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February 13, 2014

VIA U.S. MAIL & ELECTRONIC MAIL

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

RE: Proposed Initiated Constitutional Amendment Submitted by Ohioans for a Voters Bill of Rights

Dear Mr. McTigue,

On February 4, 2014, in accordance with Ohio Revised Code (ORC) Section 3519.01(A), I received a written petition containing 1) a copy of a proposed initiated constitutional amendment, "The Ohio Voters Bill of Rights," and 2) a summary of the same measure.

It is my statutory duty to determine whether the submitted summary "is a fair and truthful statement of the measure to be referred." ORC 3519.01(A). 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 Friday, February 14, 2014.

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). After reviewing the submission, I conclude that I am unable to certify your summary as a fair and truthful representation of the proposed amendment. There are two reasons for my decision.

First, the summary contains a significant omission that makes it misleading. Specifically, the summary fails to mention that federal election laws do not permit certain forms of identification listed in the amendment to be used to verify a voter's identity in a federal election if the person registered by mail to vote and had not yet voted in a federal election. The amendment provides that an elector who votes in person on the date of the election or during early voting may verify his or her identity by providing the following forms of identification:

"the last four digits of his or her social security number, his or her current Ohio drivers license or current driver's license number, his or her current United States passport or passport number, a current photo identification, utility bill, bank statement government check, or paycheck, or any other current form of identification issued to the person by the State, a political subdivision or instrumentality of the State, the federal government, a branch of the United States military, or a public or private institution of higher education, or any other form of identification that the State may authorize electors to use to verify their identity."

Amendment, Article V, Section 1(f). However, federal law requires that when first time voters who registered by mail to vote must provide the following type of identification in order to be eligible to vote in the federal election: "a copy of a current and valid photo identification" or "a copy of a

current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” 42 U.S.C. § 15483(b)(2)(A)(i)(I)-(II). Contrary to the representation made in the summary, this group of voters in a federal election is not permitted to present “any other current form of identification issued to the person by...a public or private institution of higher education.”

Under the specific provisions of the proposed amendment, for example, an individual who registered by mail to vote would be entitled to vote in an election for a non-federal office if that person produced identification issued by a private university. Federal law, however, would prohibit that person from casting a ballot for any federal office. The proposed constitutional amendment will require the State to maintain two separate voter rolls – one for individuals who have registered by mail to vote and failed to provide sufficient identification prohibiting them from voting in federal elections and a second registration roll of individuals who can vote in both State and federal elections. Because federal law supersedes the amendment on this issue only for federal elective office for individuals who registered by mail to vote, I believe that the summary is not a fair and truthful representation of what the amendment allows.

Second, the summary misrepresents the present effect of Section 1, Article V of the Ohio Constitution that the proposed amendment seeks to replace. The summary explains that pursuant to Section 1, Article V, “any elector who fails to vote for 4 consecutive years ceases to be an elector unless he again registers to vote.” The National Voter Registration Act of 1993 (“NVRA”), however, has superseded this constitutional provision. Under the NVRA, a person can only be removed from the voter rolls under specific circumstances that include failing to vote at all in any four-year cycle that includes two federal elections, followed by specific action taken by the State to communicate with the voter. The summary language, in mentioning that the current Section 1, Article V of the amendment is being repealed should detail the extent to which Article V, Section 1 has been superseded by the NVRA.

For these reasons, I am unable to certify the summary as a fair and truthful statement of the proposed amendment. However, I must caution that this letter is not intended to represent an exhaustive list of all defects in the submitted summary.

Very respectfully yours,



Mike DeWine
Ohio Attorney General

cc: Committee to Represent the Petitioners

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