Supreme Court of Ohio Clerk of Court - Filed March 20, 2024 - Case No. 2024-0409

In the Supreme Court of Ohio

State of Ohio ex rel. Cynthia Brown,

2692 Arcola Road
Columbus, Ohio 43207,

State of Ohio ex rel. Carlos Buford,

2130 Delta Drive
Dayton, Ohio 45417.

And

State of Ohio ex rel. Jenny Sue Rowe,

26 Gould Avenue
Bedford, Ohio 44146,

Relators,

v.

Dave Yost, in his official capacity as

Ohio Attorney General,

30 E. Broad Street
Columbus, Ohio 43215,

Respondent.

Case No. ___

Original Action in Mandamus and Under Section 3519.01(C), R.C.

Peremptory and Alternative Writs Requested

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS AND RELIEF UNDER SECTION 3159(C) OF THE OHIO REVISED CODE AND THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

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** Pro hac vice application forthcoming

This original action in mandamus and under Section 3519.01(C) of the Revised Code is brought in the name of the State of Ohio on the relation of Cynthia Brown, Carlos Buford, and Jenny Sue Rowe (collectively, "Relators"). For the reasons stated below, Relators request that the Court issue a peremptory or other writ of mandamus or other order under Revised Code Section 3519.01 and its authority under Ohio's Constitution and the Supreme Court Rules directing Ohio Attorney General Dave Yost ("Respondent") to certify the summary of Relators' proposed amendment.

INTRODUCTION

1. Relators seek to propose a constitutional amendment by initiative petition creating privates causes of action on behalf of the victims of violations of Ohio's Constitution entitled the "Protecting Ohioans' Constitutional Rights."

2. Relators have submitted several substantially similar versions of their proposed constitutional amendment and its corresponding summary to the Respondent, together with the required number of signatures, in compliance with O.R.C. § 3519.01(A).

3. Section 3519.01(A) of the Ohio Revised Code requires that the Respondent conduct an examination of the summary within ten days, certify that the summary "is a fair and truthful statement of the proposed . . . constitutional amendment," and then forward the petition's summary and text to the Ohio Ballot Board.

4. Respondent's duty under Section 3519.01 is only to decide whether the summary represents a "fair and truthful statement of the proposed … constitutional amendment"; he has no authority to decide whether either the text of the proposed amendment itself or the title contained in the text is fair, truthful, accurate, or anything else.

5. Here, Relators' proposed amendment, together with a sufficient number of valid supporting signatures and summary, was properly prepared and submitted to Respondent on March 5, 2024.

6. Relators' March 5, 2024 summary included over a dozen revisions and additions that Relators had made to address objections Respondent made to Relators' prior submission of the same proposed amendment and summary in November of 2023.

7. Respondent on March 14, 2024 in his formal rejection of Relators' revised summary erroneously asserted that Relators failed to address objections Respondent had raised in response to their November 2023 submission. In fact, however, Respondent did not object to or even address any of the revisions and additions Relators made, nor did Respondent suggest they were insufficient to address Respondent's prior objections. Instead, Respondent raised four new objections as grounds for rejecting Relators' summary and proposed amendment.

8. Respondent's first new objection, as explained in detail below, contradicts a prior reason that was given by Respondent for rejecting Relators' summary in November of 2023.

9. Respondent's second new objection, as explained in detail below, unreasonably surmises that Relators' summary's omission of a phrase, "or any subset thereof," following its identification of the "government actors" who are potential defendants under the terms of the proposed amendment, would somehow cause confusion among voters about which government actors might be liable.

10. Respondent's third new objection, as explained in detail below, proposes that a consecutive and redundant sentence in Relators' summary (one that reiterates that the proposed amendment's statute of limitations is six years for all claims filed "under this Amendment") would somehow cause confusion among voters and cause them to believe, mistakenly, that the

proposed amendment changed all of Ohio's statutes of limitation for all claims in every field of law in Ohio.

11. Respondent's fourth new objection, as explained below, focuses on the title of the proposed amendment, which is found in the text of that proposed amendment and thus falls beyond the competence or authority of the Attorney General to address.

12. The litany of incorrect and unfounded objections Respondent raised as grounds for rejecting Relators' March 2024 summary suggests there are no circumstances under which Respondent is willing to perform Respondent's statutory duty to certify Relators' properly prepared and duly submitted proposed amendment for placement on the ballot.

13. Respondent's groundless failure to certify Relators' proposed amendment threatens to prevent them from qualifying it by July 3, 2024 and in time for the November 2024 general election. Mandamus is therefore necessary to direct that Respondent timely certify Relators' March 2024 summary to the Ballot Board as prescribed under Ohio law.

NATURE OF THE ACTION AND JURISDICTION

14. This is an original action commenced under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 3519 of the Ohio Revised Code.

15. Before the process of proposing a constitutional amendment by initiative petition to voters can begin, proponents must submit a written petition signed by one thousand qualified electors to Respondent for examination. The petition must contain the proposed constitutional amendment and a summary of it.

16. Respondent has limited and specific authority to review the petition at this stage of the process.

17. The plain text of Section 3519.01(A) of the Revised Code is clear that Respondent is tasked only with examining whether the "summary is a fair and truthful statement of the proposed law or constitutional amendment," and that he must complete his examination within ten days.

18. If the summary meets that standard, Respondent must certify it.

19. Respondent has no authority to reject a proposed constitutional amendment for any other reason. In particular, Respondent does not have authority to review the *title* of a proposed amendment that is included in the proposed amendment's text.

20. This Court has jurisdiction over this action under Article IV, Section 2(B)(1)(b), which gives the Court original jurisdiction in mandamus actions, and under Revised Code Section 3159.01(C), which gives the Court original and exclusive jurisdiction in "all challenges of [] certification decisions" of the Attorney General.

21. Relators affirmatively allege that they have acted with the utmost diligence, that there has been no unreasonable delay or lapse of time in asserting their rights, and that there is no prejudice to Respondent. Respondent's rejection letter was sent and received on March 14, 2024 and this action has been filed less than one week later.

PARTIES

22. Relators Cynthia Brown, Carlos Buford, and Jenny Sue Rowe are residents and qualified electors of the State of Ohio who support the proposed amendment and intend to vote and organize in its favor.

23. Relators constitute the committee required by R.C. Section 3519.02, which requires between three and five committee members, and as such are injured by Respondent's failure to

certify the summary of the proposed amendment, both as Ohio electors and taxpayers and as Ohio citizens who are organizing in favor of the proposed amendment. *Id.*

24. Respondent Dave Yost is named in his official capacity as Ohio Attorney General. He is charged under Revised Code Section 3519.01(A) with examining the summary of any proposed constitutional amendment within ten days of receipt and, if the summary is fair and truthful, certifying that summary and forwarding the petition to the Ballot Board.

LEGAL FRAMEWORK

25. The Ohio Revised Code establishes the Attorney General's limited role in reviewing and certifying the summary for proposed constitutional amendments.

26. Section 3519.01(A) of the Ohio Revised Code requires the Attorney General to "conduct an examination of the summary" of the proposed amendment and, if the summary is a "fair and truthful statement" of the proposed amendment, "certify and then forward the submitted petition to the Ohio ballot board for its approval." The Attorney General has ten days from receipt of the petition and summary to review the summary and certify. R.C. 3519.01(A).

27. Section 3519.01(A) does not authorize the Attorney General to examine the title. Indeed, proponents of a ballot measure are not required to include a title until a later stage of the petition process. Specifically, a title is not required until after a petition is prepared for circulation once the Ballot Board determines whether a petition certified by the Attorney General constitutes a single measure. R.C. 3519.05.

28. Section 3519.05 of the Ohio Revised Code establishes that the title and summary are separate statutory requirements. The Revised Code does not provide the Attorney General with any authority to review the title.

29. Nor does the Revised Code allow the Attorney General to continue examining the summary after ten days from receipt of the written petition have passed. *See* R.C. 3519.01(A).

30. In sum, the Revised Code does not grant the Attorney General any discretion to venture outside the summary for his examination, to treat the title as part of the summary when it is included in the text of the proposed amendment, to base his decision to certify on anything other than his review of the summary, or to defer his examination of any part of the summary until after his single ten-day review period has passed.

31. Decisions to exclude candidates or initiatives from ballots "will be set aside and a writ of mandamus will issue … if the board [or other official] engaged in fraud, corruption, abuse of discretion or clear disregard of statutes or applicable legal provisions." *State ex rel. Hawkins v. Pickaway County Board of Elections*, 1991-Ohio-221, 75 Ohio St.3d 275, 277, 662 N.E.2d 17, 19 (citing *State ex rel. Rife v. Franklin Cty. Bd. of Elections* (1994), 70 Ohio St.3d 632, 633–634, 640 N.E.2d 522, 523–524).

32. An abuse of discretion exists when a decision is unreasonable, arbitrary, or unconscionable. *State ex rel. Worrell v. Ohio Police & Fire Pension Fund,* 112 Ohio St.3d 116, 2006-Ohio-6513, 858 N.E.2d 380, ¶ 10.

FACTS

33. Relators on November 8, 2023 submitted their proposed amendment, entitled "Protecting Ohioans' Constitutional Rights," together with the required signatures and a summary to Respondent pursuant to R.C. § 3519.01. *See* Attachment 1; https://www.ohioattorneygeneral.gov/getattachment/20d982b2-c311-4daf-abee-adf99eb2bea6/Protecting-Ohioans%E2%80%99-Constitutional-Rights-(Seventh-Submission).aspx.

34. Respondent on November 17, 2023, by letter sent to Relators, rejected their submission, identifying no less than a bakers' dozen of objections. *See* Attachment 2; https://www.ohioattorneygeneral.gov/getattachment/f06a2ff8-9527-4c3a-a994-

04b0edfa5e31/Protecting-Ohioans%E2%80%99-Constitutional-Rights-(Seventh-Submission).aspx.

35. Relators thereafter revised the text of their proposed amendment and their summary to address each of the objections that Respondent had identified in his November 17, 2023 letter and submitted their revised summary and proposed amendment, together with the required supporting signatures, to Respondent on March 5, 2024. *See* Attachment 3; https://www.ohioattorneygeneral.gov/getattachment/719cd5e3-739a-4bf2-bb86-874e1fd22e08/Protecting-Ohioans%E2%80%99-Constitutional-Rights.aspx.

36. Relators' March 5, 2024 submission of their revised summary and proposed amendment to Respondent addressed and resolved every concern that Respondent had identified in his November 17, 2023 letter.

37. On March 14, 2024, Respondent by letter to Relators rejected their March 5, 2024 submission, incorrectly claiming that that Relators "[r]egrettably" had failed to address his prior concerns and had repeated purported errors that he had identified in his November 17, 2023 letter. *See* Attachment 4; https://www.ohioattorneygeneral.gov/getattachment/a37a911b-861d-4141-b13d-640d81fd731f/Protecting-Ohioans%E2%80%99-Constitutional-Rights.aspx.

38. Respondent's claim on March 14, 2024 that Relators had repeated purported errors that he had identified in his November 17, 2023 letter is incorrect.

39. Respondent in his March 14, 2024 rejection of Relators' submission did not point to any prior objection that Respondent had raised, and instead relied upon four new objections to reject their submission.

40. Many of Respondent's objections identified in his November 17, 2023 letter centered on the proposed amendment's venue provision and Relators' summary of it. *See* November 17, 2023 Letter at 1-2.

41. Relators resolved these objections in their March 2024 submission by changing the venue portion of the proposed amendment and then fairly and accurately describing this new venue provision in their revised summary.

42. Respondent in his March 14, 2024 rejection letter did not express any concerns over or state any objections to Relators' changes related to venue.

43. Respondent also objected to Relators' purported failure to adequately describe the potential for non-party liability in their November 2023 submission.. *See* November 14, 2023 Letter at 2.

44. Relators addressed this objection in their revised summary submitted on March 5, 2024 and Respondent expressed no further concern about it in his March 14, 2024 rejection letter.

45. Respondent further had expressed objections to Relators' November 2023 summary description of "public employee" and "entity." *See* November 14, 2023 Letter at 5.

46. Relators altered the text of the proposed amendment to address these issues, going so far as to add a definition of "entity" to the text of the proposed amendment and then fairly and adequately summarizing these changes in their March 2024 re-submission.

47. Respondent said nothing further about the "public employee" and "entity" definitions in his March 14, 2024 rejection letter and raised no objections to Relators' summary description of those terms.

48. Respondent in his November 17, 2023 rejection letter also voiced objections to Relators' descriptions of potential defendants, including "public employees," "instrumentalities of the State of Ohio," and "independent contractors." *See* November 14, 2023 Letter at 3 & 4.

49. Relators addressed and resolved all of these descriptive and definitional matters in their March 5, 2024 summary, and Respondent said nothing more about them in his March 14, 2024 rejection letter.

50. Respondent further concluded in his November 17, 2023 rejection letter that Relators' November 2023 summary had misrepresented the remedies available and which party could request a jury trial. *See* November 14, 2023 Letter at 3.

51. Relators corrected these alleged misstatements in their March 5, 2024 submission, and Respondent said nothing further about them in his March 14, 2024 rejection letter.

52. Respondent also objected in his November 17, 2023 rejection letter that Relators had inadequately described in their summary the potential "reasonable attorney's fees" that are available under their proposed amendment. See November 17, 2023 Letter at 4.

53. Relators addressed this issue in their March 5, 2024 summary by adding language that resolved the objection, and Respondent said no more about it in his March 14, 2024 rejection letter.

54. Respondent also objected in his November 17, 2023 rejection letter that Relators did not make clear that only plaintiffs can choose jury trials. *See* November 17, 2023 Letter at 4.

55. Relators resolved this issue in their March 5, 2024 summary by stating that only plaintiffs may request jury trials, and Respondent said nothing more about it in his March 14, 2024 rejection letter.

56. Respondent also objected in his November 17, 2023 rejection letter that Relators' use of the word "eliminated" in summarizing the proposed amendment's effect on immunities and defenses was improper; it was "overbroad," and "would mislead a reader into believing the proposed amendment's effect on immunity defenses is broader than what the proposed amendment actually provides." *See* November 17, 2023 Letter at 5.

57. Relators accordingly removed the word "eliminated" from the summary that they submitted on March 5, 2024, and Respondent said nothing more about this objection in his March 14, 2024 rejection letter.

58. Respondent also claimed in his November 17, 2023 rejection letter that Relators' November 2023 summary improperly "omit[ed] that the types of immunities which are enumerated therein are part of an expressly non-exhaustive list." *See* November 17, 2023 Letter at 5.

59. Relators resolved this issue in their March 5, 2024 summary by stating that the listed immunities and defenses "include[ed] but [were] not limited to" them, and Respondent said nothing more about this objection in his March 14, 2024 rejection letter.

60. Respondent in his November 17, 2023 rejection letter also objected that Relators' summary did not include the phrase "or any subset thereof" with its discussion of government actors' "defenses," which misleadingly resulted in "the summary fail[ing] to encapsulate the broader swath of defenses contemplated by the text of the proposed amendment." *See* November 17, 2023 Letter at 5 (emphasis added).

61. Relators resolved this issue by adding the phrase "or any subset thereof" to the text in their new summary immediately following the words "immunities and defenses" so that the summary in their March 5, 2024 submission stated that "[i]n any action filed under this Amendment, no government actor shall enjoy or may rely upon any immunities or defenses, or any subset thereof, which are only available to government actors." *See* March 5, 2024 Submission (emphasis added).

62. Relators addressed and resolved every objection Respondent had identified in his November 17, 2023 rejection letter.

63. Far from identifying any alleged "misstatement and/or omission" Respondent had previously raised as an objection, as Respondent's March 14, 2024 rejection letter states, Respondent instead raised four new objections as grounds for rejecting Relators' March 5, 2024 summary.

64. Respondent's first new objection in his March 14, 2024 rejection letter claimed that Relators' revised summary was misleading because it had added the phrase "or any subset thereof" immediately after the words "immunities and defenses" in its description of the proposed amendment's rejection of these immunities and defenses, *see* March 14, 2024 Letter at 2, something that Respondent himself had said was necessary on November 17, 2023. *See* November 17, 2023 Letter at 5.

65. Respondent now claimed that the addition of the phrase "or any subset thereof" following the words "immunities and defenses," which Relators had inserted at Respondent's insistence, "affirmatively misleads the reader into believing that the proposed amendment broadly abrogates 'any subset' of *immunities or defenses available* to government actors." March 14, 2024 Letter at 2 (italics original and emphasis added).

66. Respondent's March 14, 2024 claim that Relator's addition of the phrase "or any subset thereof" to the words "immunities or defenses" "affirmatively misleads the reader into believing that the proposed amendment broadly abrogates 'any subset' of *immunities or defenses available* to government actors," *see* March 14, 2024 Letter at 2 (italics original and emphasis added), contradict his November 17, 2023 objection that Relators' summary's failure to use the phrase "or any subset thereof" with government actors' defenses "failed to encapsulate the broader swath of defenses" and thus too narrowly described the proposed amendment's reach.

67. Respondent insisted in his November 17, 2023 rejection letter that Relators add the phrase "or any subset thereof" to broaden their description of the "immunities and defenses" that would be abrogated by the proposed amendment.

68. Respondent's new objection in his March 14, 2024 rejection letter is that the addition of the phrase "or any subset thereof" is misleading because it suggests the proposed amendment "broadly abrogates 'any subset' of immunities or defenses available to government actors."

69. Respondent's March 14, 2024 objection to the addition of the phrase "or any subset thereof" and his November 17, 2023 objection to the omission of that phrase from the description of immunities and defenses are contradictory and cannot be reconciled.

70. Respondent's second new objection in his March 14, 2024 rejection letter claimed that Relators' revised summary misleadingly failed to include the phrase "or any subset thereof" immediately following the words "government actors" when Relators were describing the abrogation of immunities and defenses. *See* March 14, 2024 Letter at 2.

71. The text of Relators' proposed amendment states that "[i]n any action pursuant to this Section, no government actor shall enjoy or may rely upon any immunities or defenses which are only available to government actors or any subset thereof …."

72. Relators' summary adequately describes this text by stating that "[i]n any action filed under this Amendment, no government actor shall enjoy or may rely upon any immunities or defenses, or any subset thereof, which are only available to government actors …." *See* March 5, 2024 Submission at 1.

73. Respondent's objection that "the misstatement [i.e., omission of the phrase "or any subset thereof"] results in the summary's omission of this broader, undefined category of 'any subset' of 'government actors' created by the proposed amendment" is illogical and unfounded.

74. Subsets by definition cannot be larger than the sets that encompasses them and therefore cannot be "broader" as Respondent claims in his March 17, 2024 rejection of Relators' summary. *See* CHRISTOPHER CLAPHAM, THE CONCISE OXFORD DICTIONARY OF MATHEMATICS: PAPERBACK REFERENCE 269 (2d ed. 1996) ("The set A is a subset of the set B if every element of A is an element of B."); WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1661 (2d ed. 1983) (stating that the noun "set" may include "a group of persons").

75. Relators' failure to use the phrase "or any subset thereof" to describe the set of government actors covered by the proposed amendment cannot logically or linguistically imply that the set of "government actors" is a smaller than it is.

76. No reasonable person would believe that by not including the phrase "or any subset thereof" along with the set of "government actors" that is described in the summary the set of "government actors" would be smaller than the proposed amendment intended.

77. Respondent's third new objection in his March 14, 2024 rejection letter was that Relators misrepresented the proposed amendment's statute of limitations.

78. The proposed amendment's statute of limitations states that "[a] claim made under this Section shall be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred. *See* March 5, 2024 Submission at 4.

79. Relators' March 2024 summary states that "[a] claim made under this Amendment must be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred." *See* March 5, 2024 Submission at 2.

80. Because Relators also add a reiterative sentence stating that "[a]ll claims must be commenced no later than six years from the date the alleged constitutional violation is alleged to have occurred," *id*., Respondent claims Relators' description is misleading.

81. Respondent asserts in his March 14, 2024 rejection letter that "[t]hese sentences read together pose a significant risk of confusing and misleading any reader of the summary." March 14, 2024 Letter at 2.

82. Respondent further asserts that "[t]he sentences lead the reader to believe that there is some distinction or difference in the proposed amendment between the statute of limitations applicable to '[a] claim made under this Amendment' as opposed to '[a]ll claims." *Id*.

83. Respondent's objection that the proposed amendment's statute of limitations may cause misunderstanding is unreasonable and unfounded.

84. No reasonable reader would infer from Relators' description of the proposed amendment's statute of limitations that the proposed amendment was changing statutes of limitations for any additional claims beyond those that are "made under this Amendment."

85. No reasonable reader would conclude from the Relators' summary that the proposed amendment alters statutes of limitations for all claims in Ohio, including contractual claims, property claims, intentional torts, et cetera.

86. The only reasonable reading of Relators' summary is that the statute of limitation for all claims under the proposed amendment is six years.

87. Relators' description of the statute of limitations is true and accurate.

88. Respondent's fourth new objection is that the title of the proposed amendment, which is contained in the text of the proposed amendment, is misleading.

89. The textual title of the proposed amendment is "Protecting Ohioans' Constitutional Rights." See March 2024 Submission at 3 (Attachment 3).

90. Relators' summary accurately describes this title verbatim, stating that "[t]he Protecting Ohioans' Constitutional Rights Amendment creates a private cause of action …." *Id*. at 1.

91. Because the proposed amendment's title is part of the proposed amendment's text, Respondent has no authority to assess whether it is fair and accurate.

92. Because Relators' summary quotes the title verbatim, its description of the title is necessarily fair and accurate.

93. Relators' title, "Protecting Ohioans' Constitutional Rights," was also included in the text of the proposed amendment that was submitted in November of 2023. *See* November 8, 2023 Submission at 3.

94. Relators' title was also described verbatim by Relators in their November 2023 summary of the proposed amendment. *Id*. at 1.

95. Respondent did not object to Relators' title nor their summary description of the title in his November 17, 2023 rejection letter.

96. Respondent has waived any objection he might have to Relators' title and their summary's description of that title because of his failure to object to the exact same title that was included in the proposed amendment's text and quoted verbatim in its summary in November 2023.

97. Respondent erroneously claims that Relators' title "does not fairly and accurately reflect the nature and scope of the proposed amendment." March 14, 2023 Letter at 2.

98. Respondent erroneously claims that "the use of the word 'protect' in the summary's title is especially misleading because the amendment does not seek to proactively 'protect' Ohioans from violations of constitutional rights." *Id*.

99. Respondent erroneously claims that "Protecting Ohioan's Constitutional Rights" is "the summary's title." *Id*.

100. Respondent's assertion that the title "offers a subjective hypothesis (that eliminating such defenses will 'protect' the constitutional rights of citizens) regarding the proposed amendment in lieu of an objective description of its character and purpose (that it creates a cause of action notwithstanding those defenses)," *id*., ignores decades of studies and precedents going back to the Ku Klux Klan Act of 1871 (also known as 42 U.S.C. § 1983) that objectively hold that the prophylactic creation of a private cause of action for constitutional violation, like that found in § 1983, deters those violations and thereby protects constitutional rights. *See*, *e.g*., *Board of Regents v. Tomanio*, 446 U.S. 478, 488 (1980) (observing that "two of the principal policies embodied in § 1983 [have been recognized] as deterrence and compensation"); Stephen W. Miller, Note, *Rethinking Prisoner Litigation: Shifting from Qualified Immunity to a Good Faith Defense in § 1983 Prisoner Lawsuits*, 84 NOTRE DAME L. REV. 929, 933 (2009) ("The general purposes underlying § 1983 litigation are deterring officials from using their positions to deprive individuals of their rights protected by the Constitution or federal statutes, and providing victims of such deprivations with a remedy in federal court.").

101. Respondent's conclusion that "the proposed summary's title is not a fair and truthful recitation of the proposed amendment" is incorrect.

102. Relators' description of the title in their summary is a verbatim quotation of the title found in the text of the proposed amendment. Therefore, the title that is quoted by the summary is necessarily a fair and truthful recitation of the proposed amendment and its title.

COUNT I –MANDAMUS AND/OR OTHER ORDER UNDER R.C. 3519.01 FOR RESPONDENT'S CONTRADICTING HIS PRIOR DEMAND THAT RELATORS INCLUDE LANGUAGE IN THEIR SUMMARY

103. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

104. Respondent's first reason for rejecting and not certifying Relators' summary and proposed amendment was that Relators' revised summary was misleading because it added the phrase "or any subset thereof" immediately after the words "immunities and defenses" in its description of the proposed amendment's rejection of these immunities and defenses. See March 14, 2024 Letter at 2.

105. Respondent claimed that the addition of the phrase "or any subset thereof" following the words "immunities and defenses," which Relators had inserted at Respondent's insistence, "affirmatively misleads the reader into believing that the proposed amendment broadly abrogates 'any subset' of *immunities or defenses available* to government actors." March 14, 2024 Letter at 2 (italics original and emphasis added).

106. Respondent's March 14, 2024 reason for rejecting Relator's summary contradicts his reason expressed on November 17, 2023 that Relators' failure to include that phrase would mislead voters.

107. Respondent's contradiction makes plain that both reasons expressed in his November 2023 rejection and his March 2024 rejection for refusing to certify Relators' summary and proposed amendment are arbitrary, capricious and an abuse of discretion.

108. Mandamus must be issued to compel Respondent to certify Relators' summary and proposed amendment and correct this abuse of discretion.

COUNT II –MANDAMUS AND/OR OTHER ORDER UNDER R.C. 3519.01 FOR RESPONDENT'S UNFOUNDED CONCLUSION THAT NOT INCLUDING A SUBSET WITH A SET WOULD CONFUSE VOTERS

109. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

110. Respondent's second objection in his March 14, 2024 rejection letter claimed that Relator's revised summary misleadingly failed to include the phrase "or any subset thereof" immediately following the words "government actors" when Relators were describing the abrogation of immunities and defenses. *See* March 14, 2024 Letter at 2.

111. The text of Relators' proposed amendment states that "[i]n any action pursuant to this Section, no government actor shall enjoy or may rely upon any immunities or defenses which are only available to government actors or any subset thereof …."

112. Relators' summary adequately describes this text by stating that "[i]n any action filed under this Amendment, no government actor shall enjoy or may rely upon any immunities or defenses, or any subset thereof, which are only available to government actors …." *See* March 5, 2024 Submission at 1.

113. Respondent's objection that "the misstatement [i.e., omission of the phrase "or any subset thereof"] results in the summary's omission of this broader, undefined category of 'any subset' of 'government actors' created by the proposed amendment" is illogical and unfounded.

114. Subsets by definition cannot be broader than the sets that encompasses them.

115. Relators' omission of subsets of government actors from the summary cannot imply that the set of "government actors" is a smaller set.

116. No reasonable person would believe that by not mentioning "subsets" of government actors the summary somehow meant that the set of "government actors" was smaller than the proposed amendment intended.

117. Respondent acted arbitrarily, capriciously and abused his discretion in rejecting Relators' summary and proposed amendment based on their failure to include a phrase about a subset with discussion of the full set.

118. Mandamus must be issued to compel Respondent to certify Relators' summary and proposed amendment and correct this abuse of discretion.

COUNT III –MANDAMUS AND/OR OTHER ORDER UNDER R.C. 3519.01 FOR RESPONDENT'S CONCLUSION THAT RELATORS' REITERATION ABOUT THE STATUTE OF LIMITATIONS WOULD CAUSE MISUNDERSTANDING

119. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

120. Respondent's third objection in his March 14, 2024 rejection letter was that Relators misrepresented the proposed amendment's statute of limitations.

121. The proposed amendment's statute of limitations states that "[a] claim made under this Section shall be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred. *See* March 14, 2024 Submission at 4.

122. Relators' March 2024 summary states that "[a] claim made under this Amendment must be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred." *See* March 2024 Submission at 2.

123. Because Relators also add a reiterative sentence stating that "[a]ll claims must be commenced no later than six years from the date of the alleged constitutional violation is alleged to have occurred," *id*., Respondent claims Relators' description is misleading.

124. Respondent asserts in his March 14, 2024 rejection letter that "[t]hese sentences read together pose a significant risk of confusing and misleading any reader of the summary." March 14, 2024 Letter at 2.

125. Respondent further asserts that "[t]he sentences lead the reader to believe that there is some distinction or difference in the proposed amendment between the statute of limitations applicable to '[a] claim made under this Amendment' as opposed to '[a]ll claims." *Id*.

126. Respondent's objection that the proposed amendment's statute of limitations will cause misunderstanding is unreasonable, arbitrary, capricious and unfounded.

127. No reasonable reader would infer from Relators' description of the proposed amendment's statute of limitations that the proposed amendment was changing statutes of limitations for any additional claims beyond those that are "made under this Amendment."

128. No reasonable reader would conclude from the Relators' summary that the proposed amendment alters statutes of limitations for all claims in Ohio, including contractual claims, property claims, intentional torts, et cetera.

129. The only reasonable reading of Relators' summary is that the statute of limitation for all claims under the proposed amendment is six years.

130. Because Relators' description of the statute of limitations is true and accurate, mandamus ordering Respondent to certify the summary and proposed amendment is required.

COUNT IV –MANDAMUS AND/OR OTHER ORDER UNDER R.C. 3519.01 BASED ON RESPONDENT'S ILLEGALLY JUDGING WHETHER RELATORS'S TITLE WAS FAIR AND TRUTHFUL

131. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

132. Section 3519.01(A) of the Ohio Revised Code specifies the limited role of the Attorney General in certifying the summary of a proposed constitutional amendment. Within ten days after the proponent of a constitutional amendment by initiative petition submits the proposed amendment and its summary to the attorney general, "the attorney general shall conduct an examination of the summary." R.C. 3519.01(A). If the summary is a "fair and truthful statement" of the proposed constitutional amendment, "the attorney general shall so certify and then forward the submitted petition to the Ohio ballot board for its approval." *Id.*

133. The plain text of Section 3519.01(A) is clear that the authority of the Attorney General is limited to examining the summary of the proposed amendment within ten days, and "[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. . . . An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer*, 143 Ohio St. 312, 316, 55 N.E.2d 413 (1944).

134. Courts give words in the statute "their plain and ordinary meaning" "[u]nless words are otherwise defined or a contrary intent is clearly expressed." *Schaller v. Rogers*, 10th Dist. Franklin No. 08AP–591, 2008-Ohio-4464, ¶ 17, quoting *Cincinnati Metro. Hous. Auth. v. Morgan*, 104 Ohio St.3d 445, 2004–Ohio–6554, 820 N.E.2d 315, ¶ 6.

135. Section 3519.01(A) of the Ohio Revised Code does not authorize the Attorney General to review the title of the proposed constitutional amendment, which is not even required to be printed on the petition at the pre-certification stage.

136. Consistent with the statute's plain language, the Attorney General has historically reviewed only the summary and not the text nor a title contained in the text.

137. Section 3519.05 of the Ohio Revised Code and Article II, Section 1g of the Ohio Constitution set forth the form requirements for an initiative petition, as opposed to a summary

petition under Revised Code Section 3519.01, which provide that the initiative petition include both a summary and a title. *See* R.C. 3519.05; Ohio Constitution, Article II, Section 1g.

138. The Secretary of State is ultimately responsible for prescribing the title that appears on the ballot, which need not be the same as that which appears on either the summary petition or the initiative petition. *See* R.C. 3519.05 (requiring petition to print "the certification of the attorney general, under proper date").

139. Because the Attorney General does not have a statutorily-prescribed role over the title, he lacks authority to review the title.

140. The Attorney General also lacks any authority or discretion to refuse to certify a petition on that basis. *See State ex rel. Barren v. Brown*, 51 Ohio St.2d 169, 170, 365 N.E.2d 887 (1977) ("Under [R.C. 3519.01(A)], the authority of the Attorney General is limited to whether the summary is fair and truthful. If he determines that it is, he is directed to so certify.").

141. Respondent's reliance on his unauthorized conclusion that Relators' proposed amendment's title is not fair and truthful to refuse to certify Relators' summary and proposed amendment is unlawful.

142. Respondent's reliance on his unauthorized conclusion that Relators' proposed amendment's title is not fair and truthful to refuse to certify Relators' summary and proposed amendment is an abuse of discretion.

143. Because Respondent has no other lawful reason to refuse to certify Relators' summary and proposed amendment mandamus must be issued to compel Respondent to certify Relators' summary and proposed amendment.

144. Even if Respondent had authority to review the title, his conclusion that it is not accurate and truthful contradicts established principles and understandings. It is arbitrary, capricious and an abuse of discretion.

COUNT V –MANDAMUS AND/OR OTHER ORDER UNDER R.C. 3519.01 FOR RESPONDENT'S EXPRESSING NO TIMELY LAWFUL REASON FOR NOT CERTIFYING RELATORS' SUMMARY AND PROPOSED AMENDMENT

145. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

146. Because Respondent's identified deficiencies in Relators' March 2024 submission are erroneous, and because he identified no other deficiencies within the ten-day time limit, Respondent must now approve the summary of the proposed amendment. *See State ex rel. Barren*, 51 Ohio St.2d at 170–71, 365 N.E.2d 887 ("Since [the Attorney General's] only reason for refusing certification is that the matters may not be subject to referendum," which is an issue "not involved in the Attorney General's honest and impartial evaluation of whether the proposed summary is a 'fair and truthful statement,'" "it is implicit that, in [the Attorney General's] opinion, the summary meets the requirement of being a fair and truthful statement of the matter to be referred.").

147. Respondent failed to perform a mandatory duty and identify any other deficiencies in Relators' March 2024 submission within the ten-day timeframe and therefore relinquished his now expired authority over the summary under Revised Code Section 3519.01(A). *Cf. State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435, 732 N.E.2d 960 (2000) ("Waiver is defined as a voluntary relinquishment of a known right."); *State ex rel. Athens Cty. Bd. of Commrs. v. Gallia, Jackson, Meigs, Vinton Joint Solid Waste Mgt. Dist. Bd. of Dirs.*, 75 Ohio St.3d 611, 616, 665 N.E.2d 202 (1996) (explaining that "[a]s a general rule, . . . waiver is applicable to all personal rights and privileges," whether contractual, statutory, or constitutional), quoting *Sanitary Commercial Serv., Inc. v. Shank*, 57 Ohio St.3d 178, 180, 566 N.E.2d 1215 (1991).

148. Providing Respondent with another opportunity to examine the very same summary that he has reviewed is contrary to the legislative intent of the statute, which sets out clear deadlines to prevent officials from unduly delaying the process. *Schaller*, 10th Dist. Franklin No. 08AP–591, 2008-Ohio-4464, at ¶ 51 (acknowledging that the General Assembly added the ten-day deadline to limit the "attorney general's ability to impede the process" and that a process that does not place any time limitations on the Attorney General to review the summary would impede the right of initiative); *cf. State ex rel. Summit Cty. Republican Party Exec. Commt. v. Brunner*, 118 Ohio St.3d 515, 2008-Ohio-2824, 890 N.E.2d 888, ¶ 36 (O'Donnell, J. concurring) (holding that the plain reading of a statute related to the Secretary of State's duty to appoint members to a county board of elections does not allow the Secretary to keep rejecting additional recommendations into perpetuity).

149. The appropriate remedy for the Respondent's failure to identify any proper deficiencies in Relators' March 2024 submission is a writ of mandamus or other order under Revised Code Section 3519.01 compelling the Attorney General to certify the proposed amendment's summary and forward the petition to the Ballot Board.

150. This Court will grant a writ of mandamus when a relator establishes (i) a clear legal right to the requested relief, (ii) a clear legal duty on the part of the respondent to provide it, and (iii) the lack of an adequate remedy in the ordinary course of law.

151. Relators have a clear legal right to the requested relief as persons aggrieved by the Attorney General's refusal to certify the summary on an improper basis. R.C. 3519.01.

152. Relators lack an adequate remedy at law because this Court has original and exclusive jurisdiction of the subject matter of the action and mandamus is the appropriate remedy

to challenge the Attorney General's failure to certify a petition. R.C. 3159.01(C); *see also State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 13.

COUNT VI – FIRST AMENDMENT VIOLATION SHOULD OHIO LAW AND THIS COURT'S RULES NOT PROVIDE TIMELY DE NOVO REVIEW

153. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

154. The First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment to the United State Constitution, applies to Ohio's initiative certification process.

155. The First Amendment, as interpreted by the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit, requires that executive actions like Respondent's in the present case, be subject to timely, de novo review in a state's courts in order to not be considered "severe" limitations on First Amendment rights. *See Schmitt v. LaRose*, 933 F.3d 628 (6th Cir. 2019).

156. In *Schmitt v. LaRose*, 933 F.3d 628 (6th Cir. 2019), the Sixth Circuit interpreted Ohio's initiative certification process for local initiatives to require timely and de novo review to avoid finding that Ohio law imposed a "severe" burden on First Amendment rights that would be subjected to strict scrutiny and invalidated.

157. The Court in *Schmitt*, 933 F.3d at 639-40, explained:

> But even accepting Plaintiffs' argument that the First Amendment requires de novo review of a board's decision, the Ohio case law suggests that petitioners receive essentially that. The Ohio Supreme Court's evaluation of the decisions of boards of elections shows no particular deference to the boards' decisions. And, although the standard for showing entitlement to mandamus is recited as "fraud or corruption, abuse of discretion, or clear disregard of the law," Plaintiffs have identified no case in which the Ohio Supreme Court questioned the legal determination of a board of elections but nevertheless deferred to its discretion. Rather, the cases show that notwithstanding the stated standard of review, the court considers the proposed

> initiative and makes an independent reasoned determination whether it is within the Ohio Constitution's grant of legislative authority.

(Emphasis added).

158. The Court in *Schmitt*, 933 F.3d at 640 added: "We also note that because Ohio Supreme Court rules provide for expedited briefing and decision in election cases, aggrieved citizens who challenge an adverse decision are able to seek timely redress. The ballot-initiative statutes are thus not subject to strict scrutiny based on a severe burden." (Emphasis added).

159. The First Amendment requires that Relators be afforded timely, expedited and de novo review of the Respondent's executive decision to not certify their summary.

160. Relators respectfully request that the Court expedite review and apply a de novo review standard to all of Respondent's complained-of actions in this case in order to comply with the First Amendment.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

A. Issue a peremptory or other writ of mandamus or other order under Revised Code Section 3519.01 directing Respondent to certify the proposed amendment's summary as a fair and truthful statement of the proposed amendment and forward the petition to the Ballot Board;

B. If the Court determines that it requires further evidence or briefing, issue an alternative writ of mandamus and order an expedited briefing schedule on the same;

C. Apply de novo review to Respondent's actions and decisions in this case;

D. Expedite review in this case consistent with the intent behind Ohio's initiative certification process and the First Amendment;

E. Retain jurisdiction of this action pursuant to Revised Code Section 2731.16 and render any and all further orders that the Court may from time to time deem appropriate; and

F. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators' reasonable costs.

Respectfully submitted,

Mark R. Brown

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Counsel for Relators

* For purpose of identification only

** Pro hac vice application forthcoming

CERTIFICATE OF SERVICE

I certify that a true copy of this Verified Complaint was emailed to Respondent contemporaneously with the Verified Complaint's filing.

Mark R. Brown
Mark R. Brown

ATTACHMENT 1

COUNTY: Butler NUMBER: 00094

INITIATIVE PETITION

Amendment to the Constitution

Proposed by Initiative Petition

To be submitted directly to the electors

AMENDMENT

TITLE

Protecting Ohioans' Constitutional Rights

SUMMARY

This Amendment would add a new section 22 to Article I of the Ohio Constitution:

The Protecting Ohioans' Constitutional Rights Amendment creates a private cause of action on behalf of persons whose rights under Ohio's Constitution are violated, or caused to be violated, by (1) the State of Ohio, its officers, departments and instrumentalities, (2) political subdivisions of Ohio, including municipal corporations, townships, counties and school districts, (3) public employees of the State or its political subdivisions, and (4) independent contractors of the State or its political subdivisions. Liability for public employees is limited to those instances where their conduct is authorized by their governmental employers and within the scope of their employments. Liability of independent contractors is limited to conduct that is authorized and under color of law. The State of Ohio is liable for the constitutional violation of one of its public employees when the conduct that caused the constitutional violation occurs within the course or scope of authority granted to that public employee by the State of Ohio. A political subdivision is liable for the constitutional violation of one of its public employees when the conduct that caused the constitutional violation occurs within the course or scope of authority that has been granted by the political subdivision to that to the public employee.

Qualified immunity, sovereign immunity, prosecutorial immunity, and any immunity provided to the State, political subdivision, or public employee by statute are eliminated. Remedies for constitutional violations include compensation for economic and non-economic damages, equitable and injunctive relief, any other remedies prescribed by State law, federal law, or common law, and awards of reasonable attorney's fees. Courts are also authorized to order government actors found to have violated Ohio's Constitution to take reasonable measures to prevent similar violations from occurring in the future. Any finding of liability against a public employee under this Amendment provides just cause for termination of the employment, agreement, or contract giving rise to the public employee's status as a public employee.

The private cause of action created by this Amendment may be tried before the bench or a jury, but in either case violations must be proven by a preponderance of evidence. Jurisdiction and venue over the private cause of action created by this Amendment lie in the Court of Common Pleas for the county where the public employee who is named as a defendant resides or works at the time the action is filed. When only the State or a political subdivision is the defendant the action may be filed in the Court of Common Pleas for any county in Ohio. If both a public employee and the State or a political subdivision are named in the same action, the venue is restricted to the county where the named public employee resided or worked at the time of filing. All claims must be commenced no later than six years from the date the alleged constitutional violation is alleged to have occurred. This amendment contains a severability clause. The effective date would be January 1, 2025.

CERTIFICATION OF THE ATTORNEY GENERAL

This certification of the Attorney General, pursuant to Ohio Revised Code §3519.01(A), will be inserted when it is provided. This initial petition must be submitted with at least one thousand (1,000) valid signatures of Ohio electors before the Attorney General will issue that certification.

COMMITTEE TO REPRESENT THE PETITIONERS

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

Cynthia Brown	2692 Arcola Road, Columbus, Ohio 43207
Carlos Buford	2130 Della Drive, Dayton, Ohio 45417
Derrick Jamison	3015 Hackberry Street, Cincinnati, Ohio 45206
Hamza Khabir	26 Gould Avenue, Bedford, Ohio 44146
Jenny Sue Rowe	3340 Peterson Road, Mansfield, Ohio 44903

FULL TEXT OF THE PROPOSED AMENDMENT

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

Section 22. Protecting Ohioans' Constitutional Rights

(A) Definitions

(1) "State" means the State of Ohio, including, but not limited to, the offices of all elected state officers and all departments and other instrumentalities of the State of Ohio.

(2) "Political subdivision" means any body corporate or politic responsible for governmental activities within a geographic subsection of the State, including but not limited to a municipal corporation, township, county, or school district.

(3) "Public employee" means any entity who is:

(a) an officer, agent, employee, or servant, of the State or a political subdivision, whether or not compensated or full time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment by the State or political subdivision; or

(b) an independent contractor of the State or a political subdivision who is authorized to act and is acting under the color of law.

(4) "Government actor" means the State, any political subdivision thereof, or any public employee of the State or of any political subdivision thereof.

(5) "Person" means any individual resident of Ohio or individual within the State.

(6) "Constitutional right" means any right, privilege or immunity secured pursuant to the constitution of Ohio.

(B) Claim for Deprivation of Rights Guaranteed by the Constitution of Ohio

(1) No government actor shall cause any person to be subjected to deprivation of any constitutional right.

(2) A person who claims to have suffered a deprivation of any constitutional right due to acts or omissions of any government actor or actors may bring a civil action against said government actor or actors.

(3) A civil action pursuant to this Section may be brought in the following jurisdictions:

(a) An action naming a public employee as a defendant may be brought in any Court of Common Pleas for a county in which that public employee resided or worked at the time the action was filed.

(b) An action naming the State or a political subdivision as a defendant may be brought in the Court of Common Pleas for any county in the State. However, if a public employee is also named as a defendant to the same action, then the action may only be brought in a Court of Common Pleas for a county in which that public employee resided or worked at the time the action was filed.

(C) Immunity Defenses Prohibited

(1) In any action pursuant to this Section, no government actor shall enjoy or may rely upon any immunities or defenses which are only available to government actors or any subset thereof, including but not limited to:
   (a) Qualified immunity;
   (b) Sovereign immunity;
   (c) Prosecutorial immunity; or
   (d) Any immunity provided to the State, political subdivisions, or public employees by statute.

(D) Determination Of Liability

(1) The person bringing an action pursuant to this Section may elect whether the action will be tried in a bench trial or jury trial.
   (a) In a bench trial, the court's decision on any claim brought hereunder shall be supported by findings of facts and conclusions of law.
   (b) In a jury trial, any party may submit interrogatories to the jury asking for its findings of fact and application of the court's instructions as to the law.

(2) Any government actor is liable for the deprivation of a person's constitutional rights if it is proven by a preponderance of evidence that the government actor's acts or omissions caused the person to be deprived of any constitutional right.

(3) In addition, if a public employee is found liable for the deprivation of a person's constitutional rights pursuant to subsection (D)(2), and it is proven by a preponderance of evidence that the public employee was acting on behalf of, under color of, or within the course or scope of authority granted by the State or political subdivision, then the State or political subdivision shall be held liable to that person for the conduct of the public employee.

(4) Terminating a public employee shall not affect the liability of the State or political subdivision for the terminated public employee's conduct.

(E) Remedies Upon A Determination Of Liability

(1) If a government actor is found liable for the deprivation of a person's constitutional rights, that person shall be entitled to any or all of the following relief:
   (a) Compensation for economic and non-economic damages, without limitation;
   (b) Equitable or injunctive relief;
   (c) Recovery of reasonable attorney's fees, regardless of whether the attorney provided services on an hourly, contingent, or pro bono basis; and
   (d) Any other remedies prescribed by State or federal law or available pursuant to common law.

(2) In addition to the relief awarded to the person, the court shall order any government actor found liable for the deprivation of a person's constitutional rights to take reasonable measures to prevent a similar rights violation from re-occurring.

(F) Statute of Limitations

(1) A claim made under this Section shall be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred.

(G) Termination of Contract, Agreement, or Employment

(1) A finding of liability against a public employee pursuant to this Section is just cause for termination of the employment, agreement, or contract giving rise to the public employee's status as a public employee.

(H) Severability Clause

(1) All provisions of this section shall be self-executing and severable.

(I) Effective Date

(1) This section shall take effect on January 1, 2025.

ATTACHMENT 2

DAVE YOST
OHIO ATTORNEY GENERAL

Constitutional Offices
Section
Office: 614-466-2872

November 17, 2023

Mark Brown, Esq.
Capital University Law School
303 E. Broad St.
Columbus, Ohio 43215
Email: MBrown@law.capital.edu

Via regular U.S. Mail and E-mail

Re: Submitted Petition for Initiated Constitutional Amendment to Add Article I, Section 22 of the Ohio Constitution– "Protecting Ohioans' Constitutional Rights"

Dear Mr. Brown,

On November 8, 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 part-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 also my statutory duty to determine whether the submitted summary is a "fair and truthful statement of the proposed law or constitutional amendment." R.C. 3519.01(A). The Ohio Supreme Court has defined "summary" relative to an initiated petition as "a short, concise summing up," which properly advises potential signers of a proposed measure's character and purport. *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24 (1931). If I conclude that the summary is fair and truthful, I am to certify it as such within ten days of receipt of the petition. In this instance, the tenth day falls on November 17, 2023.

Having reviewed the renewed submission, I am unable to certify the summary as a fair and truthful representation of the proposed amendment. Upon review of the summary, we identified omissions and misstatements that, as a whole, would mislead a potential signer as to the actual scope and effect of the proposed amendment.

First, the summary fails to fairly and truthfully summarize the scope of potential party makeup, potential venue, and nonparty liability under the proposed amendment. With respect to venue, the proposed amendment provides that an action naming a public employee as a defendant "may be brought in any Court of Common Pleas for a county in which that public employee resided or worked at the time the action was filed." Proposed Amendment, Section (B)(3)(a). It further provides that an action naming the State or a political subdivision may be brought in any county, with the exception that "if a public employee is also named a defendant, then the action may only be brought in a Court of Common Pleas for a county in which that public employee resided or

worked at the time the action was filed. Id., Section (B)(3)(b). The Amendment is silent on proper venue for actions against multiple public-employee defendants who do not reside or work in the same county at the time the action is filed.

In turn, the summary provides that jurisdiction and venue lies "in the Court of Common Pleas for the county where the public employee who is named as a defendant resides or works at the time the action is filed," and that "[w]hen only the State or a political subdivision is the defendant the action may be filed in the Court of Common Pleas for any County in Ohio," but "[i]f both a public employee and the State or a political subdivision are named in the same action, the venue is restricted to the county where the named public employee resided or worked at the time of filing." Summary, paragraph 3. In this regard, the summary is misleading in two ways.

It is misleading to the extent that it falsely purports to set forth an exhaustive list of potential venues. The summary does not address proper venue in actions where a plaintiff names two public-employee defendants who do not share a common county where they live or work. While the amendment also does not expressly account for venue in such actions, nothing in the proposed amendment limits a plaintiff to a single public-employee defendant. Therefore, the summary is misleading to the extent it purports to set forth all potential venues for an action authorized by the amendment.

By the same token, a reader would also be misled into believing that the proposed amendment limits the type and number of potential governmental defendants. The summary's limited description of potential venues outlined above further misleads a reader into believing that the proposed amendment limits the makeup of governmental defendants to either (1) one public employee, (2) the State or one political subdivision, or (3) one public employee and the State or one political subdivision. This is driven home by the summary's reference to a singular public employee in the third foregoing scenario: in such a case, the summary states, venue is restricted to the country where "*the* named public employee" resided or worked. Summary, paragraph 3 (emphasis added.). In actuality, the proposed amendment contains none of the foregoing limitations implied in the summary. In fact, the proposed amendment authorizes actions brought against a "government actor or *actors*." Proposed Amendment, Section (B)(2).

The summary is also misleading with respect to the nonparty liability created by the proposed amendment. The amendment provides that, if a public employee is found liable for deprivation of a person's constitutional right, and it is proven by a preponderance that the public employee was acting on behalf of, under color of, or within the scope of authority granted by the State or political subdivision, "then the State or political subdivision shall be held liable to that person for the conduct of the public employee." Proposed Amendment, Section (D)(3).

Critically, the proposed amendment does not require the State or a political subdivision to be a named party in order to be held liable to the plaintiff under Section (D)(3). This is a significant departure from general legal principles and raises a host of potential substantive issues. But without regard to whether such a provision is legally sound or advisable, the fact that the proposed amendment creates nonparty liability of a State or political subdivision that is never named in a plaintiff's action is significant. A fair and truthful summary must, at the least, explain that nonparty State or political subdivision liability may arise as a result of the proposed amendment. This summary completely omits this significant aspect and, consequently, is misleading.

Second, the summary omits critical words and would materially mislead a potential signer with respect to defined terms. For example, the summary materially misstates the amendment's definition of "public employee." In particular, the proposed amendment states that a "public employee means any *entity* who is….." but the word "entity," which is a much broader term encompassing more than individuals, is omitted from the summary. This changes the character of the defined term. The summary also fails to articulate the difference between a public employee as an "entity" versus the common meaning and understanding of a public employee as a human being. This Office expressly noted this flaw in its prior August 18, 2023 declination letter sent in response to the previous iteration of this petition. It remains uncorrected.

Additionally, the proposed amendment defines "State" to mean "the State of Ohio, including, but not limited to, the offices of all elected state officers and all departments and other instrumentalities of the State of Ohio." Proposed Amendment, Section (A)(1). In contrast, the summary provides that the amendment creates a private cause of action for violations of Ohio Constitutional rights by "the State of Ohio, its officers, departments and instrumentalities …." The summary omits that the proposed amendment provides for liability of "the offices of all elected state officers." The summary's description of liability for the State's "officers" does not fairly and truthfully summarize the potential for liability of the offices of elected state officers as set forth in the amendment. This is particularly true when considered with the fact that the State's "officers" are included within the amendment's definition of "public employee" rather than within the definition of the "State." Compare Proposed Amendment, Section (A)(1) with Section (A)(3)(a). The omission of potential liability of the offices of elected state officers is materially misleading.

The summary further omits that the definition of "public employee" includes those individuals and entities that are "not compensated." Proposed Amendment, Section (A)(3)(a). In light of the ordinary, everyday definition of "employee" as generally *not* including uncompensated persons, this omission is misleading. A reader of the summary would not likely understand that the proposed amendment provides for liability of, for instance, uncompensated volunteers, because the definition's inclusion of "public employees" that are "not compensated" is omitted from the summary.

Moreover, "public employee" is defined in the proposed amendment as including an independent contractor "who is *authorized to act* and is acting under color of law." (emphasis added.). Proposed Amendment, Section (A)(3)(b). However, the summary states differently: it provides that liability of independent contractors is "limited to *conduct that is authorized* and under color of state law." Summary, paragraph 1 (emphasis added.). This is a significant distinction. The summary misleads a reader into believing that an independent contractor is liable only when the specific conduct at issue has been authorized by the State, rather than, as the proposed amendment more broadly provides, when the independent contractor was merely "authorized to act."

Third, the summary's statements on remedies and bench-or-jury-trial election are also inaccurate and misleading. The summary states that, as a remedy, "[c]ourts are also *authorized* to order government actors found to have violated Ohio's Constitution to take reasonable measures to prevent similar violations from occurring in the future." Summary, paragraph 2 (emphasis added.). This is inaccurate. Instead, the proposed amendment provides that, upon a finding of liability against a government actor, "the court *shall*" order the government actor found liable to take such reasonable measures. Proposed Amendment, Section (E)(2) (emphasis added.). The language

"courts are also authorized" in the summary incorrectly suggests that courts have discretionary authority to order a liable party to take such measures. In reality, the proposed amendment would require courts to do so.

Further, the summary states that remedies under the proposed amendment include "reasonable attorney's fees," Summary, paragraph 2, but omits that a prevailing party is entitled to those fees "regardless of whether the attorney provided services on an hourly, contingent, or pro bono basis." Proposed Amendment, Section (E)(1)(c). This omission potentially misleads a reader into believing that a prevailing party is entitled only to fees that were actually incurred and are owed by that party.

Finally, the summary provides that "the private cause of action created by this Amendment may be tried before the bench or a jury …." Summary, paragraph 3. The summary omits that it is the plaintiff who is entitled to this election: the proposed amendment is clear that "[t]he person bringing an action pursuant to this Section may elect whether the action will be tried in a bench or jury trial." Proposed Amendment, Section (D)(1). By omitting this portion of Section (D)(1), the summary may mislead a reader into believing that a named defendant – be it the State, a political subdivision, or a public employee – also has the right to insist upon a jury or bench trial.

Fourth, the summary's statements on the liability of a "public employee" are incorrect and misleading. The summary provides that "[l]iability for public employees is limited to those instances where their conduct is authorized by their governmental employers and within the scope of their employments." Summary, paragraph 1. This tracks the first definitional category of "public employee" contained in the proposed amendment. Proposed Amendment, Section (A)(3)(a). However, this sentence is inaccurate because it ignores that the proposed amendment's definition of "public employees" also includes "an independent contractor who is authorized to act and is acting under color of law." Id., Section (A)(3)(b). Thus, it is incorrect and misleading to state that public-employee liability "is limited" to instances falling under Section (A)(3)(a), as the summary purports. The summary does appear to attempt to reconcile this with its next sentence: "Liability for independent contractors is limited to conduct that is authorized and under color of law." Summary, paragraph 1. Nonetheless, the first sentence purporting to state the limits of public-employee liability remains incorrect and misleading.

Similarly, the summary further provides that the State and political subdivisions are "liable for the constitutional violation of one of its public employees when the conduct that caused the constitutional violation occurs within the course or scope of authority granted to that public employee" by the State or subdivision. Summary, paragraph 1. This, too, is inaccurate because it again fails to contemplate that the proposed amendment's definition of "public employee" also includes "an independent contractor of the State or a political subdivision who is authorized to act and is acting under the color of law." Proposed Amendment, Section (A)(3)(b). The summary's language here is again incorrect and misleads a reader into believing that liability for the State or a political subdivision for conduct by its public employee is limited to the categories of "public employee" set forth in Section (A)(3)(a), when the proposed amendment also defines independent contractors acting under color of state law as "public employees" under Section (A)(3)(b).

Fifth, the summary materially misstates that the proposed amendment's immunity defenses are "eliminated." The summary states that "[q]ualified immunity, sovereign immunity, prosecutorial

immunity, and any immunity provided to the State, political subdivision, or public employee by statute are eliminated." Summary, paragraph 2 (emphasis added.). However, the proposed amendment is not so broad – it provides only that in "*any action pursuant to this Section*, no government actor shall enjoy or may rely upon any immunities or defenses which are only available to government actors or any subset thereof, including but not limited to" qualified immunity, sovereign immunity, prosecutorial immunity, or any immunity provided to government actors by statute. Proposed Amendment, Section (C)(1) (emphasis added.). Thus, the statement that those types of immunity are "eliminated" in all instances is overbroad and fails to fairly summarize that the proposed amendment precludes the use of immunity defenses only "[i]n any action pursuant to this Section[.]" The blanket term "eliminated" would mislead a reader into believing the proposed amendment's effect on immunity defenses is broader than what the proposed amendment actually provides.

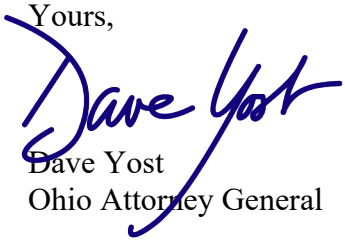
The summary's statement regarding "elimination" of immunity is overbroad in this respect, but it is also too narrow in another. That is, the purport of the proposed amendment is not limited to immunity. Indeed, the proposed amendment precludes a government actor from enjoying or relying upon "any immunities *or defenses* which are only available to government actors or any subset thereof …." Proposed Amendment, Section (C)(1) (emphasis added.). Additionally, the proposed amendment's list of immunities and defenses to which Section (C)(1) is expressly non-exhaustive. *Id.* ("…including but not limited to…").

In contrast, the summary mentions only immunity. It omits entirely any reference to the proposed amendment's effect on these "other defenses." Worse, it omits that these "other defenses" include not just those "only available to government actors," but also those "only available to … any subset thereof." The proposed amendment leaves this broad category—"subsets" of "government actors"—undefined. Thus, the summary fails to encapsulate the broader swath of defenses contemplated by the text of the proposed amendment.

The problem is exacerbated because the summary also omits that the types of immunities which are enumerated therein are part of an expressly non-exhaustive list. By limiting its description of the proposed amendment's effect to the enumerated types of immunity, the summary fails to fairly and truthfully summarize the full extent of the proposed amendment (i.e., as extending to additional defenses beyond those enumerated types). As a result, a reader would be misled into believing that the types of immunity listed in the summary are the only defenses affected by the proposed amendment, when the proposed amendment's effects are, as shown, broader.

The above instances are just a few examples of the summary's omissions and misstatements. It is significant to ask voters to make factual findings at the ballot box. A summary that fails to inform a signer of the existence of such findings does not fairly and truthfully reflect the amendment's import. Thus, without reaching the balance of the summary, and consistent with my past determinations, I am unable to certify the summary as a fair and truthful statement of the proposed amendment.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

Derrick Jamison
3015 Hackberry Street
Cincinnati, Ohio 45206

Cynthia Brown
2692 Arcola Road
Columbus, Ohio 43207

Carlos Buford
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Dayton, Ohio 45417

Hamza Khabir
26 Gould Avenue
Bedford, Ohio 44146

Jenny Sue Rowe
3340 Peterson Road
Mansfield, Ohio 44903

ATTACHMENT 3

COUNTY: ALLEN NUMBER: 0001

INITIATIVE PETITION

Amendment to the Constitution

Proposed by Initiative Petition

To be submitted directly to the electors

AMENDMENT

TITLE

Protecting Ohioans' Constitutional Rights

SUMMARY

This Amendment would add a new section 22 to Article I of the Ohio Constitution:

The Protecting Ohioans' Constitutional Rights Amendment creates a private cause of action on behalf of persons whose rights, privileges and immunities under Ohio's Constitution are violated, or caused to be violated, by "government actors." Government actors under the terms of this Amendment include (1) the "State" of Ohio, which is defined to include, but is not limited to, the offices of all elected state officers and all departments and other instrumentalities of the State of Ohio, (2) "political subdivisions" of Ohio, which is defined to mean any body corporate or politic responsible for governmental activities within a geographic subsection of the State, including but not limited to a municipal corporation, township, county, or school district, and (3) "public employees" of the State or its political subdivisions, which is defined to mean any individual who is an officer, agent, employee, or servant, of the State or a political subdivision, whether or not compensated or full-time or part-time, if that individual is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment by the State or political subdivision, as well as any individual or "business entity," which is defined to include corporations, associations, firms, limited liability companies, partnerships, sole proprietorships, or other entities engaged in business, that is an independent contractor of the State or one of its political subdivisions and who is authorized to act and is acting under the color of law.

A "government actor," as defined above, is liable under this Amendment for its deprivation of a person's constitutional rights if it is proven by a preponderance of evidence that the government actor's acts or omissions caused the person to be deprived of any constitutional right under the Ohio Constitution. In addition to being liable as government actors for causing deprivations of persons' constitutional rights under the Ohio Constitution, the State and its political subdivisions, whether or not joined as defendants in any civil action created by this Amendment, are also liable for the conduct of their public employees, including independent contractors, who are found liable based on a preponderance of the evidence for deprivations of a person's constitutional rights under this Amendment, and who are also proven by a preponderance of evidence to have been acting on behalf of, under color of, or within the course or scope of authority granted by the State or political subdivision.

Terminating a public employee shall not affect the liability of the State or political subdivision for the terminated public employee's conduct.

Ohio's Courts of Common Pleas have subject matter jurisdiction over the civil action created by this Amendment. Venue over the civil action created by this Amendment shall be determined by Ohio's laws and rules of venue that are applicable to civil actions.

In any action filed under this Amendment, no government actor shall enjoy or may rely upon any immunities or defenses, or any subset thereof, which are only available to government actors, including but not limited to (1) qualified immunity; (2) sovereign immunity; (3) prosecutorial immunity; and (4) any immunity provided to the State,

political subdivisions, or public employees by statute.

Remedies for constitutional violations by government actors under this Amendment include any or all of the following relief: (1) compensation for economic and non-economic damages, without limitation; (2) equitable or injunctive relief; (3) recovery of reasonable attorney's fees, regardless of whether the attorney provided services on an hourly, contingent, or pro bono basis; and (4) any other remedies prescribed by State or federal law or available pursuant to common law. In addition to the relief awarded to the person bringing the action under this Amendment, the court shall order any government actor found liable for the deprivation of a person's constitutional rights to take reasonable measures to prevent a similar rights violation from re-occurring.

A finding of liability against a public employee under this Amendment is just cause for termination of the employment, agreement, or contract giving rise to the public employee's status as a public employee.

The private cause of action created by this Amendment may be tried before the bench or a jury, at the election of the person bringing the action pursuant to this Amendment, but in either case all violations must be proven by a preponderance of evidence. A claim made under this Amendment must be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred.

All claims must be commenced no later than six years from the date the alleged constitutional violation is alleged to have occurred. All provisions of this Amendment shall be self-executing and severable. This Amendment shall take effect on January 1, 2025.

CERTIFICATION OF THE ATTORNEY GENERAL

This certification of the Attorney General, pursuant to Ohio Revised Code §3519.01(A), will be inserted when it is provided. This initial petition must be submitted with at least one thousand (1,000) valid signatures of Ohio electors before the Attorney General will issue that certification.

COMMITTEE TO REPRESENT THE PETITIONERS

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

Cynthia Brown	2692 Arcola Road, Columbus, Ohio 43207
Carlos Buford	2130 Della Drive, Dayton, Ohio 45417
Derrick Jamison	3015 Hackberry Street, Cincinnati, Ohio 45206
Hamza Khabir	26 Gould Avenue, Bedford, Ohio 44146
Jenny Sue Rowe	3340 Peterson Road, Mansfield, Ohio 44903

FULL TEXT OF THE PROPOSED AMENDMENT

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

Section 22. Protecting Ohioans' Constitutional Rights

(A) Definitions

(1) "State" means the State of Ohio, including, but not limited to, the offices of all elected state officers and all departments and other instrumentalities of the State of Ohio.

(2) "Political subdivision" means any body corporate or politic responsible for governmental activities within a geographic subsection of the State, including but not limited to a municipal corporation, township, county, or school district.

(3) "Public employee" means:

(a) any individual who is an officer, agent, employee, or servant, of the State or a political subdivision, whether or not compensated or full time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment by the State or political subdivision; or

(b) any individual or business entity that is an independent contractor of the State or a political subdivision who is authorized to act and is acting under the color of law.

(4) "Government actor" means the State, any political subdivision thereof, or any public employee of the State or of any political subdivision thereof.

(5) "Person" means any individual resident of Ohio or individual within the State.

(6) "Constitutional right" means any right, privilege or immunity secured pursuant to the constitution of Ohio.

(7) "Business entity" means an entity with employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business.

(B) Claim for Deprivation of Rights Guaranteed by the Constitution of Ohio

(1) No government actor shall cause any person to be subjected to deprivation of any constitutional right.

(2) A person who claims to have suffered a deprivation of any constitutional right due to acts or omissions of any government actor or actors may bring a civil action against said government actor or actors.

(3) Ohio's Courts of Common Pleas have subject matter jurisdiction over the civil action created by this Section.

(4) Venue over the civil action created by this Section shall be determined by Ohio's venue laws and rules that are applicable to civil actions.

(C) Immunity Defenses Prohibited

(1) In any action pursuant to this Section, no government actor shall enjoy or may rely upon any immunities or defenses which are only available to government actors or any subset thereof, including but not limited to:

(a) Qualified immunity;

(b) Sovereign immunity;
(c) Prosecutorial immunity; or
(d) Any immunity provided to the State, political subdivisions, or public employees by statute.

(D) Determination Of Liability

(1) The person bringing an action pursuant to this Section may elect whether the action will be tried in a bench trial or jury trial.
   (a) In a bench trial, the court's decision on any claim brought hereunder shall be supported by findings of facts and conclusions of law.
   (b) In a jury trial, any party may submit interrogatories to the jury asking for its findings of fact and application of the court's instructions as to the law.
(2) Any government actor is liable for the deprivation of a person's constitutional rights if it is proven by a preponderance of evidence that the government actor's acts or omissions caused the person to be deprived of any constitutional right.
(3) In addition, if a public employee is found liable for the deprivation of a person's constitutional rights pursuant to subsection (D)(2), and it is proven by a preponderance of evidence that the public employee was acting on behalf of, under color of, or within the course or scope of authority granted by the State or political subdivision, then the State or political subdivision shall be held liable to that person for the conduct of the public employee.
(4) Terminating a public employee shall not affect the liability of the State or political subdivision for the terminated public employee's conduct.

(E) Remedies Upon A Determination Of Liability

(1) If a government actor is found liable for the deprivation of a person's constitutional rights, that person shall be entitled to any or all of the following relief:
   (a) Compensation for economic and non-economic damages, without limitation;
   (b) Equitable or injunctive relief;
   (c) Recovery of reasonable attorney's fees, regardless of whether the attorney provided services on an hourly, contingent, or pro bono basis; and
   (d) Any other remedies prescribed by State or federal law or available pursuant to common law.
(2) In addition to the relief awarded to the person, the court shall order any government actor found liable for the deprivation of a person's constitutional rights to take reasonable measures to prevent a similar rights violation from re-occurring.

(F) Statute of Limitations

(1) A claim made under this Section shall be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred.

(G) Termination of Contract, Agreement, or Employment

(1) A finding of liability against a public employee pursuant to this Section is just cause for termination of the employment, agreement, or contract giving rise to the public employee's status as a public employee.

(H) Severability Clause

(1) All provisions of this section shall be self-executing and severable.

(I) Effective Date

(1) This section shall take effect on January 1, 2025.

ATTACHMENT 4

DAVE YOST
OHIO ATTORNEY GENERAL

Constitutional Offices
Section
Office: 614-466-2872

March 14, 2024

Via regular U.S. Mail and E-mail

Mark Brown, Esq.
Capital University Law School
303 E. Broad Street
Columbus, Ohio 43215
MBrown@law.capital.edu

Re: Submitted Petition for Initiated Constitutional Amendment to Add Article I, Section 22 of the Ohio Constitution– "Protecting Ohioans' Constitutional Rights"

Dear Mr. Brown,

On March 5, 2024, 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 part-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 also my statutory duty to determine whether the submitted summary is a "fair and truthful statement of the proposed law or constitutional amendment." R.C. 3519.01(A). The Ohio Supreme Court has defined "summary" relative to an initiated petition as "a short, concise summing up," which properly advises potential signers of a proposed measure's character and purport. *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24 (1931). If I conclude that the summary is fair and truthful, I am to certify it as such within ten days of receipt of the petition. In this instance, the tenth day falls on March 14, 2024.

Having reviewed the renewed submission, I am unable to certify the submitted summary as a fair and truthful representation of the proposed amendment. Upon review of the summary, we identified omissions and misstatements that, would mislead a potential signer as to the actual scope and effect of the proposed amendment.

I understand that I have rejected the Petitioners' summaries on multiple previous occasions. Sometimes the language of the proposed amendment has changed and the summaries have failed the fair and truthful test, which I have always explained in detail. Regrettably, the Petitioners have submitted summaries that repeat the misstatements and/or omissions that I have specifically identified in previously rejected summaries. That is the case with my rejection today.

For example, the current summary is misleading with respect to the scope of subsection (C) of the proposed amendment. The summary and proposed amendment say two different things. That is,

the qualifier "or any subset thereof" as used in the proposed amendment modifies and broadens the phrase "government actors". Proposed Amendment, Section (C)(1). The summary, on the other hand, says differently: it rewords the amendment such that "or any subset thereof" directly follows and modifies the comma-separated clause "immunities or defenses." Summary, paragraph 5. But the proposed amendment actually abrogates the immunities or defenses available to "any subset" of *government actors*. This renders the summary misleading in two aspects. First, this misstatement affirmatively misleads the reader into believing that the proposed amendment broadly abrogates "any subset" of *immunities or defenses available* to "government actors." Second, the misstatement results in the summary's omission of this broader, undefined category of "any subset" of "government actors" created by the proposed amendment. **This latter problem was identified as one of the reasons that I was unable to certify Petitioners' previous summary on November 17, 2023.** Thus, again, the summary fails to fairly and truthfully reflect the scope of the proposed amendment's effect as set forth in its subsection (C).

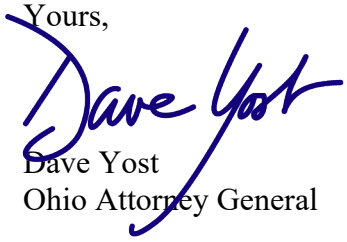
Second, in subsection (F), the proposed amendment provides that "[a] claim made under this Section shall be commenced no later than six years from the date that deprivation of a constitutional right is alleged to have occurred." Proposed Amendment, Subsection (F). On the other hand, the summary confusingly provides in consecutive sentences: "A claim made under this Amendment must be commenced no later than six years from the date that the deprivation of a constitutional right is alleged to have occurred. All claims must be commenced no later than six years from the date the alleged constitutional violation is alleged to have occurred." Summary, Paragraphs 8-9. These sentences read together pose a significant risk of confusing and misleading any reader of the summary. The sentences lead the reader to believe that there is some distinction or difference in the proposed amendment between the statute of limitations applicable to "[a] claim made under this Amendment" as opposed to "[a]ll claims." In reality, the proposed amendment makes no such distinction or difference. Nonetheless, a reader will likely assign significance to the fact that the summary repeats itself in this manner while using different language.

Finally, the title "Protecting Ohioans' Constitutional Rights" does not fairly and accurately reflect the nature and scope of the proposed amendment. "A title 'provides notice of the proposal to the signers of an initiative petition. More so than the text, the title immediately alerts signers to the nature of [the] proposed legislation.'" *State ex rel. Hildreth v. LaRose*, No. 2023-1213, 2023-Ohio-3667, ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597, 575 N.E.2d 835 (1991). The use of the word "protect" in the summary's title is especially misleading because the amendment does not seek to proactively "protect" Ohioans from violations of constitutional rights. Instead, the nature of the amendment is to *abrogate*: specifically, governmental immunity and similar defenses available to defined government actors. Accordingly, the summary's title offers a subjective hypothesis (that eliminating such defenses will "protect" the constitutional rights of citizens) regarding the proposed amendment in lieu of an objective description of its character and purport (that it creates a cause of action notwithstanding those defenses). Given the Supreme Court's holding on the import of petition titles, I find that the proposed summary's title is not a fair and truthful recitation of the proposed amendment.

The above instances are just a few examples of the summary's omissions and misstatements. Any of these omissions or misrepresentations, together or alone, are sufficient to reject the submitted petition. As I have said before, it is significant to ask voters to make factual findings at the ballot box. A summary that fails to inform a signer of the existence of such findings does not fairly and

truthfully reflect the amendment's import. Thus, without reaching the balance of the summary, and consistent with my past determinations, I am unable to certify the summary as a fair and truthful statement of the proposed amendment.

Yours,



Dave Yost
Ohio Attorney General

cc: Committee Representing the Petitioners

Cynthia Brown
2692 Arcola Road
Columbus, Ohio 43207

Carlos Buford
2130 Della Drive
Dayton, Ohio 45417

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26 Gould Avenue
Bedford, Ohio 44146

Jenny Sue Rowe
3340 Peterson Road
Mansfield, Ohio 44903

IN THE SUPREME COURT OF OHIO

State ex rel. Brown, et al.,

Petitioners

Vs. **No. _____**

Yost,

Respondent.

VERIFICATION OF MARK R. BROWN

Franklin County

/ss

State of Ohio

I, Mark R. Brown, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and the Verifications of the Relators and state that they are true and accurate copies of what they purport to be.

FURTHER AFFIANT SAYETH NAUGHT

Mark R. Brown

Sworn to me by Mark R. Brown before me and subscribed in my presence this 20 day of March, 2024.

NOTARY PUBLIC

Shawn M. Beem
Notary Public, State of Ohio
My Commission Expires 10-15-26

My commission expires: 10/15/2026

IN THE SUPREME COURT OF OHIO

State ex rel. Brown, et al.,

Petitioners

Vs.

Yost,

Respondent.

VERIFICATION OF CARLOS BUFORD

Montgomery County

/ss

State of Ohio

I, Carlos Buford, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and state that they are true and accurate copies of what they purport to be.

FURTHER AFFIANT SAYETH NAUGHT

Carlos D. Buford

Carlos Buford

Sworn to and before me and subscribed in my presence this 20th day of March, 2024.

TARA S. CAMPBELL
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
04-29-2025

Tara S. Campbell

NOTARY PUBLIC

My commission expires: April 29, 2025

IN THE SUPREME COURT OF OHIO

State ex rel. Brown, et al.,

Petitioners

Vs. **No. _____**

Yost,

Respondent.

VERIFICATION OF JENNY SUE ROWE

Richland County

/ss

State of Ohio

I, Jenny Sue Rowe, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and state that they are true and accurate copies of what they purport to be.

FURTHER AFFIANT SAYETH NAUGHT

_____

Jenny Sue Rowe

Sworn to and before me and subscribed in my presence this 20 day of March, 2024.

NOTARIAL SEAL
STATE OF OHIO

Jennifer L Hopkins
Notary Public - Ohio
My Commission Expires
July 24, 2024

_____

NOTARY PUBLIC

My commission expires: July 24, 2024

IN THE SUPREME COURT OF OHIO

State ex rel. Brown, et al.,

Petitioners

Vs. **No. _____**

Yost,

Respondent.

VERIFICATION OF CYNTHIA BROWN

Franklin County

/ss

State of Ohio

I, Cynthia Brown, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and state that they are true and accurate copies of what they purport to be.

FURTHER AFFIANT SAYETH NAUGHT

Cynthia Brown

Sworn to and before me and subscribed in my presence this 20 day of March, 2024.

NOTARIAL SEAL
STATE OF OHIO

Jennifer L Hopkins
Notary Public - Ohio
My Commission Expires
July 24, 2024

_____
NOTARY PUBLIC

My commission expires: July 24, 2024