



JIM PETRO
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April 15, 2005

VIA HAND-DELIVERY

Honorable J. Kenneth Blackwell
Ohio Secretary of State
180 E. Broad Street, 16th Floor
Columbus, OH 43266

Re: Proposed Initiated Constitutional Amendment – Art. XII, §14(TEL)

Dear Mr. Blackwell:

In accordance with the provisions of Section 3519.01(A) of the Ohio Revised Code, a written petition proposing an amendment to the Ohio Constitution, Article XII, §14, was submitted for my examination, together with a summary of that initiated proposed amendment. A copy of the proposal and of the summary is enclosed.

Having considered only the language of the proposed constitutional amendment which the petitioners seek to submit to the Secretary of State for submission to the voters, and the summary of the proposed constitutional amendment appearing on the petition as submitted to my office, I conclude that the summary is a fair and truthful statement of the measure to be proposed, and have so certified this finding to the attorney representing the petitioners on this date as follows:

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

I am hereby filing with you this letter containing the above certification and the attached petition containing the measure to be referred and the petitioners' summary.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Petro", written over a circular stamp.

JIM PETRO
ATTORNEY GENERAL

JMP:ajm

Enclosure

cc: Chief Elections Counsel, Secretary of State

(Pursuant to R.C. 3519.01)

**Initiative Petition Submitted to the Attorney General for
Certification of Summary of Proposed Amendment to the Constitution**

FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio, that the Constitution of the State of Ohio be amended by adopting Section 14 of Article XII, to read as follows:

Section 14.

(A) *State Spending Limitation.* The general assembly shall not increase aggregate state expenditures for a fiscal year by an amount that exceeds the aggregate state expenditures for the previous fiscal year beyond the allowable rate, except upon passage of a bill which (1) specifically identifies by appropriation item the amount and purpose of each excess expenditure and the specific source of the revenue necessary to fund that expenditure, (2) limits each excess expenditure to the amount and purpose identified in the bill, and (3) is subject to a vote of affirmation by a majority of electors at the next statewide special, primary or general election occurring more than sixty days after the filing of such bill with the secretary of state. If a majority of electors voting at such an election approves the bill, the bill shall take effect thirty days after the date of the election.

(B) *Budget Reserve Fund; Tax Refund.*

(1) A budget reserve fund is hereby created in the state treasury for the purpose of receiving and holding budgetary reserves for the state, which reserves may only be expended as provided in this subsection (B). Moneys may be appropriated directly to the budget reserve fund by legislation enacted by the general assembly.

(2) At the end of each fiscal year, all of the unencumbered moneys in the general revenue fund and ten per cent of the unencumbered moneys in all non-general revenue funds shall be appropriated as follows: one half of the moneys shall be refunded by the treasurer of state, on a pro rata basis, to each individual taxpayer who paid Ohio income tax in the preceding calendar year, and one half of the moneys shall be transferred to the budget reserve fund.

(3) Moneys in the budget reserve fund may be expended by the general assembly for any lawful purpose, provided that, if at any time the amount of moneys in or accrued to the budget reserve fund exceeds fifteen per cent of the aggregate state expenditures for the preceding fiscal year, the excess moneys shall be refunded to the taxpayers in the same manner as provided in subsection (B)(2) of this section. Expenditures from the budget reserve fund, except expenditures for a tax refund or an emergency, shall be subject to the expenditure limitation as provided in subsection (A) of this section for the fiscal year in which such expenditures are made. Any interest earnings of the budget reserve fund shall be credited to the fund.

(C) *State Mandates on Political Subdivisions.* A political subdivision may not be required to fulfill any mandate imposed by the state unless and until, and may be required to fulfill that mandate only to the extent that, moneys are provided to the political subdivision by the state for that purpose. The general assembly is not required to appropriate moneys for mandates if more than two years have passed since the effective date of the mandate and no claim for funding has been made by the political subdivision during that period. Any moneys provided by the state to a political subdivision shall be subject to the

expenditure limitation as provided in subsection (A) of this section, and shall be in addition to the moneys provided pursuant to subsection (D) of this section.

(D) *Local Government Fund.* A local government fund is hereby created in the state treasury for the purpose of providing a minimum level of state funding to political subdivisions. Each fiscal year, moneys equal to not less than five per cent of the aggregate state expenditures for the preceding fiscal year shall be appropriated to the local government fund by the general assembly, which moneys shall be distributed by the treasurer of state from the local government fund proportionally to each county in at least two equal installments by not later than the end of the fiscal year, in accordance with legislation enacted by the general assembly. Each county shall, in turn, distribute its proportional share of those moneys to one or more, but not necessarily all, of the political subdivisions in that county, in accordance with legislation enacted by the general assembly. All moneys appropriated to the local government fund pursuant to this subsection shall be subject to the expenditure limitation as provided in subsection (A) of this section. Any interest earnings of the local government fund shall be credited to the fund.

(E) *Tax and Spending Limitations on Political Subdivisions.*

(1) No political subdivision of the state shall (a) increase aggregate political subdivision expenditures for a fiscal year by an amount that exceeds the aggregate political subdivision expenditures for the previous fiscal year beyond the allowable rate for a political subdivision, (b) levy a new tax, or (c) increase the rate of an existing tax, without first obtaining the approval of a majority of electors in that political subdivision.

(2) The general assembly, by legislation, shall provide a mechanism to adjust the amount of the limitations as provided in subsection (E)(1) as a result of any subsequent annexation, creation of a new political subdivision, or any consolidation or change in the boundaries of a political subdivision. The mechanism shall adjust the amount of the limitations so that total costs are not increased as a result of the annexation, creation, consolidation or change in boundaries. The adjustment mechanism provided in accordance with this subsection shall be used in determining the limitations beginning with the fiscal year immediately following the annexation, creation of a new political subdivision, or consolidation or change in the boundaries of a political subdivision.

(F) *Definitions.* As used in this section:

(1) "Aggregate political subdivision expenditures" means the sum of all expenditures made by a political subdivision, except that "aggregate political subdivision expenditures" shall not include expenditures of moneys (a) received from the federal or state government, (b) for refunds of any kind, (c) received as grants, gifts, donations or bequests which are to be expended for purposes specified by the donor, or (d) made pursuant to an ordinance or resolution which (i) authorizes temporary expenditures for the sole purpose of providing relief directly related to an emergency, (ii) specifically identifies by appropriation item the amount and purpose of each temporary expenditure and the specific source of the revenue necessary to fund each temporary expenditure and the specific source of the revenue necessary to fund that expenditure, (iii) limits the temporary expenditure to the amount and specific purpose identified in the ordinance or resolution, (iv) provides for the expenditure of all federal, state or other funds earmarked or otherwise designated for general emergency relief before any other funds shall be expended for the emergency, and (v) receives the affirmative vote of not less than three-fifths of the members of the legislative authority of that political subdivision.

(2) "Aggregate state expenditures" means the sum of all state expenditures, except that "aggregate state expenditures" shall not include expenditures of moneys (a) received from a revenue source other than taxes, licenses, permits, fees or sales, (b) received from the federal government, (c) for refunds

of any kind, or (d) made pursuant to a bill which (i) authorizes temporary expenditures for the sole purpose of providing relief directly related to an emergency, (ii) specifically identifies by appropriation item the amount and purpose of each temporary expenditure and the specific source of the revenue necessary to fund that expenditure, (iii) limits the temporary expenditure to the amount and specific purpose identified in the bill, (iv) provides for the expenditure of all federal or other monies earmarked or otherwise designated for general emergency relief, and then the entire budget reserve fund, before any other funds shall be expended for the emergency, and (v) receives the affirmative vote of not less than three-fifths of the members of each house of the general assembly.

(3) "Allowable rate" means the greater of either: (a) the sum of (i) the rate of inflation in the state for the preceding calendar year, based on the consumer price index for all urban consumers, midwest region, all items (or its successive equivalent), as determined by the United States department of labor, bureau of labor statistics (or its successor in responsibility), and (ii) the rate of population change in the state for the preceding calendar year, based on population data published by the United States department of commerce, bureau of the census (or its successor in responsibility); or (b) three and one half per cent.

(4) "Allowable rate for a political subdivision" means the greater of either: (a) the sum of (i) the rate of inflation in the political subdivision for the preceding calendar year, based on the consumer price index for all urban consumers, midwest region, all items (or its successive equivalent), as determined by the United States department of labor, bureau of labor statistics (or its successor in responsibility), and (ii) the rate of population change in the political subdivision for the preceding calendar year, based on population data published by the United States department of commerce, bureau of the census (or its successor in responsibility); or (b) three and one half per cent. If population data for a particular political subdivision is not available, then the rate of population change for the county in which the political subdivision is located shall be the rate for that political subdivision.

(5) "Emergency" means the existence, as formally declared by the governor, of conditions of disaster or of extreme peril to the safety of persons and property within the state, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, or by fire, flood, drought, storm, civil disorder, earthquake, tornado or epidemic disease. "Emergency" does not mean a revenue shortfall or budget shortfall.

(6) "Fiscal year" means the twelve-month fiscal period prescribed by law for the state or political subdivision.

(7) "Political subdivision" means any county, municipality, village, township, education district, library district, other special district, or any other taxing district of the state which is directly supported by tax funds.

(8) "State" means the state government including any branch, state office, authority, agency, board, commission, institution, instrumentality or any other division or unit of state government which is directly supported with tax funds.

(G) *Construction and Enforcement; Miscellaneous.*

(1) The provisions of this section shall be liberally construed for the purpose of effectuating the purposes thereof, except that nothing in this section shall be construed to authorize any new or increased tax of any kind other than as provided or authorized by law enacted by the general assembly in accordance with and subject to this constitution.

(2) The general assembly shall provide by law for the manner of submitting to the electors matters subject to approval of electors under this section.

(3) The provisions of this section shall be self executing, except as otherwise provided herein. To the extent that a successive equivalent or successor in responsibility must be determined, such determination shall be made in legislation enacted by the general assembly.

(4) In any case of a conflict between any provision of this section and any other provision contained in this constitution, the provisions of this section shall control. All laws in force as of the effective date of this amendment and not inconsistent herewith shall remain in full force and effect until amended or repealed by the general assembly or pursuant to a statewide initiative or referendum. The general assembly shall repeal or amend all laws that are not consistent with the provisions of this section to conform herewith.

(5) Any proposed amendment to this constitution, if approved by the electors, shall cause this section 14 to be repealed in its entirety if, in the determination of the secretary of state, which determination shall be subject to direct review by the Supreme Court applying an abuse of discretion standard, the proposed amendment would or might: (a) compel or allow an increase in (i) aggregate state expenditures for any given fiscal year in excess of the allowable rate, (ii) expenditures for any appropriation item in the state budget for any given fiscal year in excess of the allowable rate, (iii) aggregate political subdivision expenditures in any given fiscal year in excess of the allowable rate for a political subdivision, or (iv) any rate of taxation for a political subdivision; or (b) establish or levy a new tax on a political subdivision. The ballot language for any such proposed amendment presented to the electors for approval or rejection, in addition to any other ballot language required by law, shall conspicuously include the following caveat, in all capital letters: "APPROVAL OF THIS PROPOSED AMENDMENT WILL RESULT IN THE REPEAL OF ARTICLE XII, SECTION 14 OF THE OHIO CONSTITUTION, WHICH LIMITS STATE AND LOCAL GOVERNMENT SPENDING AND LOCAL GOVERNMENT TAX INCREASES."

(6) Any taxpayer or class of taxpayers shall have standing to bring a lawsuit for equitable relief to compel compliance with this section. A court of record shall award a successful plaintiff his costs and reasonable attorney fees incurred in bringing the suit, but shall not award the state or a political subdivision its costs and reasonable attorney fees unless a suit against it is ruled frivolous.

(7) Each subsection, paragraph, subparagraph and provision of this section is intended to be independent and severable, and if any subsection, paragraph, subparagraph or provision of this section is held to be invalid, either on its face or as applied to any person or circumstance, the remaining subsections, paragraphs, subparagraphs and provisions of this section, and the application thereof to any person or circumstance other than those to which it is held invalid, shall not be affected thereby.

SUMMARY

Section 14(A) of the amendment creates a cap on state expenditures, prohibiting the state from increasing "aggregate state expenditures" (as defined in the amendment and summarized below) for a fiscal year over and above aggregate state expenditures for the previous fiscal year by a percentage amount that exceeds the greater of the sum of the rate of inflation plus the rate of population change in the state, or three and one half per cent. The spending cap may be exceeded only upon passage of legislation by the general assembly authorizing excess spending and meeting other specific criteria, which legislation must be approved by a majority of Ohio electors at a statewide election.

Section 14(B) of the amendment provides for the establishment of a "budget reserve fund" in the state treasury, and requires that one half of the sum of all unencumbered moneys in the general revenue fund plus ten per cent of all unencumbered moneys in all non-general revenue funds at the end of each fiscal year must be transferred to the budget reserve fund, and the other one half must be refunded to individual state income-tax taxpayers. Moneys may be appropriated to and expended from the budget reserve fund by the general assembly at its discretion, subject to the spending cap for that fiscal year. If the amount of moneys in the budget reserve fund ever exceeds fifteen per cent of the previous fiscal year's aggregate state expenditures, the excess moneys must be refunded to individual state income tax-taxpayers. All expenditures from the budget reserve fund except for refunds or an emergency are subject to the state spending cap.

Section 14(C) of the amendment prohibits the state from requiring a political subdivision to fulfill any state mandate unless that mandate (i) is fully funded by the state or (ii) has been in effect for more than two years and the political subdivision has not made a claim for funding in that time. Moneys expended by the state pursuant to this subsection are subject to the state spending cap.

Section 14(D) of the amendment requires the state to create in the treasury a "local government fund," into which the general assembly each fiscal year must appropriate an amount equal to five per cent of the previous fiscal year's aggregate state expenditures, and from which moneys are to be distributed proportionally to each county of the state, and then distributed by each county to one or more of the political subdivisions in that county, both in accordance with legislation enacted by the general assembly. Moneys distributed to the counties pursuant to this subsection are subject to the state spending cap.

Section 14(E) of the amendment requires a majority vote of the electors of a political subdivision to authorize that political subdivision to (i) increase its "aggregate political subdivision expenditures" (as defined in the amendment and summarized below) over and above its aggregate political subdivision expenditures for the previous fiscal year in a percentage amount that exceeds the greater of the rate of inflation plus the rate of population change in the political subdivision, or three and one half per cent, (ii) increase taxes, or (iii) create a new tax. This subsection also requires the general assembly to enact legislation to provide for adjustments to be made to the tax and spending limitations in the event of annexation, change in boundary, or the creation of a new political subdivision.

Section (14)(F) of the amendment provides definitions for several terms utilized in the amendment, including the following key terms:

- "Aggregate political subdivision expenditures" is defined as all expenditures by a political subdivision except expenditures of moneys received from the federal or state government or as a gift, for refunds, or for an emergency. Expenditures of moneys for an emergency are only excluded if such expenditures are authorized by an ordinance or resolution that satisfies the specific criteria set forth in the amendment.

- “Aggregate state expenditures” is defined as all expenditures by the state except expenditures of moneys: (i) received from a revenue source other than taxes, licenses, permits, fees and sales; (ii) received from the federal government; (iii) for a refund; or (iv) for an emergency. Expenditures of moneys for an emergency are only excluded if such expenditures are authorized pursuant to legislation (i) enacted by a three-fifths vote of the members of each house of the general assembly, and (ii) that satisfies the specific criteria set forth in the amendment.
- “Allowable rate” and “allowable rate for a political subdivision,” respectively, establish the specific indexes to be utilized in calculating the allowable increase in spending in the state or political subdivision, respectively, and more specifically establish that (i) the rate of population change is determined based on census data for the state or political subdivision, respectively, and (ii) the rate of inflation is determined based on consumer price index data for the midwest region.

Section 14(E) also provides definitions for the terms “emergency,” “fiscal year,” “political subdivision” and “state.”

Section 14(G) of the amendment: (i) instructs as to the proper construction and enables enforcement by taxpayers of the amendment; (ii) directs the general assembly to enact legislation to facilitate certain provisions of the amendment; (iii) provides that if a constitutional amendment is proposed, and that amendment, if enacted, would be contrary to or potentially in conflict with this amendment (as specified in Section 14(G)(5)), then this amendment would be repealed in its entirety, and the voters must be informed of the effect of the proposed amendment (*i.e.*, if passed, it would repeal this amendment) by means of a warning that appears as part of the ballot language for the proposed amendment; and (iv) provides that each provision of the amendment is intended to be independent and severable.



JIM PETRO
ATTORNEY GENERAL
STATE OF OHIO

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April 15, 2005

VIA FAX AND FIRST CLASS MAIL

Janelle Mead
Citizens for Tax Reform
3323 Cleveland Avenue
Grove City, Ohio 43123

Re: Proposed Initiated Constitutional Amendment – Art. XII, §14 (TEL)

Dear Ms. Mead:

In accordance with the provisions of Section 3519.01(A) of the Ohio Revised Code, a written petition bearing a copy of a proposed constitutional amendment was submitted for my examination, together with a summary of that proposed amendment, on March 18, 2005.

Having considered only the language of the constitutional amendment which you propose to submit to the Secretary of State for submission to the voters, and a summary of that proposed constitutional amendment appearing on the petition you have submitted, I am of the opinion that the summary is a fair and truthful statement of the measure to be proposed. I am therefore submitting to you the following certification, which will also be transmitted to the Secretary of State:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Petro", written over a horizontal line.

JIM PETRO
ATTORNEY GENERAL

JMP:ajm

Enclosure

cc: Chief Elections Counsel, Secretary of State