an individual’s “own reproductive decisions” but also concerns the interest and rights of a third party, *i.e.*, the unborn child. (And the same can be said with respect to decisions concerning “continuing one’s own pregnancy”.)

48. But, by including “abortion” and “continuing one’s own pregnancy” within Section A of the *Proposed Constitutional Amendment* as being under the rubric of “one’s own reproductive decisions,” the *Proposed Constitutional Amendment* does not and cannot relate to a single general object or purpose, as “abortion” has been recognized by the United States Supreme Court as an “inherently different” and “unique act”, and the same logic applies to the synonymous concept of decisions regarding “continuing one’s own pregnancy”.

49. Thus, decisions regarding “contraception”, “fertility treatment”, and “miscarriage care” are distinctly and materially different from decisions regarding “continuing one’s own pregnancy” and “abortion” as used in Section A of the *Proposed Constitutional Amendment*. Stated otherwise, decisions regarding “contraception”, “fertility treatment”, and “miscarriage care” do not relate to the same general object or purpose as decisions concerning “continuing one’s own pregnancy” and “abortion”.

50. In fact, as acknowledged by Ohio Attorney General David Yost, “every abortion inflicts the most irreparable harm imaginable – death – on the unborn child”, and the same logic applies to the synonymous concept of decisions concerning “continuing one’s own pregnancy”.

Proposed Constitutional Amendment can and should also relate to the language in the *Proposed Constitutional Amendment* concerning decisions concerning “continuing one’s own pregnancy”.

See Preterm-Cleveland v. David Yost, Ohio Supreme Court Case No. 2023-004, *Brief in Support of Jurisdiction of Appellants Dave Yost, et al.*, at 10.⁶

51. Furthermore, by including efforts to impose certain legislative requirements specifically with respect to abortion within Section C of the *Proposed Constitutional Amendment* but also including within the *Proposed Constitutional Amendment* items such as contraception, fertility treatment, and miscarriage care, the *Proposed Constitutional Amendment* does not and cannot relate to a single general object or purpose, as “abortion” has been recognized by the United States Supreme Court as an “inherently different” and “unique act”, and the same logic applies to the synonymous concept of decisions “continuing one’s own pregnancy”.

52. In fact, the unique distinction or difference between all intimate personal decisions, including those relating to reproduction or procreation, on the one hand, and abortion or deciding on continuing one’s own pregnancy, on the other hand, has repeatedly been recognized and acknowledged by the United States Supreme Court.

53. As recognized by Justice Blackmun of the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113, 159 (1973)(with emphasis added):

The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. The situation therefore is inherently different from...procreation....

54. Similarly, in *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), the United States Supreme Court acknowledged (with emphasis added) that, while “[o]ur law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education” but, on the other hand, “[a]bortion is a unique

⁶ Available at https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=936103.pdf&subdirectory=2023-0004\DocketItems&source=DL_Clerk

act” to such personal decisions. The former are akin to the nature of the right established in Section A of the *Proposed Constitutional Amendment*, except decisions on abortion and continuing one’s pregnancy, while the latter is akin to what is being legislated in Section C of the *Proposed Constitutional Amendment* and also established as a right in Section A of the *Proposed Constitutional Amendment* vis-à-vis decisions on abortion and continuing one’s own pregnancy.

55. And, just recently, the United States Supreme Court reiterated once again that legislation regarding abortion is clearly distinguishable from personal intimate rights of individuals:

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call “potential life” and what the law at issue in this case regards as the life of an “unborn human being.” See *Roe*, 410 U.S., at 159, 93 S. Ct. 705, 35 L. Ed. 2d 147 (abortion is “inherently different”); *Casey*, 505 U. S., at 852, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (abortion is “a unique act”).

Dobbs v. Jackson Women's Health Org., 597 U.S. __, __, 142 S. Ct. 2228, 2258 (2022) (emphasis added).

56. If “abortion” or deciding on “continuing one’s own pregnancy” is “inherently different” from other intimate individualized rights and is also considered “a unique act”, then the *Proposed Constitutional Amendment* does not concern a single general object or purpose of an individual’s (or a woman’s) own reproductive decisions. Furthermore, by providing standards specific to abortion, the *Proposed Constitutional Amendment* has gone far afield of an individual’s (or a woman’s) own reproductive decisions and, instead, also pulls into play the interests and rights of the unborn child.

57. As the *Proposed Constitutional Amendment* involves separate and distinct matters, *i.e.*, it does not address a single general object or purpose, but the OHIO BALLOT BOARD

wrongfully determined, as a matter of law, that the *Proposed Constitutional Amendment* contains only one proposed amendment, the OHIO BALLOT BOARD acted in clear disregard of applicable legal provisions when it determined that the *Proposed Constitutional Amendment* contains only one proposed amendment.

58. Additionally, “[t]he failure to exercise discretion is itself an abuse of that discretion.” *Bank of Am. v. Litteral*, 191 Ohio App. 3d 303, 945 N.E.2d 1114, 2010-Ohio-5884 ¶24 (2d Dist.); accord *Dickson, Carlson & Campillo v. Pole*, 83 Cal. App.4th 436, 449 (2000); see *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 291 (5th Cir. 2015)(“the court's failure to explain its decision is an abuse of discretion”); *Roop v. Roop*, 2006-Ohio-2862 ¶1 (4th Dist.)(“[b]ecause the trial court offers no rationale to support its modifications, we conclude that those modifications were arbitrary, and thus, an abuse of discretion”)

59. As the OHIO BALLOT BOARD determined that the *Proposed Constitutional Amendment* contains only one proposed amendment but did so without any substantive comment, discussion, or debate amongst its members as to whether the *Proposed Constitutional Amendment* actually contains only one proposed amendment, let alone making any effort to explain its determination, the OHIO BALLOT BOARD abused its discretion in making that determination.

CAUSE OF ACTION
Writ of Mandamus

60. Relators incorporates by reference all of the foregoing paragraphs as if fully restated herein.

61. Relators have standing to ensure compliance with all aspect of election laws, including those dealing with initiative petitions seeking to propose constitutional law. See *State ex rel. Holwadel v. Hamilton Cty. Bd. of Elec.*, 144 Ohio St. 3d 579, 45 N.E.3d 994, 2015-Ohio-5306

¶41 (“Resident electors have standing to bring mandamus actions to enforce public duties in election matters”).

62. Relators have a clear legal right to the requested relief as, in determining the *Proposed Constitutional Amendment* contains only one proposed amendment, the OHIO BALLOT BOARD abused its discretion and/or acted in clear disregard of applicable legal provisions, and Relators have a clear legal right to ensure compliance by a public body with election laws that limit initiative petitions proposing a constitutional amendment be limited to one proposed amendment. *See State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶66 (Kennedy, J., concurring)(“[f]or the remaining requirements of clear legal right and clear legal duty, in the absence of any evidence of fraud or corruption, the dispositive issue is whether the ballot board abused its discretion or clearly disregarded applicable law”).

63. The OHIO BALLOT BOARD and its members have the clear legal duty, under R.C. 3505.062, to divide all initiative petitions that seek to propose more than one constitutional amendment into individual petitions and to then certify its approval of each individual petitions to the Ohio Attorney General and, in particular, to do so with respect to the *Preliminary Initiative Petition* containing the *Proposed Constitutional Amendment* set forth in paragraph 42 above.

64. The OHIO BALLOT BOARD and its members have the clear legal duty, under R.C. 3505.062, to actually exercise any discretion it may have under R.C. 3505.062 and to not forego any analysis and assessment whatsoever in making its determination of whether an initiative petition seeks to propose more than one constitutional amendment.

65. Relators lack an adequate remedy in the ordinary course of law as R.C. 3505.062 does not provide or afford any person disagreeing with the determination of the OHIO BALLOT

BOARD with a statutory right to appeal or otherwise challenge its decision. *See State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶15 (“Ohio-SAFE does not have an adequate remedy, because there is no statutory right to appeal from a decision of the ballot board”); *see also State ex rel. Morgan v. State Teachers Retirement Bd. of Ohio*, 121 Ohio St.3d 324, 904 N.E.2d 506, 2009-Ohio-591 ¶20 (mandamus is an appropriate remedy to correct an abuse of discretion by a public board in a decision that is not appealable). Additionally, the time constraints on the initiative petition process precludes a full and complete opportunity to otherwise challenge the abuse of discretion and/or clear disregard of applicable law by the OHIO BALLOT BOARD.

WHEREFORE, the STATE OF OHIO, by and on relation to Relators MARGARET DeBLASE and JOHN GIROUX, prays for the issuance, in its name, of a peremptory writ of mandamus, or, in the alternative, an alternative writ of mandamus:

- (i) compelling Respondent FRANK LAROSE, as chairman of the OHIO BALLOT BOARD to convene a meeting of the OHIO BALLOT BOARD at the earliest possible date in order to undertake the actions set forth below;
- (ii) compelling the OHIO BALLOT BOARD and its members at such meeting to:
 - a. to vacate their decision and determination of March 13, 2023, that, with respect to the initiative petition purportedly seeking to propose an amendment to the Ohio Constitution entitled “The Right to Reproductive Freedom with Protections for Health and Safety,” said petition contains only one proposed constitutional amendment;

- b. to issue a determination that the foregoing initiative petition, *i.e.*, the *Preliminary Initiative Petition*, contains more than one proposed amendment to the Ohio Constitution;
 - c. to divide the foregoing initiative petition into individual petitions, each containing only one proposed constitutional amendment; and
 - d. to certify the approval of each of the individual petitions containing only one proposed constitutional amendment to the attorney general;
- (iii) any other relief in mandamus to which the law and equities warrant.

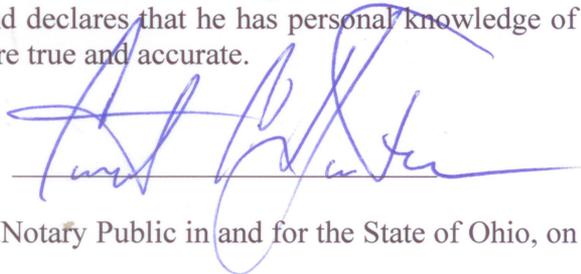
Respectfully submitted,

/s/ Curt C. Hartman
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Attorney for Relators

VERIFICATION

State of Ohio, County of Clermont) ss:

Comes now, Curt C. Hartman, legal counsel for Relators Margaret DeBlase and John Giroux, having been duly cautioned and sworn, and declares that he has personal knowledge of the factual allegations above and such allegations are true and accurate.



Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this the 20th day of March 2023.



LOGAN ARD
Notary Public, State of Ohio
My Commission Expires
September 30, 2023

INITIATIVE PETITION

To the Attorney General of Ohio: Pursuant to Ohio Revised Code § 3519.01(A), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed Amendment to the Ohio Constitution and a summary of the same.

TITLE

The Right to Reproductive Freedom with Protections for Health and Safety

SUMMARY

The Amendment would amend Article I of the Ohio Constitution by adding Section 22, titled "The Right to Reproductive Freedom with Protections for Health and Safety."

The Amendment provides that:

1. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on contraception, fertility treatment, continuing one's own pregnancy, miscarriage care, and abortion.
2. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either an individual's voluntary exercise of this right or a person or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.
3. However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.
4. As used in this Section, "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis"; and "State" includes any governmental entity and political subdivision.
5. This Section is self-executing.

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

Nancy Kramer, 955 Urlin Avenue, Columbus, Ohio 43212
Dr. Aziza Wahby, 2971 Paxton Road, Shaker Heights, Ohio 44120
David Hackney, 2918 Huntington Road, Shaker Heights, Ohio 44120
Jennifer McNally, 2409 Brentwood Road, Bexley, Ohio 43209
Ebony Speakes-Hall, 6617 English Oaks Station, Middletown, Ohio 45044

FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article I of the Ohio Constitution is amended to add the following Section:

Article I, Section 22. The Right to Reproductive Freedom with Protections for Health and Safety

- A. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on:
1. contraception;
 2. fertility treatment;
 3. continuing one's own pregnancy;
 4. miscarriage care; and
 5. abortion.
- B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:
1. An individual's voluntary exercise of this right or
 2. A person or entity that assists an individual exercising this right,

unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.

- C. As used in this Section:
1. "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis."
 2. "State" includes any governmental entity and any political subdivision.
- D. This Section is self-executing.

STATEMENT OF CIRCULATOR

I, Kimberly Mann, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of 22 electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Kimberly Mann
(Signed)

4828 W. Park Dr
(Address of circulator's permanent residence)
Number and Street, Road or Rural Route

Fairview Park
City, Village or Township

Ohio 44124
State Zip Code

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.



DAVE YOST

OHIO ATTORNEY GENERAL

Constitutional Offices
Section
Office: 614-466-2872

March 2, 2023

Donald J. McTigue
McTigue & Colombo LLC
545 East Town Street
Columbus, Ohio 43215
dmctigue@electionlawgroup.com

Re: Submitted Petition for Initiated Constitutional Amendment to Enact Article I, Section 22 of the Ohio Constitution— “The Right to Reproductive Freedom with Protections for Health and Safety Amendment”

Dear Mr. McTigue,

On February 21, 2023, in accordance with Ohio Revised Code Section 3519.01(A), I received a written petition containing (1) a copy of a proposed constitutional amendment, and (2) a summary of the same measure. One of my statutory duties as Attorney General is to send all of the petitions to the appropriate county boards of elections for signature verification. With all of the county boards of elections reporting back, at least 1,000 signatures have been verified.

It is my statutory duty to determine whether the submitted summary is a “fair and truthful statement of the proposed constitutional amendment.” R.C. 3519.01(A). That is, my role is limited to determining whether the wording of the summary properly advises potential petition signers of a measure’s material components. If I conclude that the summary is fair and truthful, I am to certify it as such within ten days after receipt of the petition.

I cannot base my determination on the wisdom or folly of a proposed amendment as a matter of public policy. “These arguments must be addressed to the electorate,” not to me. *State ex rel. Schwartz v. Brown*, 32 Ohio St.2d 4, 11, 288 N.E.2d 821 (1972).

Elected office is not a license to simply do what one wishes. The rule of law necessarily means that there are limits to the decision-making of those who temporarily exercise public authority. This is true of prosecutors who will not enforce criminal statutes with which they disagree, or presidents who wish to take actions not authorized by the Constitution or Congress.

It is also true of attorneys general required by a narrow law to make a decision about the truthfulness of a summary. My personal views on abortion are publicly known. In this matter, I am constrained by duty to rule upon a narrow question, not to use the authority of my office to effect a good policy, or to impede a bad one. A duty that never compels an unpleasant duty or act is not duty, but self-service, the opposite of public service—government by solipsism. That way lies chaos, and ultimately the breakdown of self-governance.

I state these first principles because it has become increasingly common for elected leaders to ignore them when convenient, and the process is accelerating as each side in our perpetual conflicts expects their own to act as faithlessly as the other side.

Enough.

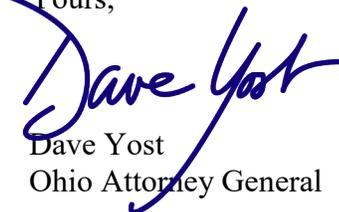
Having examined the submission, I conclude that the summary is a fair and truthful statement of the proposed amendment. I am therefore submitting the following certification to the Ohio Secretary of State:

Without passing on the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed amendment.

My certification of the summary under Section 3519.01(A) should not be construed as an affirmation of the enforceability and constitutionality of the proposed amendment. *See State ex rel. Barren v. Brown*, 51 Ohio St.2d 160, 171, 365 N.E.2d 887 (1977) (holding that the "factual determination" that a summary is fair and truthful "is the extent of the role and authority of the Attorney General"). Indeed, there are significant problems with the proposed amendment, and if adopted, it will not end the long-running litigation on this topic, but simply transform it.

Should the proposal make it to the ballot, those arguments will be properly addressed to the electorate, as the Ohio Supreme Court suggested.

Yours,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

Nancy Kramer
955 Urlin Avenue
Columbus, Ohio 43212

Dr. Aziza Wahby
2971 Paxton Road
Shaker Heights, Ohio 44120

David Hackney
2918 Huntington Road
Shaker Heights, Ohio 44120

Jennifer McNally
2409 Brentwood Road
Bexley, Ohio 43209

Ebony Speakes-Hall
6617 English Oaks Station
Middletown, Ohio 45044

MEETING OF THE OHIO BALLOT BOARD

Pursuant to R.C. 3505.062

Monday March 13, 2023

10:30 A.M.

Senate Finance Hearing Room of the Ohio Statehouse
1 Capitol Square, Columbus, Ohio, 43215

AGENDA

- I. Call to Order.
- II. Roll Call.
- III. Examination of a proposed constitutional amendment, entitled “The Right to Reproductive Freedom with Protections for Health and Safety,” to determine whether it contains only one proposed amendment.
- IV. Adjournment.

THE OHIO BALLOT BOARD

Ohio Secretary of State Frank LaRose, Chair
Senator Theresa Gavarone, Vice-Chair
Senator Paula Hicks-Hudson
Mr. William Morgan
Representative Elliot Forhan

March 13, 2023

The Honorable Dave Yost
Ohio Attorney General
30 East Broad Street - 17th Floor
Columbus, Ohio 43215

Re: Ballot Board approval of a proposed constitutional amendment, entitled “The Right to Reproductive Freedom with Protections for Health and Safety,” as a single amendment.

Dear Attorney General Yost:

Acting pursuant to Ohio Revised Code 3519.01(A), on March 2, 2023, you transmitted to the Ohio Secretary of State, in his capacity as chairman of the Ohio Ballot Board, a proposed constitutional amendment entitled “The Right to Reproductive Freedom with Protections for Health and Safety.”

As Secretary of the Ohio Ballot Board, I hereby certify that a quorum of the board met in public session on March 13, 2023, for the purpose of examining and certifying the petition in accordance with the provisions of Ohio Revised Code 3505.062(A).

I hereby further certify that the Ohio Ballot Board determined that the proposed initiative petition contains a single proposed constitutional amendment.

Sincerely,



Jeff Hobday
Secretary, Ohio Ballot Board
22 North Fourth Street
Columbus, Ohio 43215

Exhibit D