

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* One Person One Vote,  
*et al.*,

Relators,

v.

Ohio Ballot Board, *et al.*,

Respondents.

Case No. 2023-0672

Original Action in Mandamus Pursuant to  
Article XVI, Section 1 of the Ohio  
Constitution

Expedited Election Case Pursuant to  
Supreme Court Rule of Practice 12.08

Peremptory and Alternative Writs  
Requested

RELATORS' MERIT BRIEF

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## INTRODUCTION

For over a century, the people of Ohio have had the right to amend the Constitution by a simple majority vote. Soon, they will be asked to vote on a proposed constitutional amendment that asks them not only to surrender this right, but to make it much harder for the people to propose constitutional amendments via initiative petitions at all. If the Amendment is approved, it will be the last that is ever approved by a simple majority. But under the ballot language that the Ballot Board approved and the ballot title that Secretary of State Frank LaRose prescribed, many electors will vote on the Amendment without understanding what it is that they are being asked to do.

The approved ballot language is both incomplete and misleading. It tells electors that the Amendment would require amendments to be approved by sixty percent of electors, but it does not mention that the current threshold—which has been in place since 1912—is *fifty* percent, or even that the Amendment would raise (as opposed to lower) the threshold. The ballot language wrongly states that initiative petitions proposing amendments will require signatures from “at least five percent of the *eligible voters* in each county of the state” (emphasis added), when in fact the requirement is five percent of the number of voters who voted in the last gubernatorial election. And, once again, it does not explain how this compares to current law, which requires that same percentage of signatures from only *half* of Ohio’s counties. The ballot language also misleadingly states that the Amendment will “specify” that amendment initiative petitioners may not cure petitions found to lack sufficient signatures, when in truth the Amendment would strip them of that existing constitutional right.

The ballot title is just as bad. It falsely states that the Amendment “elevat[es] the standards to qualify for ... *any* constitutional amendment” (emphasis added), when in fact the changes to qualifying standards single out only amendments proposed by the people via initiative petition, leaving the qualifying standards for amendments proposed by politicians in the General Assembly

and at constitutional conventions unchanged. And its characterization of the changes as “elevating the standards” for amendments is blatantly argumentative.

The misleading and argumentative ballot title and language are of great consequence. “[I]n many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot.” *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶ 29 (quoting *Schnoerr v. Miller*, 2 Ohio St.2d 121, 125, 206 N.E.2d 902 (1965)). And electors who see only the ballot title and ballot language prescribed by Respondents will have a dramatic misunderstanding of the nature and effect of the Amendment.

Ballot titles and ballot language “must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected.” *Id.* (quoting *State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519, 426 N.E. 2d 493 (1981)); *see also Jurcisin v. Cuyahoga Cnty. Bd. of Elections*, 35 Ohio St. 3d 137, 141, 519 N.E.2d 347, 351 (1988). This Court has never hesitated to strictly enforce that requirement. It should do so again here, by directing Respondents to start over and adopt ballot language and a ballot title that are consistent with their clear legal duties.

## STATEMENT

### **I. Since the 1912 Constitutional Convention, the Ohio Constitution has enshrined the right of the people to adopt constitutional amendments by simple majority vote.**

The current requirements for amending the Ohio Constitution were adopted at the Constitutional Convention of 1912. As delegates explained, chief among the 1912 Convention’s objectives was “to provide a simple and easy method of amending the constitution, because if we do that it matters not so much what else we do; the people will have the machinery whereby they can, in a simple and businesslike way, get what they want.” (RELATORS\_0095). One delegate

went so far as to characterize the Ohio Constitution’s previous framers as having made a “mistake” because “they made that constitution too difficult to amend, and we have had to resort to various devices to get it amended.” (RELATORS\_0101).

In enshrining new amendment methods, the 1912 Convention sought to ensure that “constitutional questions will be decided on their merits” and explained that the “greatest fundamental change” was adopting a simple-majority threshold for electors to approve amendments—which would allow citizens, rather than political parties, to dictate the results. (RELATORS\_0095). In his final remarks on the proposal, a delegate exclaimed, “I heartily agree with the proposal, because it makes it easy to get rid of a bad amendment that may be placed in the constitution.” (RELATORS\_0101). And he predicted that soon the people “will regard it as the dearest right they have, the ease with which they can amend their constitution.” (RELATORS\_0101). Immediately thereafter, revisions to the constitutional amendment process—including the simple-majority threshold—passed the 1912 Convention in a remarkable and atypical show of unanimity, with 102 delegates in favor and none against. (RELATORS\_0101). The people of Ohio approved the revisions later that year, and they have enjoyed the right to amend their constitution by simple majority vote ever since.

## **II. The Amendment would make it far more difficult for Ohioans to amend the Constitution.**

On May 10, 2023, the General Assembly passed and filed Amended Substitute Senate Joint Resolution No. 2 (“S.J.R. 2”), which submits to the electors of the state an amendment to Sections 1b, 1e, and 1g of Article II and Sections 1 and 3 of Article XVI of the Ohio Constitution. (RELATORS\_0007). If ratified, the Amendment would make three changes to Ohio’s constitutional processes governing future amendments. First, the Amendment would increase the threshold for ratification of future amendments by the people of Ohio from a simple majority to a

sixty percent supermajority. Second, the Amendment would increase the number of counties from which signatures must be collected upon a constitutional amendment initiative petition from one-half of the state's counties to all counties. Third, the Amendment would eliminate amendment-initiative petitioners' opportunity to cure a petition found insufficient by filing additional signatures. S.J.R. 2 provides that upon ratification, the supermajority requirement shall go into force immediately, and the changes to the petition process shall apply to petitions filed on or after January 1, 2024.

S.J.R. 2 provides that the proposed Amendment shall be submitted to the electors at a special election on August 8, 2023, and purports to call such an election "pursuant to the authority provided by Section 1 of Article XVI." Relators are challenging that election date's validity in a separate mandamus action, filed on May 12 and fully briefed as of May 25. *See State ex rel. One Person One Vote, et al., v. LaRose*, No. 2023-0630.

### **III. The Ballot Board prescribed misleading, incomplete language to describe the Amendment, and the Secretary prescribed a prejudicial title.**

The Ballot Board met to prescribe and certify the ballot language for the Amendment on May 18, 2023. (RELATORS\_0008). At the outset, the Ballot Board's secretary advised the Board of its substantive obligations, explaining that the language "must properly identify the substance of the proposal to be voted on" and that, "[i]f a condensed version of the proposal is used, the ballot language must not omit substance of a proposal that is material" or "result in or imply a persuasive argument." (RELATORS\_0017). Secretary LaRose then explained that the Ballot Board's staff had prepared and circulated draft ballot language. (RELATORS\_0018). That language is as follows:

**Issue 1  
Proposed Constitutional Amendment**

**Proposed by Joint Resolution of the General Assembly  
To amend Sections 1b, 1e, and 1g of Article II and Sections 1 and 3 of Article XVI of the  
Constitution of the State of Ohio**

A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

- Require that any proposed amendment to the Constitution of the State of Ohio receive the approval of at least 60 percent of eligible voters voting on the proposed amendment.
- Require that any initiative petition filed on or after January 1, 2024 with the Secretary of State proposing to amend the Constitution of the State of Ohio be signed by at least five percent of the eligible voters of each county in the state.
- Specify that additional signatures may not be added to an initiative petition filed with the Secretary of State on or after January 1, 2024 proposing to amend the Constitution of the State of Ohio.

If passed, the amendment shall be effective immediately.

	<b>YES</b>	<b>SHALL THE AMENDMENT BE APPROVED?</b>
	<b>NO</b>	

(RELATORS\_0060).

Secretary LaRose, who is charged individually with setting the ballot title, also presented his proposed title along with the above proposed language:

**ELEVATING THE STANDARDS TO QUALIFY FOR AND TO PASS ANY  
CONSTITUTIONAL AMENDMENT**

(RELATORS\_0060).

During the public comment period, Attorney Don McTigue, counsel to Relators, identified several evident shortcomings in the proposed language. First, McTigue noted the omission of any details about the constitutional status quo. “[N]one of the bullet points explain what the current constitutional provision is. So ... it’s not telling the voters what change they’re being asked to make.” (RELATORS\_0024). Board member and State Representative Elliot Forhan criticized the



same omissions, analogizing to a municipal zoning change. “You wouldn’t ask ... a subdivision or a municipality to approve a change in the zoning law if you didn’t explain to them exactly what the change in the zoning was,” he explained. (RELATORS\_0031). “[O]ur state supreme court said, something of this nature has a far greater effect than a change in the zoning law.” (RELATORS\_0031).

Second, McTigue also pointed out that the language describing the signature requirement for amendment petitions was flatly incorrect. “[T]he statement about [] at least 5 percent of the eligible voters of each county is actually not accurate,” he explained. “It’s 5 percent of the most recent gubernatorial vote in that county.” (RELATORS\_0026). Remarkably, Secretary LaRose *agreed* after the meeting that the language describing the signature requirement was inaccurate, confirming that “[t]here is a difference between 5% of all eligible voters and 5% of the most recent gubernatorial election.” (RELATORS\_0064). Yet Secretary LaRose defended the misstatement on the ground that “putting a ton of words on the actual ballot is confusing to people in and of itself.” (RELATORS\_0064).

McTigue also identified problems with the title, pointing out that to the average reader, “elevating” is a “positive [] modifying term,” and so was likely to create unlawful prejudice in favor of the Amendment. (RELATORS\_0028). McTigue therefore suggested that the Secretary replace “elevate” with “change” or “modify.” (RELATORS\_0028). Responding to these criticisms after the meeting, Secretary LaRose defended his choice of the term “elevating” on the ground that it “means to raise or increase. That’s the first definition in the Webster’s dictionary.” (RELATORS\_0065).

On behalf of One Person One Vote, Attorney McTigue proposed alternative ballot language and an alternative title that would have avoided the above defects. (RELATORS\_0020–

21). That proposal read:

**Proposed Constitutional Amendment**

**TO REQUIRE THAT AMENDMENTS TO THE OHIO CONSTITUTION BE APPROVED BY AT LEAST 60% OF THE ELECTORS VOTING ON THE AMENDMENT AND TO INCREASE REQUIREMENTS FOR AMENDMENTS PROPOSED BY INITIATIVE PETITION**

**Proposed by Am. Sub. Senate Joint Resolution Number 2 of the General Assembly.**

A majority affirmative vote is necessary for the amendment to pass.

Amended Substitute Senate Joint Resolution Number 2 proposes to amend Sections 1b, 1e and 1g of Article II and Sections 1 and 3 of Article XVI of the Constitution of the State of Ohio as follows:

1. Require that all amendments to the Ohio Constitution proposed by citizen Initiative Petition, Joint Resolution of the General Assembly, or Constitutional Convention be approved by a supermajority of at least 60% of the electors voting on the amendment. Since 1912, the Ohio Constitution has required a simple majority vote of 50% + 1.
2. Repeal the 10-day period for citizens to file supplemental signatures after the state has determined that there is a deficiency in the number of validated signatures submitted by a citizen Initiative Petition proposing an amendment to the Ohio Constitution. The 10-day cure period has been part of the Constitution since 1912.
3. Increase from 44 to 88 counties the requirement that a citizen Initiative Petition proposing an amendment to the Ohio Constitution contain signatures of electors equal to 5% of the total vote for governor in each county. The 44-county provision has been part of the Constitution since 1912.

If passed, the Amendment will take effect immediately.

(RELATORS\_0066).

The Ballot Board voted 3-to-2 to adopt the ballot language introduced by Secretary LaRose, and Secretary LaRose prescribed the ballot title he had introduced as the official title for the Amendment. (RELATORS\_0041).

**LEGAL STANDARD**

“A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide

it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 18.

## ARGUMENT

### I. **Proposition of Law 1: The ballot language prescribed by the Ballot Board violates the Ohio Constitution and Revised Code.**

The Ballot Board’s adopted language is marred by an array of inaccurate statements and material omissions, rendering it unlawful. Where the Ballot Board elects to summarize a proposed amendment on the ballot instead of including its full text, the ballot language must “properly identify the substance of the proposal to be voted upon.” Ohio Constitution, Article XVI, Section 1; R.C. 3505.062(B). Article XVI specifies that the summary may not be “such as to mislead, deceive, or defraud the voters.” And Section 3505.062(B) of the Revised Code requires the Ballot Board to “[p]rescribe the ballot language for constitutional amendments proposed by the general assembly to be printed on the questions and issues ballot, which language *shall properly identify* the substance of the proposal to be voted upon.” (Emphasis added.)

To enforce these standards, this Court has mandated a “three-part test”: (i) a voter has the right to know what it is he or she is being ask to vote upon; (ii) language in the nature of a persuasive argument in favor of or against the issue is prohibited; and (iii) the determinative issue is whether the cumulative effect of the technical defects in the ballot language is harmless or fatal to the validity of the ballot. *Voters First*, 2012-Ohio-4149, ¶ 26.

A long line of precedent applying that test establishes that summary language marred by inaccuracies or material omissions is unlawful. Ballot language “must be complete enough to convey an intention “ought to be free from any misleading tendency, whether of amplification, or omission.” *Markus v. Trumbull Cnty. Bd. of Elections*, 22 Ohio St.2d 197, 203, 259 N.E.2d 501

(1970).<sup>1</sup> That includes omission of “the actual existing circumstances” that form the context in which a ballot measure is proposed. *State ex rel. McCord v. Delaware Cnty. Bd. of Elections*, 106 Ohio St.3d 346, 2005-Ohio-4758, 835 N.E.2d 336, ¶ 52 (emphasis omitted) (quoting *Olen Corp. v. Franklin Cnty. Bd. of Elections*, 42 Ohio App.3d 189, 193, 541 N.E.2d 80 (1988)).

Accurate and complete ballot language is essential because “[i]t is only from the ballot statement that the ultimate deciders of the question can arrive at an efficacious and intelligent expression of opinion.” *Markus*, 22 Ohio St.2d at 203. The summary must therefore “be complete enough to convey an intelligent idea of the scope and import of the amendment.” *Id.* at 202–03. And “[i]t must in every particular be fair to the voter to the end that intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.” *Id.* An “omission in the ballot[] board’s condensed ballot language ... is in the nature of a persuasive argument against its adoption” because it would mislead voters by implication. *Voters First*, 2012-Ohio-4149, ¶ 48.

Thus, in *McCord*, the Court held that the summary for a zoning petition was misleading where it omitted the fact that the developer had reduced the size of his proposed development from a prior proposal. 2005-Ohio-4758, ¶¶ 52–59. In *Markus*, a zoning summary was misleading where it failed to “indicat[e] that part of the property was *presently* zoned for business and commercial use, and that the zone change was merely an increase in the size of the business and commercial zone.” 22 Ohio St.2d at 202. And in *Voters First*, the Court struck down ballot language that “state[d] very generally that the proposed amendment would change the constitutional standards

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<sup>1</sup> *Markus* is a zoning case, as are several other cases discussed in this section, but the Court has held that it “can require no less in construing the constitutional and statutory requirements applicable to ballot-language cases for proposed statewide constitutional amendments, which have a greater effect on the people of this state than local zoning amendments.” *Voters First*, 2012-Ohio-4149, ¶ 41.

and requirements ... without describing those changes or the pertinent [] criteria.” 2012-Ohio-4149, ¶ 38. It emphasized that because of the omissions, the language “does not fairly and accurately present the issue to be decided so as ‘to assure a free, intelligent and informed vote by the average citizen affected.’” *Id.* ¶ 41 (quoting *Bailey*, 67 Ohio St. 2d 516, 519).

**A. The ballot language contains several material omissions.**

The ballot language prescribed by the Ballot Board is unlawful because it fails to convey essential information about the Amendment and its effects. The ballot language omits any information about the pre-Amendment status quo, which both fails to tell electors what they are being asked to vote upon and serves to persuade in favor of the Amendment.

For starters, the adopted ballot language omits any mention of the current simple-majority threshold to adopt constitutional amendments. It states only that the Amendment would require that “any proposed amendment to the Constitution of the State of Ohio receive the approval of at least 60 percent of eligible voters voting on the proposed amendment.” But that fact, on its own, does not suffice to give electors even a faint sense of the Amendment’s effect in context. An elector could read that language to mean that the Constitution does not presently require that all constitutional amendments receive the approval of Ohio’s electors *at all*. The language is so out of context that an elector could reasonably understand it to mean that the Amendment itself *creates* the people’s right to participate in the process of ratifying all amendments. Even if an elector assumes that some level of majority vote is currently required, they might reasonably think that a percentage *higher* than sixty percent is currently required and wrongly conclude that the Amendment makes it *easier* to amend the Constitution, or they might think that the requirement is only a minor change to an existing supermajority requirement. The existing threshold is therefore vital information for electors to make informed decisions, and its omission is so misleading as to

warrant invalidating the language on its own.

Second, the ballot language similarly omits mention that the Constitution currently requires that an initiative petition include a minimum number of signatures from “one-half of the counties of the state.” It states only that the Amendment would require that initiative petitions “be signed by at least five percent of the eligible voters of each county in the state.” As with the threshold language, an elector reading that language might reasonably assume that the Constitution does not presently require that *any* signatures, or any set number of signatures be collected to propose a constitutional amendment. And even an elector who assumes that some signatures are required will not necessarily know that they must be from multiple counties, nor be familiar with the 44-county requirement under existing law. Without such information, electors are not able to fairly assess what they are being asked to vote upon, a change from half of the counties (44) to all counties (88).

Third, the ballot language does not tell electors that the Constitution currently gives citizens a 10-day grace period to make up for a deficiency in signatures on an initiative petition after validation. The ballot language therefore leaves electors to wonder whether the Constitution currently allows the filing of additional signatures.

Finally, the ballot language fails to contextualize the Amendment in Ohio’s constitutional history. It omits any mention of how long the provisions to be changed have been a part of the Constitution—since the 1912 Convention. Needless to say, most electors are not historians or scholars of state constitutional law and will not realize that fact unless told. That deprives them of valuable information about the Amendment—the length of time a process has been in place is material to any assessment of whether it is serving its purpose.

By omitting such key contextual details about the Amendment, the ballot language breaks

sharply with the Ballot Board's past practices. Typically, ballot language in Ohio has described the status quo and the nature of the change that is being proposed. For example, the ballot language for 2011 Issue 1, an amendment to increase the maximum age at which a person may assume judicial office, set forth that the amendment would: "Increase the maximum age for assuming elected or appointed judicial office from seventy to seventy-five." (RELATORS\_0103). That language informed electors of the effect of their vote precisely because it included both the pre-amendment age and the post-amendment age. Similarly, the ballot language for recent legislative and congressional reapportionment amendments began with: "End the partisan process for drawing [] districts, and replace it with ... ." (RELATORS\_0104–05). That language explained to electors that a "yes" vote would *replace* the current process, rather than establishing a process in the first instance. The ballot language for several other recent amendments took a similar approach. *See* (RELATORS\_0106) (2022 Issue 1); (RELATORS\_0107–09) (2012 Issue 2).

That is for good reason. As this Court has long acknowledged, "[i]n the larger community, in many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot." *Schnoerr*, 2 Ohio St.2d at 125. And because an amendment to the Constitution may involve either a change to existing language or the addition of something completely new, it is especially important that the ballot language itself inform electors of the constitutional starting point. Here, as in *Markus*, the ballot language does not indicate the "present[]" state of affairs or the nature of the change and thus does not "convey an intelligent idea of the scope and import of the amendment." *Markus*, 22 Ohio St.2d at 202–03. Just as the ballot language in *Markus* was "insufficient, ambiguous and misleading" for failing to place a zoning change in context by explaining the existing zoning, so too the ballot language for the Amendment fails to inform

electors what the Constitution currently provides, obscuring the nature of the change being proposed. *Id.* Unless electors are informed of the effect of the Amendment—which undoubtedly requires them to understand the baseline on which it would operate—they cannot know what they are being asked to vote upon. Accordingly, the above-enumerated omissions cause the ballot language to fail the first prong of this Court’s three-part test.

What is more, the omissions are “in the nature of a persuasive argument [for] adoption of the amendment.” *Bailey*, 67 Ohio St. 2d at 520. By excluding any mention of Ohioans’ current and longstanding rights to vote on and initiate constitutional amendments—which are more citizen-friendly than those the Amendment proposes—the Ballot Board’s language “creates the clear impression” that the Amendment would *not* restrict Ohioans’ rights. *See id.* (“[T]his court is fully aware that effective arguments can be made as easily by what is said as by what is left unsaid, or implied.”). The omissions thus sink the adopted ballot language under the second prong of this Court’s test as well.

**B. The ballot language contains several misleading statements.**

The ballot language is also unlawful because it does not accurately identify the substance of the proposal to be voted upon—a defect which Secretary LaRose, remarkably, admitted to in his post-meeting press conference. Again, the ballot language flunks the Court’s three-part test by misleading electors about the changes to the cure process and signature requirement for citizen-initiated petitions.

The ballot language inaccurately describes the change the Amendment would make to the signature requirement for amendments proposed by initiative petitions. According to the ballot language, such petitions would require signatures from “five percent of the *eligible voters*” in each county. (Emphasis added). But in fact, the Amendment would require signatures from five percent



of the “total *number of votes cast for the office of governor*” in the most recent gubernatorial election. In particular, the Amendment would add a new clause to Article II, Section 1g—in what would become Division (E)—providing that “upon an initiative petition proposing an amendment to the constitution, it shall be necessary to file from each county of the state petitions bearing the signatures of not less than five per cent of the *electors* of the county.” (Emphasis added). And, as amended, Division (I) of the same Section would keep the basis for determining the required number of elector signatures the same: “the total number of *votes cast for the office of governor* at the last preceding election therefore.” *Compare* (RELATORS\_0004) (emphasis added), *with* Ohio Constitution, Article II, Section 1g. This is a considerable difference—amounting in Hamilton County, for example, to a difference of nearly 15,000 signatures using 2022 figures.<sup>2</sup>

The ballot language thus plainly misstates one of the Amendment’s effects—as Secretary LaRose himself acknowledged, (RELATORS\_0064)—and does not adequately inform electors about the choice they are making.

The adopted ballot language related to the Amendment’s abolishing an initiative petitioner’s opportunity to cure a petition found to lack sufficient signatures by submitting additional signatures is also fatally flawed. It suggests that the Amendment would “[s]pecify that additional signatures may not be added to an initiative petition ... proposing to amend the Constitution of the State of Ohio.” (Emphasis added.) To “specify” means “to name or state explicitly or in detail.” *Specify*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/specify> (last updated May 22, 2023). The most natural inference from the

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<sup>2</sup> Hamilton County reported 303,971 votes for governor in November 2022, and 596,786 total registered voters. *See* Hamilton Cnty. Bd. of Elections, General Election 11-08-2022: Results, <https://results.votehamiltoncountyohio.gov/OH/Hamilton/115759/web.307039/#/summary> (last updated Nov. 23, 2022).

Ballot Board's choice of phrase is that the Constitution currently does *not* specify whether "additional signatures" may be added to cure a defective petition. That implication is false—it specifies that they are permitted. Such an implication "is in the nature of [a persuasive] argument [for] adoption of the amendment." *Bailey*, 67 Ohio St. 2d at 520 ("[T]his court is fully aware that effective arguments can be made as easily by what is said as by what is left unsaid, or implied."). Moreover, the ballot language does not convey that the Constitution provides a cure period to file additional signatures, or that it is ten days. This information is necessary for electors to assess the changes they are being asked to vote upon.

These inaccuracies, like the omissions discussed above, distinguish this language from that employed by the Ballot Board to describe past amendments. The settled norm is to adopt ballot language that describes the proposed amendment thoroughly and precisely, even when doing so adds some length to the language. Take 2015 Issue 1, for instance, which created the bipartisan Ohio Redistricting Commission. One bullet of that ballot language described the precise make-up of the Commission, explaining that it would be "composed of 7 members including the Governor, the Auditor of State, the Secretary of State, and 4 members appointed by the majority and minority leaders of the General Assembly." (RELATORS\_0104). In the same vein, 2017 Issue 1, creating new rights for crime victims, spelled out *each* of the nine new rights to be created. (RELATORS\_0110). Secretary LaRose's claim that the Ballot Board needed to sacrifice accuracy for the sake of brevity thus has no purchase.

As in *Voters First*, "[t]he cumulative effect of these defects in the ballot language is fatal to the validity of the ballot because it fails to properly identify the substance of the amendment, a failure that which misleads voters." 2012-Ohio-4149, ¶ 56; *see also id.* ¶ 51 (striking down ballot language due to inaccurate statements and erroneous implications).

## II. Proposition of Law 2: The ballot title prescribed by the Secretary violates the Revised Code.

The ballot title prescribed by Secretary LaRose at the Ballot Board’s May 18 meeting—“Elevating the standards to qualify for and to pass any constitutional amendment”—violates state law. Under Section 3519.21 of the Revised Code, the ballot title must be “true and impartial” and not likely to “create prejudice for or against the measure.” This Court has applied the same three-part test to evaluate ballot titles: “First, a voter has the right to know what it is he is being asked to vote upon. Second, use of language which is in the nature of a persuasive argument in favor of or against the issue is prohibited. And, third, the determinative issue is whether the cumulative effect of these technical defects in ballot language is harmless or fatal to the validity of the ballot.” *Jurcisin*, 35 Ohio St. 3d at 141 (cleaned up) (applying test to ballot title challenge). Secretary LaRose’s prescribed title does not pass the test.

First, Secretary LaRose’s designated title is not “true.” It falsely states that the Amendment “elevat[es] the standards to qualify for ... *any* constitutional amendment.” (Emphasis added). In fact, the Amendment’s changes to qualifying standards apply *only* to amendments that the people propose via initiative petition. The Amendment does nothing to change the qualifying standards for amendments proposed by politicians in the General Assembly—like the Amendment itself—or at a constitutional convention, because those proposed amendments do not require initiative petitions or voter signatures. As a result, instead of conveying to the elector what “he is being asked to vote upon,” the title creates a false impression about the Amendment’s effects.

Second, Secretary LaRose’s designated title is not “impartial,” but rather “is in the nature of a persuasive argument in favor” of the Amendment. Specifically, the phrase “elevating the standards” implies that the standards to amend the Constitution are currently too low. Secretary LaRose had several far more impartial options available to him—such as “change” or “modify”—

yet settled on a title that strongly suggests that the Amendment is *desirable*. Secretary LaRose defended his choice of “elevating” on the ground that the first dictionary definition of “elevate” is to “raise or increase.” (RELATORS\_0065). But when used as a transitive verb, the word “elevate” carries other meanings as well and conveys a clear meaning of *improvement*: its definitions include “to raise in rank or status” and “to improve morally, intellectually, or culturally.” *Elevate*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/elevate> (last accessed May 30, 2023).

If Secretary LaRose wanted to convey simply that the Amendment raises the standards for proposed amendments, he should have used a word like “raising,” “increasing,” or “heightening.” Each would directly convey the meaning Secretary LaRose says he sought to express, but without the strongly positive, prejudicial connotation that “elevating” carries. Doing so would have been consistent with past ballot titles, which used simple, neutral verbs to describe the nature of the changes being proposed. *See* (RELATORS\_0103–05, 0107) (ballot titles that used the verbs “increase,” “eliminate,” “create,” and “establish”).

Together, these defects are “fatal to the validity of the ballot” because they render the title neither “true” nor “impartial”—in direct contravention of the Secretary’s statutory mandate.

### **III. Proposition of Law 3: Relators are entitled to writs of mandamus.**

Mandamus relief is appropriate here because Respondents the Ballot Board and Secretary LaRose have acted in clear disregard of applicable law by refusing to adhere to the clear dictates of the Constitution and Revised Code. Relators have a clear legal right to the requested relief because the ballot language and title violate the express requirements of the Constitution and Revised Code. *See supra* Parts I, II. Respondent the Ballot Board has a clear legal duty to provide the requested relief because it has a mandatory duty under Article XVI and Section 3505.062(B)

to prescribe lawful ballot language. Thus far, it has abused its discretion and acted in clear disregard of applicable law and its legal duty. Similarly, Respondent Secretary LaRose has a clear legal duty to provide the requested relief because he has a mandatory duty under Section 3519.21 to prescribe a lawful ballot title. Thus far, he has abused his discretion and acted in clear disregard of applicable law and his legal duty. And Relators lack an adequate remedy at law because this Court has original and exclusive jurisdiction of the subject matter of the action under Article XVI, and has long treated mandamus as the only available remedy an elector seeks to challenge the form in which a ballot issue is to be submitted. *See, e.g., Voters First*, 2012-Ohio-4149.

### CONCLUSION

For the foregoing reasons, Relators request that this Court issue a peremptory writ of mandamus directing the Ohio Ballot Board to reconvene and prescribe lawful ballot language for the Amendment, and providing standards for that language, as follows:

- The ballot language must fully and accurately describe the status quo that the Amendment would modify, including the simple majority vote threshold for amendments, the petition signature requirements, and the provision for cure of amendment petitions;
- The ballot language must accurately characterize and explain the definition of “electors” underlying the petition signature requirements, including how many signatures are required to qualify an initiative petition;
- The ballot language must specify that the provisions to be amended have been part of the Ohio Constitution in their current form since 1912;
- Or, in the alternative, the full text of the proposed amendment may be adopted as the ballot language.

Relators further request that the Court issue a peremptory writ of mandamus directing Respondent

Secretary LaRose to prescribe a lawful ballot title for the Amendment, meaning that the title must not use words or phrases that are likely to mislead electors about the Amendment's scope or create prejudice in favor of the Amendment.

Dated: May 30, 2023

Respectfully submitted,

/s/ Donald J. McTigue

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent via email this 30th day of May 2023 to the following:

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**APPENDIX  
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Ohio Constitution, Article II**

**Section 1: In whom power vested**

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

**Section 1a: Initiative and referendum to amend constitution**

The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

**Section 1b: Initiative and referendum to enact laws**

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly



shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

#### **Section 1e: Powers; limitation of use:**

(A) The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

(B)

(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows: "Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be

authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?”

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

### **Section 1g: Petition requirements and preparation; submission; ballot language; by Ohio ballot board**

Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or

signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the

People of the State of Ohio.” The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

### **Ohio Constitution, Article IV**

#### **Section 2: Organization and jurisdiction of Supreme Court**

...

(B)

(1) The Supreme Court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

...

### **Ohio Constitution, Article XVI**

#### **Section 1: Constitutional amendment proposed by joint resolution of General Assembly; procedure**

Either branch of the General Assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the General

Assembly may prescribe.

The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

The Supreme Court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the General Assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the General Assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

### **Section 3: Question of constitutional convention to be submitted periodically**

At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution[.]" shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the General Assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

## Ohio Revised Code, Title 27

### **Section 2731.01: Mandamus defined**

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

### **Section 2731.02: Courts authorized to issue writ – contents**

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested.

Such writ shall contain a copy of the petition, verification, and order of allowance.

### **Section 2731.04: Application for writ**

Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice.

### **Section 2731.05: Adequacy of law remedy bar to writ**

The writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law.

### **Section 2731.06: Peremptory writ in first instance**

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

## Ohio Revised Code, Title 35

### **Section 3501.05: Election duties of secretary of state**

The secretary of state shall do all of the following:

...

(G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;

(H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;

(I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;

[Divisions (J) through (EE) omitted.]

### **Section 3505.06: Questions and issues ballot**

(A) On the questions and issues ballot shall be printed all questions and issues to be submitted at any one election together with the percentage of affirmative votes necessary for passage as required by law. Such ballot shall have printed across the top thereof, and below the stubs, "Official Questions and Issues Ballot."

(B)

(1) Questions and issues shall be grouped together on the ballot from top to bottom as provided in division (B)(1) of this section, except as otherwise provided in division (B)(2) of this section. State questions and issues shall always appear as the top group of questions and issues. In calendar year 1997, the following questions and issues shall be grouped together on the ballot, in the following order from top to bottom, after the state questions and issues:

- (a) County questions and issues;
- (b) Municipal questions and issues;
- (c) Township questions and issues;
- (d) School or other district questions and issues.

In each succeeding calendar year after 1997, each group of questions and issues described in division (B)(1)(a) to (d) of this section shall be moved down one place on the ballot except that the group that was last on the ballot during the immediately preceding calendar year shall appear at the top of the ballot after the state questions and issues. The rotation shall be performed only once each calendar year, beginning with the first election held during the calendar year. The rotation of groups of questions and issues shall be performed during each calendar year as required by division (B)(1) of this section, even if no questions and issues from any one or more such groups appear on the ballot at any particular election held during that calendar year.

(2) Questions and issues shall be grouped together on the ballot, from top to bottom, in the following order when it is not practicable to group them together as required by division (B)(1) of this section because of the type of voting machines

used by the board of elections: state questions and issues, county questions and issues, municipal questions and issues, township questions and issues, and school or other district questions and issues. The particular order in which each of a group of state questions or issues is placed on the ballot shall be determined by, and certified to each board of elections by, the secretary of state.

(3) Failure of the board of elections to rotate questions and issues as required by division (B)(1) of this section does not affect the validity of the election at which the failure occurred, and is not grounds for contesting an election under section 3515.08 of the Revised Code.

(C) The particular order in which each of a group of county, municipal, township, or school district questions or issues is placed on the ballot shall be determined by the board providing the ballots.

(D) The printed matter pertaining to each question or issue on the ballot shall be enclosed at the top and bottom thereof by a heavy horizontal line across the width of the ballot. Immediately below such top line shall be printed a brief title descriptive of the question or issue below it, such as "Proposed Constitutional Amendment," "Proposed Bond Issue," "Proposed Annexation of Territory," "Proposed Increase in Tax Rate," or such other brief title as will be descriptive of the question or issue to which it pertains, together with a brief statement of the percentage of affirmative votes necessary for passage, such as "A sixty-five per cent affirmative vote is necessary for passage," "A majority vote is necessary for passage," or such other brief statement as will be descriptive of the percentage of affirmative votes required.

(E) The questions and issues ballot need not contain the full text of the proposal to be voted upon. A condensed text that will properly describe the question, issue, or an amendment proposed by other than the general assembly shall be used as prepared and certified by the secretary of state for state-wide questions or issues or by the board for local questions or issues. If other than a full text is used, the full text of the proposed question, issue, or amendment together with the percentage of affirmative votes necessary for passage as required by law shall be posted in each polling place in some spot that is easily accessible to the voters.

(F) Each question and issue appearing on the questions and issues ballot may be consecutively numbered. The question or issue determined to appear at the top of the ballot may be designated on the face thereof by the Arabic numeral "1" and all questions and issues placed below on the ballot shall be consecutively numbered. Such numeral shall be placed below the heavy top horizontal line enclosing such question or issue and to the left of the brief title thereof.

(G) No portion of a ballot question proposing to levy a property tax in excess of the ten-mill limitation under any section of the Revised Code, including the renewal or replacement of such a levy, may be printed in boldface type or in a font size that is different from the font size of other text in the ballot question. The prohibitions in



division (G) of this section do not apply to printed matter either described in division (D) of this section related to such a ballot question or located in the area of the ballot in which votes are indicated for or against that question.

### **Section 3505.061: Ohio ballot board**

(A) The Ohio ballot board, as authorized by Section 1 of Article XVI, Ohio Constitution, shall consist of the secretary of state and four appointed members. No more than two of the appointed members shall be of the same political party. One of the members shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house of representatives, and one shall be appointed by the minority leader of the house of representatives. The appointments shall be made no later than the last Monday in January in the year in which the appointments are to be made. If any appointment is not so made, the secretary of state, acting in place of the person otherwise required to make the appointment, shall appoint as many qualified members affiliated with the appropriate political party as are necessary.

(B)

(1) The initial appointees to the board shall serve until the first Monday in February, 1977. Thereafter, terms of office shall be for four years, each term ending on the first Monday in February. The term of the secretary of state on the board shall coincide with the secretary of state's term of office. Except as otherwise provided in division (B)(2) of this section, division (B)(2) of section 3505.063, and division (B)(2) of section 3519.03 of the Revised Code, each appointed member shall hold office from the date of appointment until the end of the term for which the member was appointed. Except as otherwise provided in those divisions, any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Except as otherwise provided in those divisions, any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or a period of sixty days has elapsed, whichever occurs first. Any vacancy occurring on the board shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy shall be of the same political party as that required of the member whom the member replaces.

(2) The term of office of a member of the board who also is a member of the general assembly and who was appointed to the board by the president of the senate, the minority leader of the senate, the speaker of the house of representatives, or the minority leader of the house of representatives shall end on the earlier of the following dates:

(a) The ending date of the ballot board term for which the member was appointed;

(b) The ending date of the member's term as a member of the general assembly.

(C) Members of the board shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(D) The secretary of state shall be the chairperson of the board, and the secretary of state or the secretary of state's representative shall have a vote equal to that of any other member. The vice-chairperson shall act as chairperson in the absence or disability of the chairperson, or during a vacancy in that office. The board shall meet after notice of at least seven days at a time and place determined by the chairperson. At its first meeting, the board shall elect a vice-chairperson from among its members for a term of two years, and it shall adopt rules for its procedures. After the first meeting, the board shall meet at the call of the chairperson or upon the written request of three other members. Three members constitute a quorum. No action shall be taken without the concurrence of three members.

(E) The secretary of state shall provide technical, professional, and clerical employees as necessary for the board to carry out its duties.

#### **Section 3505.062: Ohio ballot board duties**

The Ohio ballot board shall do all of the following:

(A) Examine, within ten days after its receipt, each written initiative petition received from the attorney general under section 3519.01 of the Revised Code to determine whether it contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately. If the board so determines, it shall certify its approval to the attorney general, who then shall file with the secretary of state in accordance with division (A) of section 3519.01 of the Revised Code a verified copy of the proposed law or constitutional amendment together with its summary and the attorney general's certification of it.

If the board determines that the initiative petition contains more than one proposed law or constitutional amendment, the board shall divide the initiative petition into individual petitions containing only one proposed law or constitutional amendment so as to enable the voters to vote on each proposal separately and certify its approval to the attorney general. If the board so divides an initiative petition and so certifies its approval to the attorney general, the petitioners shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, and the attorney general then shall review the resubmissions as provided in division (A) of section 3519.01 of the Revised Code.

(B) Prescribe the ballot language for constitutional amendments proposed by the general assembly to be printed on the questions and issues ballot, which language shall properly identify the substance of the proposal to be voted upon;

(C) Prepare an explanation of each constitutional amendment proposed by the general assembly, which explanation may include the purpose and effects of the proposed amendment;

(D) Certify the ballot language and explanation, if any, to the secretary of state no later than seventy-five days before the election at which the proposed question or issue is to be submitted to the voters;

(E) Prepare, or designate a group of persons to prepare, arguments in support of or in opposition to a constitutional amendment proposed by a resolution of the general assembly, a constitutional amendment or state law proposed by initiative petition, or a state law, or section or item of state law, subject to a referendum petition, if the persons otherwise responsible for the preparation of those arguments fail to timely prepare and file them;

(F) Direct the means by which the secretary of state shall disseminate information concerning proposed constitutional amendments, proposed laws, and referenda to the voters;

(G) Direct the secretary of state to contract for the publication in a newspaper of general circulation in each county in the state of the ballot language, explanations, and arguments regarding each of the following:

(1) A constitutional amendment or law proposed by initiative petition under Section 1g of Article II of the Ohio Constitution;

(2) A law, section, or item of law submitted to the electors by referendum petition under Section 1g of Article II of the Ohio Constitution;

(3) A constitutional amendment submitted to the electors by the general assembly under Section 1 of Article XVI of the Ohio Constitution.

### **Section 3519.21: Ballot title and order**

The order in which all propositions, issues, or questions, including proposed laws and constitutional amendments, shall appear on the ballot and the ballot title of all such propositions, issues, or questions shall be determined by the secretary of state in case of propositions to be voted upon in a district larger than a county, and by the board of elections in a county in the case of a proposition to be voted upon in a county or a political subdivision thereof. In preparing such a ballot title the secretary of state or the board shall give a true and impartial statement of the measures in such language that the ballot title shall not be likely to create prejudice for or against the measure. The person or committee promoting such measure may submit to the secretary of state or the board a suggested ballot title, which shall be given full consideration by the secretary of state or board in determining the ballot title.

Except as otherwise provided by law, all propositions, issues, or questions submitted to the electors and receiving an affirmative vote of a majority of the votes cast thereon are approved.