

Case No. \_\_\_\_\_

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**Supreme Court  
of the State of Ohio**

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**JENNIFER GIROUX,**

**and**

**THOMAS E. BRINKMAN, JR.,**

**Relators,**

**v.**

**COMMITTEE REPRESENTING THE PETITIONERS WITH RESPECT TO  
THE INITIATIVE PETITION PROPOSING AN AMENDMENT TO  
THE OHIO CONSTITUTION ENTITLED THE RIGHT TO REPRODUCTIVE  
FREEDOM WITH PROTECTIONS FOR HEALTH AND SAFETY, and**

**NANCY KRAMER, Member, Committee Representing the Petitioners, and**

**AZIZA WAHBY, Member, Committee Representing the Petitioners, and**

**DAVID HACKNEY, Member, Committee Representing the Petitioners, and**

**JENNIFER McNALLY, Member, Committee Representing the Petitioners, and**

**EBONY SPEAKES-HALL, Member, Committee Representing the Petitioners,**

**and**

**FRANK LAROSE, Ohio Secretary of State,**

**Respondents.**

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*Original Action Under Article II, Section 1g of the Ohio Constitution*

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**VERIFIED CHALLENGE TO INITIATIVE PETITION  
PURSUANT TO ARTICLE II, SECTION 1g OF THE OHIO CONSTITUTION**

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***Counsel for Relators:***

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2. Generally speaking, Relators seek an order and/or judgment from this Court: (i) invalidating the *Initiative Petition* filed with Ohio Secretary of State FRANK LAROSE seeking to propose an amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with Protections for Health and Safety*; and (ii) prohibiting the placement on the ballot for the general election to be held on November 7, 2023, the proposed amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with Protections for Health and Safety*.

3. The *Initiative Petition* seeking to propose an amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with Protections for Health and Safety* failed to comply with all of the statutory requirements for an initiative petition, including, in particular, the mandate of R.C. 3519.01(A) that such petition “shall include the text of any existing statute or constitutional provision that would be amended or repealed if the proposed law or constitutional amendment is adopted.”

4. Even though certain existing statutory provisions would be repealed if the proposed amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with Protections for Health and Safety* is adopted, the *Initiative Petition* failed to include the text of such statutory provisions and, thus, the *Initiative Petition* violates requirements established by law and must be invalidated.

### **PARTIES**

5. Relators JENNIFER GIROUX is a citizen and qualified elector of the State of Ohio, residing in Hamilton County, and, thus, eligible to vote on the constitutional amendment proposed by the *Initiative Petition*.

6. Plaintiff THOMAS E. BRINKMAN, JR., is a citizen and qualified elector of the State of Ohio, residing in Hamilton County, and, thus, eligible to vote on the constitutional amendment proposed by the *Initiative Petition*.

7. Respondent COMMITTEE REPRESENTING THE PETITIONERS WITH RESPECT TO THE INITIATIVE PETITION PROPOSING AN AMENDMENT TO THE OHIO CONSTITUTION ENTITLED THE RIGHT TO REPRODUCTIVE FREEDOM WITH PROTECTIONS FOR HEALTH AND SAFETY is an unincorporated association constituting the committee designated on the initiative petition at issue herein pursuant to R.C. 3519.02 to represent the petitioners in all matters relating to such petition.

8. Respondent NANCY KRAMER is one of the five members of the COMMITTEE REPRESENTING THE PETITIONERS designated, pursuant to R.C. 3519.02. on the initiative petition at issue herein to represent the petitioners in all matters relating to such petition.

9. Respondent AZIZA WAHBY is one of the five members of the COMMITTEE REPRESENTING THE PETITIONERS designated, pursuant to R.C. 3519.02. on the initiative petition at issue herein to represent the petitioners in all matters relating to such petition.

10. Respondent DAVID HACKNEY is one of the five members of the COMMITTEE REPRESENTING THE PETITIONERS designated, pursuant to R.C. 3519.02. on the initiative petition at issue herein to represent the petitioners in all matters relating to such petition.

11. Respondent JENNIFER McNALLY is one of the five members of the COMMITTEE REPRESENTING THE PETITIONERS designated, pursuant to R.C. 3519.02. on the initiative petition at issue herein to represent the petitioners in all matters relating to such petition.

12. Respondent EBONY SPEAKES-HALL is one of the five members of the COMMITTEE REPRESENTING THE PETITIONERS designated, pursuant to R.C. 3519.02. on

the initiative petition at issue herein to represent the petitioners in all matters relating to such petition.

13. Respondent FRANK LAROSE is the Ohio Secretary of State and, in such capacity, is the chief elections official of the State of Ohio with the statutory responsibility to determine and certify the sufficiency of all initiative petitions, as well as to certify the form of the official ballots for the forthcoming general election, including directing the boards of elections to place any proposed constitutional amendment on the ballot.

#### ***Overview of Process for an Initiated Constitutional Amendment***

14. 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.

15. 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.

16. 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.

17. 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 determination under R.C. 3505.062(A)..

18. 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 determination of whether the petition proposes only one proposed constitutional amendment.

19. 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.

20. After the Ohio Ballot Board has certified that the preliminary initiative petition proposes only one proposed constitutional amendment, the Attorney General then must file with the Secretary of State a verified copy of the proposed constitutional amendment, together with its summary and the Attorney General's certification. At this stage, the petitioners may then begin to collect signatures on the petition itself by which they seek to submit the proposed constitutional amendment on the ballot.

21. Ultimately, the initiative petition seeking to propose a constitutional amendment proposed must be filed with the Ohio Secretary of State for the purpose of determining the sufficiency of the signatures on the petition.

22. If the initiative petition contains a sufficient number of valid signatures consistent with Article II, Sections 1a and 1g of the Ohio Constitution, and absent any other deficiencies or legal infirmities in the petition or otherwise, the proposed constitutional amendment would appear at on the ballot at the appropriate regular or general election.



### *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 obtained from the website of the Ohio Attorney General, is attached hereto as *Exhibit A*.<sup>1</sup>

25. 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*.

26. 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*.<sup>2</sup>

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

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

<sup>2</sup> 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. At the meeting of the OHIO BALLOT BOARD held on March 13, 2023, 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. This Court subsequently upheld that determination. *State ex rel. Deblase v. Ohio Ballot Bd.*, \_\_\_ Ohio St. 3d \_\_\_, N.E.3d \_\_\_, 2023-Ohio-1823.

29. On March 13, 2023, the Secretary of the OHIO BALLOT BOARD issued the *Ballot Board's Certification 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.

30. A true and accurate copy of the *Ballot Board's Certification Letter* issued by the Secretary of the OHIO BALLOT BOARD to the Ohio Attorney General on March 13, 2023, as provided to undersigned counsel by the Office of the Ohio Secretary of State, is attached hereto as *Exhibit C*.

31. On July 5, 2023, the COMMITTEE REPRESENTING THE PETITIONERS filed with the Office of the Secretary of State the *Initiative Petition* seeking to propose an amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with Protections for Health and Safety*.

32. As obtained from the Office of the Secretary of State through a public records request, attached hereto as *Exhibit D* is one of the *Part-Petitions* submitted to Office of the Secretary of State on July 5, 2023, as part of the *Initiative Petition* filed that day seeking to propose an amendment to the Ohio Constitution entitled *The Right to Reproductive Freedom with*

*Protections for Health and Safety*, and said *Part-Petition* serves as an exemplar of all the part-petitions tendered that day as part of the *Initiative Petition*.

33. All part-petitions submitted to the Office of the Office of the Secretary of State on July 5, 2023, as part of the *Initiative Petition* contained the same content as that in the *Part-Petition* provided herein as an exemplar, *i.e.*, *Exhibit D*.

34. 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 *Initiative Petition*.

35. Subsequently, on July 25, 2023, FRANK LAROSE, as the Ohio Secretary of State, issued a *Certification Letter* to legal counsel for the COMMITTEE REPRESENTING THE PETITIONERS declaring that the *Initiative Petition* contained “a sufficient number of valid signatures and satisfied the requirements prescribed by Article II, Section 1a and 1g of the Ohio Constitution and Section 3519.16 of the Ohio Revised Code.”

36. A true and accurate copy of the *Certification Letter* issued by the Secretary of State on July 25, 2023, to legal counsel for the COMMITTEE REPRESENTING THE PETITIONERS, as provided to undersigned counsel by the Office of the Ohio Secretary of State, is attached hereto as *Exhibit E*.

37. As expressly declared by FRANK LAROSE in the *Certification Letter*, “in the absence of judicial direction to the contrary, I will direct the boards of elections to place the proposed amendment on the November 7, 2023 General Election ballot.”

**The Initiative Petition is Invalid  
Due to the Failure to Comply with All Requirements of Law**

38. Pursuant to its constitutional authority to pass laws to facilitate the statewide initiative petition process, *see* Ohio. Const., art. II, sec. 1g, the General Assembly enacted R.C. 3519.01. Said provisions do not restrict the power of the people to vote or to sign statewide initiative petitions but, instead, simply ensure the integrity of and confidence in the process, including deterring fraud by circulators who might misrepresent the effect of the proposal within an initiative petition.

39. One requirement imposed by R.C. 3519.01(A) with respect to, *inter alia*, initiative petitions proposing a constitutional amendment is that “[the] petition shall include the text of any existing statute or constitutional provision that would be amended or repealed if the proposed law or constitutional amendment is adopted.”

40. The *Initiative Petition* does not identify, let alone contain the text, of any existing statute that would be repealed if the constitutional amendment being proposed by the *Initiative Petition* is adopted.

41. Repeal of an existing statute or constitutional provision may be either explicit or implicit.

42. “To determine whether a constitutional provision implicitly repeal[s] a statutory provision, [the Ohio Supreme Court] considers whether there is a clear ‘repugnancy between the provisions’ and whether they are ‘so contrary to each other that they cannot be reconciled.’ If the General Assembly could have enacted the same law even after the adoption of the later constitutional language, then the law ‘must be held constitutional.’ ... If not, then the law ‘must be held unconstitutional and void.’” *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d

496, 39 N.E.3d 1223, 2015-Ohio-3431 ¶23 (quoting *State ex rel. Evans v. Dudley*, 1 Ohio St. 437, 441 (1853), and *State v. Medbery*, 7 Ohio St. 522, 528 (1857)).

43. If the constitutional amendment proposed by the *Initiative Petition* is adopted, then certain existing statutes would be repealed, including, without limitation, those identified below.

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44. If the constitutional amendment proposed by the *Initiative Petition* is adopted, then certain provisions of *The Human Rights and Heartbeat Protection Act*, including, in whole or in part, 2919.195 and R.C. 2919.193, would be repealed.

45. If the constitutional amendment proposed by the *Initiative Petition* is adopted, then certain provisions of R.C. 2912.12, either in whole or in part, would be repealed.

46. If the constitutional amendment proposed by the *Initiative Petition* is adopted, then R.C. 2919.10, either in whole or in part, would be repealed.

\* \* \* \* \*

**Existing statutes ((R.C. 2919.195 and 2919.193) concerning abortion  
when there exists a detectable fetal heartbeat**

47. Enacted by the 133rd General Assembly as Sub. S.B. 23 and signed by Governor DeWine, *The Human Rights and Heartbeat Protection Act* became effective on July 11, 2019.

48. *The Human Rights and Heartbeat Protection Act* has also been given the appellation of *The Heartbeat Bill*.

49. A true and accurate copy of the enrolled *The Human Rights and Heartbeat Protection Act* filed with the Office of the Ohio Secretary of State, together with the *Certification of General Laws* by FRANK LAROSE for all laws located on said website, all obtained and

provided through the governmental website of the Ohio Secretary of State, are attached hereto as *Exhibit F*.<sup>3</sup>

50. A true and accurate copy of the *Final Analysis* by the Legislative Service Commission of *The Human Rights and Heartbeat Protection Act* as passed by the 133rd General Assembly, obtained from the governmental website of the Ohio General Assembly, is attached hereto as *Exhibit G*.<sup>4</sup>

51. Provisions of *The Human Rights and Heartbeat Protection Act* now part of existing statute include:

- a. a prohibition of any person from knowingly and purposefully performing or inducing an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected, *see* R.C. 2919.195(A);
- b. an allow for a physician, notwithstanding the foregoing prohibition, to perform a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, *see* R.C. 2919.195(B);
- c. a criminal statutes that provides that a person who knowingly and purposefully performs or induces an abortion before determining if there is a fetal heartbeat is

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<sup>3</sup> Published at <https://www.ohiosos.gov/globalassets/laws/133/certification.pdf> and at <https://publicfiles.ohiosos.gov/free/publications/SessionLaws/133/133-SB-023.pdf>.

<sup>4</sup> Published at <https://www.legislature.ohio.gov/download?key=12355&format=pdf>.

guilty of performing or inducing abortion before determining whether there is a detectable fetal heartbeat, a felony of the fifth degree, *see* R.C. 2919.193.

52. Copies of the full provisions of R.C. 2919.193 and R.C. 2919.195 are attached hereto as *Exhibit H*.

53. If the constitutional amendment proposed by *Initiative Petition* is adopted, then provisions of *The Human Rights and Heartbeat Protection Act*, including the specific statutory provisions identified above, would be amended or repealed.

54. The *Initiative Petition* does not contain the text of any of the provisions of *The Human Rights and Heartbeat Protection Act*, including the specific provisions identified above, which would be amended or repealed if the constitutional amendment proposed by the *Initiative Petition* is adopted.

\* \* \* \* \*

**Existing statute (R.C. 2919.12) requiring parental consent or court approval for abortion for an unmarried and unemancipated minor**

55. Under current statute, *i.e.*, R.C. 2919.12, certain requirements must exist before an abortion may be performed or induced upon “a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated.”

56. R.C. 2919.12 was enacted by the 121st General Assembly as S.B. 2.

57. A copy of the full provisions of R.C. 2919.12 is attached hereto as *Exhibit I*.

58. Generally speaking, R.C. 2912.12(B) currently requires consent from a parent, a step-parent, grandparent, or sibling age 21 or older before an abortion may be performed or induced upon an unmarried and unemancipated minor, though there is a mechanism for judicial bypass by which a judge may authorize such minor to otherwise consent to an abortion.

59. If the constitutional amendment proposed by *Initiative Petition* is adopted, then R.C. 2912.12, including the specific statutory provisions identified above, would be amended or repealed.

60. The *Initiative Petition* does not contain the text of any of the provisions of R.C. 2919.12, including the specific provisions identified above, which would be amended or repealed if the constitutional amendment proposed by the *Initiative Petition* is adopted.

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**Existing statute (R.C. 2919.10) prohibiting a person from performing, inducing, or attempting to perform or induce an abortion on a pregnant woman who is seeking the abortion because the unborn child has or may have Down Syndrome**

61. Under current statute, *i.e.*, R.C. 2919.10, it is illegal for a person to purposely perform or induce or attempt to perform or induce an abortion on a pregnant woman if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of any of the following: (a) a test result indicating Down syndrome in an unborn child; (b) a prenatal diagnosis of Down syndrome in an unborn child; or (c) any other reason to believe that an unborn child has Down syndrome.

62. R.C. 2919.10 was enacted by the 132nd General Assembly as H.B. 214.

63. A true and accurate copy of the enrolled H.B. 214, filed with the Office of the Ohio Secretary of State, together with the *Certification of General Laws* by FRANK LAROSE for all laws located on said website, all obtained and provided through the governmental website of the Ohio Secretary of State, are attached hereto as *Exhibit J*.<sup>5</sup>

64. A copy of the full provision of R.C. 2919.10 is attached hereto as *Exhibit K*.

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<sup>5</sup> Published at <https://www.ohiosos.gov/globalassets/laws/132/certification.pdf> and at <https://publicfiles.ohiosos.gov/free/publications/SessionLaws/132/132-HB-214.pdf>.



65. If the constitutional amendment proposed by *Initiative Petition* is adopted, then R.C. 2919.10, including the specific statutory provisions identified above, would be amended or repealed.

66. The *Initiative Petition* does not contain the text of any of the provisions of R.C. 2919.10, including the specific provisions identified above, which would be amended or repealed if the constitutional amendment proposed by the *Initiative Petition* is adopted.

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67. The *Initiative Petition* fails to comply, either strictly or substantially, with all requirements established by law for initiative petitions, including the requirement of R.C. 3519.01(A) that initiative petitions proposing a constitutional amendment “include the text of any existing statute...that would be amended or repealed if the proposed...constitutional amendment is adopted.”

68. The *Initiative Petition* is invalid due to the failure of the *Initiative Petition* to comply, either strictly or substantially, with all requirements established by law for initiative petitions, including the requirement of R.C. 3519.01(A) that initiative petitions proposing a constitutional amendment “include the text of any existing statute...that would be amended or repealed if the proposed...constitutional amendment is adopted.”

69. Due to the invalidity of the *Initiative Petition* and/or the failure of the *Initiative Petition* to comply, either strictly or substantially, with all requirements established by law for initiative petitions, including the requirement of R.C. 3519.01(A), the constitutional amendment proposed by the *Initiative Petition* may not be placed on the ballot at the forthcoming general election to be held on November 7, 2023.

**WHEREFORE**, Relators respectfully pray for the following relief from this Court:

- (i) issue an order and/or judgment sustaining the challenge herein;
- (ii) issue an order and/or judgment invalidating the *Initiative Petition* due to the failure of the *Initiative Petition* to comply, either strictly or substantially, with all requirements established by law for initiative petitions, including the requirement of R.C. 3519.01(A) that initiative petitions proposing a constitutional amendment “include the text of any existing statute...that would be amended or repealed if the proposed...constitutional amendment is adopted.”
- (iii) issue an order and/or judgment prohibiting the placement on the ballot for the general election to be held on November 7, 2023, the proposed amendment to the Ohio Constitution contained within the *Initiative Petition* entitled *The Right to Reproductive Freedom with Protections for Health and Safety*;
- (iv) issue an order and/or judgment prohibiting FRANK LAROSE from directing the boards of elections to place on the ballot the proposed amendment to the Ohio Constitution contained within the *Initiative Petition* entitled *The Right to Reproductive Freedom with Protections for Health and Safety*;
- (v) issue an order and/or judgment directing FRANK LAROSE to undertake all actions necessary to effectuate any order and/or judgment that issues from this Court; and
- (vi) issue an order and/or judgment granting any other relief to which the law and equity entitles Relators.

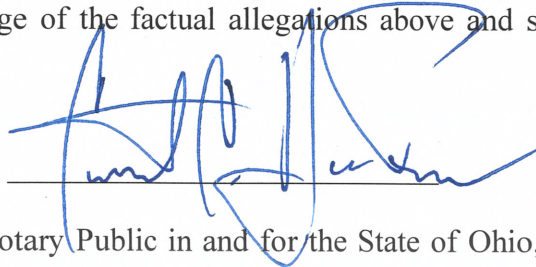
Respectfully submitted,

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**VERIFICATION**

State of Ohio, County of Hamilton) ss:

Comes now, Curt C. Hartman, legal counsel for Relators, 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 to before me, a Notary Public in and for the State of Ohio, on this the 28th day of July 2023.



**ISAAC T. HEINTZ**  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Date. Section 147.03 O.R.C.

