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I. INTERESTS OF AMICUS CURIAE

The Ohio Education Association (OEA), an affiliate of the National Education Association, is a non-profit association representing approximately 118,000 teachers, faculty, and support professionals who work in Ohio's schools, colleges, and universities. The organization was founded in 1847 and is headquartered in Columbus, Ohio. The OEA Vision Statement is to create an Ohio where every student has access to a high-quality public education and where all members are supported, valued, and respected. OEA's mission is to lead the way for the continuous improvement of public education while advocating for our members and the students they serve. OEA works to advance the rights and interests of educators and to ensure that every student in Ohio has access to a high-quality public education.

As part of ensuring a high-quality education to every student in Ohio, OEA believes in the idea that students and educators should be free to discuss a wide variety of facts, events, and ideas and that public school standards are and should continue to be created with honesty and integrity and not be influenced by politics. Likewise, OEA believes that it is important for policy makers to be honest about ballot initiatives put forth to voters to enable them to make informed choices based on facts without being influenced by the manner in which the initiatives are craftily worded.

II. SUMMARY OF ARGUMENT

The matter at hand concerns the ballot title and language proposed for Senate Joint Resolution Number 2 ("S.J.R. 2"), a potential amendment to the Ohio Constitution which seeks to raise the popular vote threshold for adopting constitutional amendments and modify the procedures for initiative petitions. The Relators argue that both the title and language of the proposed amendment are misleading, prejudicial, and contrary to law, thereby infringing on voters' rights to understand the measure they are voting upon.

The crux of this argument lies in Ohio Revised Code § 3519.21 and Article XVI, Section 1 of the Ohio Constitution, both of which stipulate that ballot language should not be likely to create prejudice for or against the measure and should properly identify the substance of the proposal to be voted upon. Furthermore, the language must not mislead, deceive, or defraud voters.

The three-part test established by this Court in *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-419, 978 N.E.2d 119 and *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 519 N.E.2d 347 (1988) guides the evaluation of both the ballot title and language. The test requires (i) a clear understanding for the voter of what they are voting upon; (ii) the avoidance of language serving as a persuasive argument in favor of or against the issue; and (iii) the assessment of whether the cumulative effect of technical defects in the ballot language is harmless or fatal to the ballot's validity.

The proposed title, “Elevating the Standards to Qualify for and Pass Any Constitutional Amendment,” is misleading and creates prejudice for the Amendment. It does not convey the essence of the changes to the popular vote threshold or the alterations to the initiative petition procedures. The use of the term "elevating" is suggestive of a beneficial action, which may act as a persuasive argument in favor of the Amendment, thus violating the second prong of the Jurcisin test and Ohio Revised Code § 3519.21.

The proposed ballot language is also inaccurate, incomplete, and misleading. It fails to correctly identify the substance of the proposal, violating the first prong of the *Voters First* test, and the mandates of Article XVI, Section 1 of the Ohio Constitution, and Section 3505.062(B) of the Ohio Revised Code. The proposed language does not offer sufficient context about the significance of the changes being proposed. Moreover, some phrases are inaccurate, ambiguous,

or potentially confusing, which misleads and confuses voters about the proposal's true purpose and effects. The cumulative effect of these defects is not harmless but rather fatal to the validity of the ballot, thereby violating the third prong of the Voters First test.

Therefore, Amicus Curiae Ohio Education Association requests that this Court invalidate the proposed language, and mandate the Ohio Ballot Board to draft new language that aligns with the standards established in the Ohio Constitution and Revised Code.

III. LAW AND ARGUMENT

A. Background

The Ohio General Assembly enacted Amended Substitute Senate Joint Resolution Number 2 (“S.J.R. 2”) on May 10, 2023, decreeing a special election for August 8, 2023. This election aims to propose an amendment to the Ohio Constitution, increasing the popular vote threshold from a simple majority to a sixty percent supermajority for adopting constitutional amendments (“the Amendment”). (Relators’ Exhibit 1). Furthermore, S.J.R. 2 intends to alter the initiative petition procedures. It calls for signatures to be collected from every county when proposing constitutional amendments, a shift from the current requirement of gathering signatures from only half the counties as per Ohio Constitution Article II, Section 1g. Additionally, the Amendment intends to remove the provision that allows initiative petitioners to correct an insufficient petition by submitting more signatures. (Complaint ¶1).

This is Relators’ second original action involving S.J.R. 2. (Complaint ¶1). The original action in Mandamus filed on May 12, 2023, challenges the General Assembly’s ability to place the Amendment before the voters in a special election in August. *State ex rel. One Person One Vote, et al. v. LaRose*, No. 2023-0630. The current action in Mandamus challenges “the decision of Secretary of State Frank LaRose and the Ballot Board he chairs to adopt a misleading,

prejudicial ballot title and inaccurate, incomplete ballot language.” (Complaint ¶1).

Section 3519.21 of the Revised Code provides that the Secretary shall determine “the ballot title of all ... propositions, issues, or questions ... in case of propositions to be voted upon in a district larger than a county.” (Complaint ¶30). Section 3519.21 of the Revised Code provides that “[I]n 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.” (Complaint ¶31).

Article XVI, Section 1 of the Ohio Constitution provides in part that:

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... ***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 shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.*** (Emphasis added).

Ohio Revised Code Section 3505.062(B) provides that the Ballot Board shall “[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.” (Complaint ¶29).

Under Article XVI, Section 1, of the Constitution and Section 3505.062(B) of the Revised Code, the ballot language must “properly identify the substance of the proposal to be voted upon.” Article XVI specifies that it may not be “such as to mislead, deceive, or defraud the voters.” (Complaint ¶58).

This Court has adopted a “three-part test” for evaluating the propriety of ballot language

for a proposed constitutional amendment: (i) a voter has the right to know what it is he or she is being asked to vote upon; (ii) use of 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.

State ex rel. Voters First v. Ohio Ballot Bd., 133 Ohio St.3d 257, 2012-Ohio-419, 978 N.E.2d 119, ¶ 26. (Complaint ¶59). This Court has adopted the same standard for evaluating a ballot title for a proposed constitutional amendment. *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 519 N.E.2d 347 (1988).

This Court has recognized that ballot language containing material omissions and factual inaccuracies fails the foregoing test. *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-419, 978 N.E.2d 119, ¶¶ 27–32. (Complaint ¶59). “[Ballot language] 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). Ballot language that fails to “convey an intelligent idea of the scope and import of the amendment” is invalid. *Id.* at 202–03. (Complaint ¶60).

Analogously, there are rules for wording in how organizations conduct business so that members/shareholders can understand the organization’s operations. Robert’s Rules of Order Newly Revised is a manual of parliamentary procedure that many organizations adopt to govern their meetings. While it includes detailed rules and guidelines for various types of motions, voting procedures, and the conduct of meetings, it does not specifically address the language or wording of political ballot measures or initiatives. However, it does have general guidance on wording motions that might be seen as analogous to crafting ballot language: The language of a motion (or a ballot measure) should be clear and unambiguous so that all members understand

the proposed action; Motions are generally phrased in a positive manner. This ensures that a 'yes' vote agrees with the proposal and a 'no' vote disagrees; A motion (or ballot measure) should be specific about what action is proposed. It should name who will do what, when, and how; and the language of a motion should propose action, not argue for it. As such, there is a universal understanding that words have particular meaning. Words should be clear and concise in the boardroom, classroom, and at the ballot box.

B. The proposed title of the Amendment is misleading and contrary to law.

The Relators submit that the proposed ballot title for S.J.R. 2, “Elevating the Standards to Qualify for and Pass Any Constitutional Amendment,” violates Ohio Revised Code § 3519.21 as it is not a “true and impartial” statement of the measure and is likely to create prejudice for the measure. (Complaint ¶ 10). R.C. § 3519.21 provides that the Secretary shall determine “the ballot title of all ... propositions, issues, or questions ... in case of propositions to be voted upon in a district larger than a county.” (Complaint ¶ 30). Section 3519.21 of the Revised Code provides that “[I]n 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.” (Complaint ¶ 31). This is critical in ensuring that the public understands the initiative or referendum and can make an informed decision.

In *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 519 N.E.2d 347 (1988), this court applied the same “three-part test” for evaluating the propriety of ballot language for a proposed constitutional amendment that was developed in *State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 426 N.E.2d 493 (1981) to the evaluation of the ballot titles. In *Jurcisin*, this Court determined that:

"First, a voter has the right to know what it is he is being asked to vote upon. *State, ex rel. Burton, v. Greater Portsmouth Growth Corp.* (1966), 7 Ohio St. 2d 34, 37. Second, use of language which is 'in the nature of a persuasive argument in favor of or against the issue * * *' is prohibited. *Beck v. Cincinnati* (1955), 162 Ohio St. 473, 475. 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.' *State, ex rel. Williams, v. Brown* (1977), 52 Ohio St. 2d 13, 19; *State, ex rel. Commrs. of the Sinking Fund, v. Brown* (1957), 167 Ohio St. 71."

Jurcisin v. Cuyahoga Cty. Bd. of Elections, 35 Ohio St.3d 137, 519 N.E.2d 347 (1988).

Ohio Revised Code § 3519.21 expressly requires the Secretary of State to provide "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." In *State ex rel. Responsible Ohio v. Ohio Ballot Bd.*, 2015-Ohio-3758, this Court clarified the standard set forth by the code, reinforcing the necessity of truthfulness, impartiality, and non-prejudicial language. In *Jurcisin*, this Court held that a voter has the right to know what they are being asked to vote upon, language that acts as a persuasive argument for or against the issue is prohibited, and the cumulative effect of defects in ballot language must be evaluated. *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 519 N.E.2d 347 (1988)

The title, "Elevating the Standards to Qualify for and Pass Any Constitutional Amendment," fails to provide voters with a clear understanding of the Amendment's provisions. It does not mention the increased popular vote threshold or the change in signature gathering procedures for initiative petitions. By omitting these key details, the title obscures the Amendment's true nature and hampers the voter's right to know what they are voting upon.

The chosen title also violates the second prong of the *Jurcisin* test. The use of the word "elevating" inherently suggests a positive action, a raising of standards. By Webster's Dictionary definition, "elevating" means to lift-up, raise in rank or status, or improve morally, intellectually, or culturally. This word choice effectively acts as a persuasive argument in favor of the

Amendment and is thus prohibited.

Finally, the cumulative effect of these defects cannot be overlooked. The title's lack of clarity combined with its biased language creates a significant likelihood of prejudice in favor of the Amendment, violating the third prong of the *Jurcisin* test and Ohio Revised Code § 3519.21.

C. The proposed ballot language of the Amendment is inaccurate, incomplete and contrary to law.

Relators assert that the ballot language proposed for S.J.R. 2 is deficient and violates Ohio law in significant ways. As required by both Article XVI, Section 1 of the Ohio Constitution and Section 3505.062(B) of the Revised Code, the ballot language must "properly identify the substance of the proposal to be voted upon." Moreover, Article XVI prohibits ballot language that might "mislead, deceive, or defraud the voters." Unfortunately, the proposed language for S.J.R. 2 fails to meet these criteria, and thus violates voters' rights to be accurately informed about the measure they are asked to vote upon.

This Court has long held that voters have the right to clear and transparent ballot language. The Court's established three-part test from *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St.3d 257, 2012-Ohio-419, 978 N.E.2d 119, mandates that (i) voters must know what they are being asked to vote upon; (ii) the language must not make persuasive arguments for or against the issue; and (iii) the cumulative effect of technical defects must not invalidate the ballot.

Amicus Curiae OEA contends that the ballot language for S.J.R. 2 fails on the first and third prongs of this test. First, the proposed ballot language does not properly identify the substance of the proposal, thus violating the first part of the *Voters First* test and the requirements of Article XVI, Section 1, and Section 3505.062(B) of the Ohio Revised Code. For instance, the proposal outlines new requirements for proposed constitutional amendments and initiative petitions,

including approval thresholds and signature requirements. However, it does not adequately explain the implications of these changes for the amendment process, such as how they would make it more difficult to amend the constitution or propose initiatives. Without knowing the current thresholds for passing constitutional amendments or the rules around gathering signatures for initiative petitions, voters might not fully understand the significance of the changes being proposed. This lack of context easily misleads and confuses voters about the proposal's true purpose and effects.

Additionally, some of the language is wrong, ambiguous, or potentially confusing. For example, the phrase "be signed by at least five percent of the eligible voters of each county in the state" is not accurate. The actual amendment requires signatures from 5% of only those voters who cast ballots in the last gubernatorial election from all 88 counties. The phrase also does not explain that petition signatures are currently only required from 44 counties in Ohio. Thus, it is at its best ambiguous or confusing, and at its worst purposefully misleading.

Finally, the language's cumulative technical defects are not harmless but fatal, specifically the lack of explicit contextual information and confusion for voters. It does not help voters understand that if the amendment is approved, significant changes to the democratic process would take effect; increasing the threshold for future constitutional changes and potentially restricting the ability of citizens to bring about legislative changes through initiatives.

Because the ballot language for S.J.R. 2 is both misleading and incomplete, it fails the Court's established test from *Voters First*, and thus violates Ohio law. Accordingly, *Amicus Curiae* OEA respectfully request that this Court find the proposed language invalid and require the Ohio Ballot Board to draft new language that properly identifies the substance of the proposal, does not mislead or deceive voters, and meets the standards set forth in the Ohio Constitution and Revised

Code.

D. The Relator's presentation of credible criteria establishes justification for the Court's intervention via mandamus action

The jurisdiction for this action lies with this Court as per Article IV, Section 2(B)(1)(b), bestowing upon the Court original jurisdiction in mandamus actions. Furthermore, Article XVI, Section 1 provides the Court with both original and exclusive jurisdiction in all cases that involve "challenging the adoption or submission of a proposed constitutional amendment to the electors." (Complaint ¶13.).

Mandamus actions are governed by R.C. Chapter 2731. A mandamus is a writ to enforce performance of a specific act by a public official or agency and will only be issued where there is a clear legal duty to act. A writ of mandamus will not be issued when there is a plain and adequate remedy in the ordinary course of law. R.C. 2731.05. 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. Otherwise, an alternate writ must first be issued by the court or judge pursuant to R.C. 2731.06.

A Court will grant a writ of mandamus when a relator establishes (i) a clear legal right to the requested relief, (ii) a clear legal duty on the part of the respondent to provide it, and (iii) the lack of an adequate remedy in the ordinary course of law, *State ex rel. Berger v. McMonagle*, 6 Ohio St. 3d 28, 451 N.E.2d 225 (1983)). In the aforementioned case, this Court articulated the following standard: "The writ of mandamus will be granted by this court only when the relator establishes a clear legal right to the requested relief, a clear legal duty on the part of the respondents to provide it, and the lack of an adequate remedy in the ordinary course of law."

Relators assert a clear legal entitlement to the requested relief, as the proposed ballot title

and language submission of the Amendment to the people on August 8, 2023, would contravene the explicit provisions of the Ohio Constitution and Revised Code. The Ohio Ballot Board bears a manifest legal obligation to furnish the requested relief since it is tasked with ensuring that the proposed ballot language complies with the law.

Given that this Court exercises original and exclusive jurisdiction over the subject matter of the case, and mandamus has consistently been recognized as the sole available recourse when an elector seeks to eliminate an unlawfully presented constitutional amendment from the ballot, *Relators* are without a satisfactory legal remedy.

E. Just as honesty in education is paramount in the classroom, so is honesty at the ballot box.

The OEA represents educators who are committed to providing a high-quality education for every student in Ohio. This commitment is rooted in the belief that students and educators should be free to discuss a wide array of facts, events, and ideas, and that public school standards should be created with honesty and integrity, free from political influence. This principle is not confined to the classroom but extends to all aspects of education policy, including the wording of ballot initiatives concerning our public schools.

The OEA submits this amicus brief to stress the crucial role that honesty and integrity play in crafting ballot language, especially as it pertains to education. The principles that guide our educators in the classroom should be equally applicable to the language that shapes education policy at the ballot box. Voters, like students, deserve to receive information that is accurate, clear, and unbiased.

The ballot language for S.J.R. 2, as currently formulated, fails to meet these principles. As previously argued, the language does not properly identify the substance of the proposal and

could potentially mislead voters about its true impact of the proposed constitutional amendment. This is contrary to the principle of honesty that OEA believes should guide education policy.

Just as educators are committed to teaching students with honesty and integrity, so too should policymakers be committed to providing voters with honest and clear ballot language. The lack of clarity and potential for misunderstanding inherent in the proposed language for S.J.R. 2 is as detrimental to the democratic process as misleading or incomplete instruction is to a student's education.

A key component of a high-quality education is teaching students to think critically about the information presented to them. Similarly, voters should be equipped with clear and accurate information to make informed decisions about the policies affecting their communities. When ballot language is misleading or incomplete, it hinders voters' ability to critically evaluate the proposal at hand, just as faulty or biased instruction hinders a student's learning.

As educators, the members of OEA have a vested interest in promoting honesty, clarity, and critical thinking, both in the classroom and at the ballot box. We urge this Court to uphold these principles in its consideration of the proposed ballot language for S.J.R. 2. Doing so will not only ensure that voters can make informed decisions but also set a precedent for honesty and integrity in the crafting of future ballot initiatives.

IV. CONCLUSION

For the reasons articulated above, *amici curiae* OEA requests that the Court issue a writ of mandamus directing the Ballot Board to reconvene and adopt ballot language that properly and lawfully describes the amendment, or, in the alternative, adopt the full text of the Amendment as the ballot language; and directing Secretary LaRose to adopt a ballot title that properly and lawfully describes the amendment.

Dated: May 30, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 30, 2023, the foregoing was filed electronically using the Court's e-filing system. I further certify that the foregoing was served via electronic mail upon the following pursuant to S.Ct.Prac.R. 3.11(C)(3):

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