

**In the
Supreme Court of Ohio**

STATE OF OHIO <i>ex rel.</i> ONE	:	
PERSON ONE VOTE, <i>et al.</i>,	:	Case No. 2023-0672
	:	
<i>Relators,</i>	:	
	:	
v.	:	Original Action in Mandamus
	:	Expedited Elections Case
	:	
OHIO BALLOT BOARD, <i>et al.</i>,	:	
	:	
<i>Respondents.</i>	:	

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. BACKGROUND 2

III. LAW AND ANALYSIS..... 3

 A. Standard of Review – Mandamus..... 3

 B. The Ballot Language easily passes constitutional muster..... 4

 C. The Ballot Title complies with all constitutional and statutory requirements..... 13

IV. CONCLUSION..... 15

CERTIFICATE OF SERVICE 16

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TABLE OF AUTHORITIES

Cases	Page(s)
<i>Bailey v. Celebrezze</i> , 67 Ohio St.2d 516, 426 N.E.2d 493 (1981)	4, 5, 12
<i>State ex rel. Combs v. Greene Cty. Bd. of Elections</i> , 158 Ohio St. 3d 70, 2019-Ohio-4110, 140 N.E.3d 555	13
<i>State ex rel. Commissioners of Sinking Fund v. Brown</i> , 167 Ohio St. 71, 146 N.E.2d 287 (1957)	5, 6, 7, 12
<i>State ex rel. Doner v. Zody</i> , 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d	4
<i>State ex rel. Evans v. Blackwell</i> , 111 Ohio St. 3d 437, 2006-Ohio-5439, 857 N.E.2d 88	3
<i>State ex rel. Foreman v. Brown</i> , 10 Ohio St. 2d 139, 226 N.E.2d 116 (1967)	<i>passim</i>
<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397	3
<i>Markus v. Trumbull Cty. Bd. of Elections</i> , 22 Ohio St.2d 197, 259 N.E.2d 501 (1970)	8
<i>State ex rel. Minus v. Brown</i> , 30 Ohio St.2d 75, 283 N.E.2d 131 (1972)	9
<i>State ex rel. ResponsibleOhio v. Ohio Ballot Bd.</i> , 2015-Ohio-3758	13
<i>State ex rel. Voters First v. Ohio Ballot Bd.</i> , 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119	<i>passim</i>
<i>State ex rel. Williams v. Brown</i> 52 Ohio St. 2d 13, 368 N.E.2d 838 (1977)	9
Statutes	Page(s)
R.C. 3505.06(E)	4
R.C. 3505.062(B)	4
R.C. 3519.21	13

Other Authorities	Page(s)
https://www.legislature.ohio.gov/legislation/135/sjr2/status (last visited on May 21, 2023)	2
https://www.ohiosos.gov/elections/voters/current-voting-schedule/2023-schedule/ (last visited on May 21, 2023)	3
https://www.ohiosos.gov/globalassets/ballotboard/2017/2017-02-06-petition.pdf (last visited June 1, 2023)	8
https://www.ohiosos.gov/globalassets/ballotboard/2017/2017-08-17-certifiedballotlanguageissue1.pdf (last visited June 1, 2023)	8
https://www.ohiosos.gov/globalassets/ballotboard/2022/202211_issue2_certifiedballotlanguage.pdf (last visited June 1, 2023)	9
Ohio Const. Art. II, Sec. 1g	10, 11
Ohio Const. Art. XVI, Sec. 1	2, 4
Senate Joint Resolution 2	1, 2
<i>Specify</i> , MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/specify (last visited June 1, 2023)	11

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Indeed, both the ballot title and language are valid exercises of the Ballot Board and the Secretary's authority, properly inform the electorate about the substance of the proposed amendment, and comply with applicable law. The proposed amendment, as adopted, is therefore valid, so Relators are not entitled to the writ they now seek.

II. BACKGROUND

On March 22, 2023, Senate Joint Resolution 2 ("SJR 2") was introduced in the Ohio Senate, which proposed a special election "to be held on August 8, 2023, such election being prescribed pursuant to the authority provided by Section 1 of Article XVI of the Constitution of the State of Ohio[.]" 2023 Bill Text OH S.J.R. 2. The special election was set "for the purpose of submitting to the electors of the state a proposal 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[.]" *Id.* Among the proposed amendments are the requirements that (1) any future proposed amendment submitted to the electors obtain at least sixty percent approval to be adopted, (2) the number of signatures required for an initiative petition proposing a constitutional amendment increased, and (3) if an initiative petition proposing a constitutional amendment lacks sufficient signatures, no additional signatures may be filed. *Id.* The joint resolution was adopted by both chambers of the General Assembly on May 10, 2023. See <https://www.legislature.ohio.gov/legislation/135/sjr2/status> (last visited on May 21, 2023).

The Ballot Board convened a hearing on May 18, 2023, to prescribe and certify ballot language for the "General Assembly-initiated constitutional amendment authorized by Senate Joint Resolution 2, which will be Issue 1 for the August 8th, 2023 special election." RELATORS_0011: 20-22. In advance of the hearing, Ballot Board staff prepared and circulated draft ballot language ("Ballot Language") to committee members. RELATORS_0018. After a public comment period and consideration of arguments for and against the Ballot Language, the

Ballot Board adopted the Ballot Language. RELATORS_0041; RELATORS_0060. Secretary LaRose prescribed the ballot title for the Amendment. RELATORS_0041.

As directed by the General Assembly in SJR 2, a special election has been set for August 8, 2023 by Secretary LaRose. See <https://www.ohiosos.gov/elections/voters/current-voting-schedule/2023-schedule/> (last visited on May 21, 2023).

III. LAW AND ANALYSIS

A. Standard of Review – Mandamus

Relators seek a writ of mandamus compelling (1) the Ballot Board to “reconvene and prescribe lawful ballot language for the Amendment” and (2) Secretary LaRose to “prescribe a lawful ballot title for the Amendment[.]” See Compl. at p. 17. The purpose of a writ of mandamus is to compel a public officer to perform an act the law requires him or her to do. See *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397, ¶ 17. In order to be entitled to an extraordinary writ, the Relators must establish: (1) a clear legal right to the requested relief; (2) a clear legal duty owed by the Ballot Board and Secretary LaRose to perform the requested relief; and (3) that they lack an adequate remedy at law. See *State ex rel. Evans v. Blackwell*, 111 Ohio St. 3d 437, 2006-Ohio-5439, 857 N.E.2d 88, ¶ 18, citing *State ex rel. Marsalek v. S. Euclid City Council*, 111 Ohio St. 3d 163, 2006-Ohio-4973, 855 N.E.2d 811, ¶ 8. As to the first two requirements, “in the absence of any evidence of fraud or corruption, the dispositive issue is whether the ballot board abused its discretion and clearly disregarded applicable law in adopting the ballot language of the proposed constitutional amendment.” *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶ 23, citing *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010 Ohio 1845, 928 N.E.2d 410, ¶ 30. Relators have the burden of demonstrating entitlement to mandamus relief by

clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d, ¶ 55. Relators have not carried their burden here.

B. The Ballot Language easily passes constitutional muster.

The Ohio Constitution and Revised Code dictate that the Ballot Board is responsible for prescribing the ballot language for all proposed amendments to the Ohio Constitution by the General Assembly. *See* Ohio Const. Art. XVI, Sec. 1 (“The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board”); R.C. 3505.062(B) (stating that one of the Ballot Board’s duties is 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”). In determining what language to include in its summary, the Ballot Board is not required to include the full text of the proposed amendment. Ohio Const. Art. XVI, Sec. 1; *see also Voters First* at ¶ 24. Instead, the Ballot Board can elect to include a condensed text of the proposed amendment. *Id.*, quoting Ohio Const. Art. XVI, Sec. 1; *see also* R.C. 3505.06(E). If the Ballot Board elects to include a condensed text of the proposed amendment, then R.C. 3505.06(E) requires that the full text of the proposed 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.”

When, as here, the Ballot Board approves a condensed text of the proposed amendment, “the sole issue is whether the board’s approved ballot language ‘is such as to mislead, deceive, or defraud the voters.’” *Voters First* at ¶ 26, quoting Ohio Const. Art. XVI, Sec. 1. Thus, it is not relevant if “the members of this court might have used different words to describe the language used in the proposed amendment[.]” *Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 (1981). Rather, this Court only considers “whether the language adopted by the ballot board

properly describes the proposed amendment.” *Id.* For, as this Court recognized in discussing the words “of the noted historian, George Bancroft, in the preface to the last revision of his History of the United States, that, ‘there is no end to the difficulty in choosing language which will awaken in the reader the very same thought that was in the mind of the writer.’” *State ex rel. Commissioners of Sinking Fund v. Brown*, 167 Ohio St. 71, 74, 146 N.E.2d 287 (1957).

To answer whether the ballot language is such as to mislead, deceive, or defraud the voters, this Court devised a three-step test to determine if the ballot language chosen by the Ballot Board is sufficient. “First, a voter has the right to know what it is he is being asked to vote upon.” *Bailey* at 519, citing *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St.2d 34, 37, 218 N.E.2d 446 (1966). Second, the Ballot Board is prohibited from using language that is “‘in the nature of a persuasive argument in favor of or against the issue * * *.’” *Id.*, quoting *Beck v. Cincinnati*, 162 Ohio St. 473, 474-75, 124 N.E.2d 120 (1955). Third, and what is considered to be dispositive, “‘is whether the cumulative effect of these technical defects [in ballot language] is harmless or fatal to the validity of the ballot.’” *Id.*, quoting *State ex rel. Williams v. Brown* 52 Ohio St. 2d 13, 19, 368 N.E.2d 838 (1977) and citing *Sinking Fund*, 167 Ohio St. 71.

In other words, “[i]n order to pass constitutional muster, ‘[t]he text of a ballot statement * * * 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.’” *Bailey* at 519, quoting *Markus v. Trumbull Cty. Bd. of Elections*, 22 Ohio St.2d 197, 259 N.E.2d 501 (1970), paragraph four of the syllabus. Therefore, to the extent possible, “[t]he ballot language ‘ought to be free from any misleading tendency, whether of amplification, or omission.’” *Voters First*, 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119 at ¶ 29, quoting *Markus* at 203. However, the ballot language adopted by the Ballot Board will only be struck down where the omission or other defect is

material. *See id.* at ¶ 30, citing *State ex rel. Minus v. Brown*, 30 Ohio St.2d 75, 81, 283 N.E.2d 131 (1972) (“any omitted substance of the proposal must not be material, i.e., its absence must not affect the fairness or accuracy of the text.”).

This Court routinely found that various condensed texts satisfied constitutional and statutory requirements, even when there was a slight chance for voter confusion. *See, e.g., Sinking Fund* at 73-75; *see also State ex rel. Foreman v. Brown*, 10 Ohio St. 2d 139, 147-51, 226 N.E.2d 116 (1967). In *Sinking Fund*, the Court was presented with a proposed amendment to the Constitution that provided for the creation of a long-range building program, the issuance of securities totaling \$150 million to provide the funds for the program, and an excise tax on cigarettes to pay for such securities. *Sinking Fund* at 73. A condensed text was adopted and included the following statement, “[f]or the purpose of providing funds to pay all interest, principal, and charges for the issuance and retirement of such bonds and other obligations, there shall be levied an excise tax on sales of cigarettes.” *Id.* The relators argued that this statement was misleading as it suggested that the securities would be paid only by the cigarette tax. *Id.* However, the Court disagreed and found that the logical conclusion was that all proceeds from the cigarette tax would go solely towards paying the bonds, not that the bonds could only be payable from the cigarette tax proceeds. *Id.* The Court reasoned that the possibility of misunderstanding was remote, at best, given that the full text of the proposed amendment was advertised in the newspapers and published at every polling place. *Id.* at 73-74. And although the Court admitted that more complete language could have avoided confusion, the purpose of allowing a condensed version of an amendment was to avoid having to include technical terms that were likely to confuse voters. *Id.* at 74. Therefore, the Court concluded that the ballot language passed constitutional muster. *Id.* at 75.

The *Foreman* Court similarly found that the condensed text used was sufficient. There, the proposed constitutional amendment included the “creation of a bond commission to raise revenues by issuing bonds and to expend the moneys raised for certain stated public purposes.” *Foreman* at 146. Looking at the ballot language, the Court concluded that there was no “speculation or argumentation” that would have defeated the language. *Id.* at 149. The Court further dismissed any notion that the ballot language contained too much or omitted too much information. *Id.* at 150. Finally, like in *Sinking Fund*, the Court found that any possibility of voter confusion was remote, stating,

Furthermore, it is apparent that no elector who listens or reads will be unaware that Issue No. 1 is the Ohio Bond Commission amendment and that it is a highly controversial issue. Such elector should have an opportunity to read its complicated language in its entirety in a local newspaper once a week for five weeks before the election. He should also have an opportunity to read it where it is posted at his polling place. He can hardly escape hearing or reading the arguments for and against the amendment.

Id. at 150-51.

Here, like the ballot language adopted in *Sinking Fund* and *Foreman*, the Ballot Language easily passes constitutional scrutiny. The Ballot Language accurately reflects the changes to the Constitution that the Amendment, if passed, would make. First, any future proposed constitutional amendment would require 60% approval from voters to pass. *Compare* RELATORS_0005 *with* RELATORS_0060. Relators do not contend that this is inaccurate. Rather, they raise two general objections to this change as well as the other two changes in that the Ballot Language omits the status quo and that the status quo has existed since 1912. *See* Relators’ Br. at p. 10-12. Yet, neither point renders the Ballot Language insufficient.

Initially, there is no requirement that the ballot language recite the current state of the constitution when a constitutional amendment is presented to the voters. For this point, Relators

rely solely on *Markus*, 22 Ohio St.2d at 202-03. See Relators' Br. at p. 12. But Relators misinterpret *Markus*. In *Markus*, the ballot language was not invalidated because it failed to recite the current zoning status of the property subject to the potential re-zoning. See *Markus* at 202-03. Rather, the Court found that the summary was *inaccurate* because the summary language indicated that the property subject to re-zoning was only zoned as residential when it, in fact, was also partially zoned "business and commercial" and that only a portion of the residential property was to be re-zoned as business-commercial. *Id.* at 201-02. Here, there is no dispute that the Ballot Language regarding the number of votes required to pass future constitutional amendments is accurate. Moreover, the Ballot Language complies with the Relators' claim that the status quo must be listed, as the Ballot Language states "[a] majority yes vote is necessary for the amendment to pass." RELATORS_0060. Thus, voters can clearly see from the Ballot Language that the status quo requires 50% plus one to pass. Again, however, this is not required to satisfy the Constitution. It is completely irrelevant that the Ballot Board elected not to include the status quo in the Ballot Language for the other proposed changes.

Omitting the status quo in ballot language is nothing new in Ohio. There are numerous examples of ballot language adopted by the ballot board that did not include the status quo. In 2017, the ballot language for Issue 1, which was commonly referred to as "Rights for Crime Victims," did not mention the specific rights that the Constitution already provided crime victims.

See <https://www.ohiosos.gov/globalassets/ballotboard/2017/2017-08-17-certifiedballotlanguageissue1.pdf> (last visited June 1, 2023). Rather, it simply stated that the proposed amendment would "expand the rights of victims" and then proceeded to enumerate all the proposed "rights," many of which were already provided by the Constitution. Compare *id.* with <https://www.ohiosos.gov/globalassets/ballotboard/2017/2017-02-06-petition.pdf> (last visited

June 1, 2023). However, by looking at the ballot language, a voter would not be able to tell that several of the “expanded” rights were already provided in the Constitution. Also, in 2022, the ballot language for Issue 2, which sought to prevent non-citizens from being able to vote in state and local elections, did not include any reference to the status quo at that time regarding the qualifications needed to vote in state and local elections. *See* https://www.ohiosos.gov/globalassets/ballotboard/2022/202211_issue2_certifiedballotlanguage.pdf (last visited June 1, 2023). These examples show that the Ballot Board did not change its course by electing not to include the status quo here.

Similarly, nothing requires the Ballot Board to indicate how long a constitutional provision has existed in its adopted ballot language. Relators’ claim to the contrary is in direct conflict with established precedent that has held that ballot language containing the full text of the proposed amendment satisfies all constitutional and statutory requirements. *See, e.g., Williams*, 52 Ohio St. 2d at 19-20 (“The alleged errors do not lend to misleading, deceiving or defrauding the voters on the instant issue. The ballot contains the actual text of the proposed amendment, not merely a condensed text. Thus, the concern expressed in *State, ex rel. Minus, v. Brown* (1972), 30 Ohio St. 2d 75, that the voters know what they are being asked to vote upon, is not present.”). Under the Court’s well-reasoned opinion in *Williams*, had the Ballot Board here adopted the full text of the Amendment, which they were not required to do, Relators’ argument would not get off the ground. Notably, there is nothing in the Amendment’s language or the language of the constitutional provisions that would be amended that mentions how long the status quo has existed. *See* RELATORS_0001-_0005. Indeed, Relators’ own requested alternative remedy--that “the full text of the proposed amendment may be adopted as the ballot language”—would not include that

information either. Simply put, the Ballot Language is not defective because it fails to state that the status quo has existed since 1912.

Moreover, including the historical nature of the status quo could actually have a detrimentally negative effect on electors, such that it could render the Ballot Language insufficient. Specifically, the language could be seen as argumentative in support of rejecting the proposed amendment. Voters may likely presume that the constitutional provisions to be amended, having been the law of our state for over 100 years, must inherently bear the imprimatur of legitimacy and thus be free from any defect necessitating amendment by the people. In other words, why change it now? The only way to avoid this is to not mention how long the status quo has existed, which is what the Ballot Board did. Critically, none of the ballot language submitted in Relators' Evidence contains any mention of exactly how long each of the constitutional provisions subject to amendment were the governing law. That is because it is not required by the Constitution or any statute.

Next, the Ballot Language “[s]pecify[ing] 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,” RELATORS__0060, is completely accurate. For this proposed change, there will be an amendment to Article II, Sec. 1g, which will add the following statements to that section: “No additional signatures may be filed to an initiative petition proposing an amendment to the constitution[;]” and “The requirements of divisions (C) and (E) of this section, as amended by this amendment, apply to initiative petitions proposing constitutional amendments that are filed with the secretary of state on or after January 1, 2024.” RELATORS_0003-0004. Comparing the Ballot Language to the full text, there are no inaccuracies or inconsistencies that would render the language insufficient. Yet, Relators

complain of the Ballot Board's choice of the word "specify" in the Ballot Language, claiming that this word choice is inaccurate and misleading. *See* Relators' Br. at p. 14-15. But "specify" is defined as "to name or state explicitly or in detail." *Specify*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/specify> (last visited June 1, 2023). Under this definition, the Ballot Language is clearly sufficient as the proposed changes would "state explicitly" that no additional signatures can be submitted to cure an initiative petition seeking to amend the Constitution. Essentially, Relators' argument amounts to the type of semantics warfare that this Court has rejected time and time again. *See, e.g., Voters First*, 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119 at ¶ 25, quoting *Bailey*, 67 Ohio St. 2d at 519 ("Nor is it pertinent 'whether the members of this court might have used different words to describe the language used in the proposed amendment, but, rather, whether the language adopted by the ballot board properly describes the proposed amendment.'"); *Foreman*, 10 Ohio St.2d at 150 (same).

The final proposed change, i.e., increasing the number of signatures required for initiative petitions proposing a constitutional amendment, is, admittedly, more complicated. Notably, the main change in this amendment is accurately depicted by the Ballot Board's language. That change is that initiative petition circulators will now have to obtain signatures from all of Ohio's 88 counties when the petition seeks to amend the Constitution. *Compare* RELATORS_0003 with RELATORS_0060. However, there is a technical difference between "eligible voters," as used by the Ballot Board, and the actual number of signatures required for each county under the proposed amendment. Under the proposed amendment, several aspects of Article II, Sec. 1g remain the same, including the clarification that "[t]he 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." Therefore, the actual number required is not five percent of

all eligible voters of a county, but five percent of the county's total amount of votes cast in the last gubernatorial election. But this is not a material defect, requiring new language. As stated above, the full text of the Amendment will be highly publicized as required by statute. The Ballot Board authorized Secretary LaRose to publish the Amendment, including its full language, on the Secretary of State's website and to print sufficient paper copies of the Amendment for distribution among Ohio's county boards of elections, public agencies, legislators, and any interested persons. *See* RELATORS_0043-0045. And like in *Foreman*, "it is apparent that no elector who listens or reads will be unaware that" that the proposed amendment seeks to increase the standards by which the Constitution is amended and "that it is a highly controversial issue." 10 Ohio St.2d at 150. Ohio's voters have an exhaustive list of ways to inform themselves as to the proposed amendment's full text. Because of this, any possibility of confusion is remote at best. *See id.* at 150-51; *Sinking Fund*, 167 Ohio St. at 73-74.

In sum, the Ballot Language "fairly and accurately present[s] the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected." *Bailey* at 519, quoting *Markus*, 22 Ohio St.2d 197, at paragraph four of the syllabus. The Ballot Language accurately reflects the proposed changes to the Constitution in that it states that (1) for future constitutional amendments, 60 percent of voters must approve the amendment for it to pass and (2) no additional signatures can be submitted to cure a defective initiative petition proposing a constitutional amendment. Further, any defect with the Ballot Language related to the change in the number of signatures required for an initiative petition is not material and does not affect the overall fairness of the text. At bottom, the cumulative effect of this one, non-material defect, is harmless. Therefore, the Ballot Language satisfies the requirements of our Constitution.

Because the Ballot Language is constitutionally valid, Relators cannot establish a clear legal right to have the Ballot Board reconvene and adopt new language. For that same reason, the Ballot Board does not owe Relators a duty to reconvene and adopt new language. Accordingly, Relators are not entitled to the extraordinary writ of mandamus. *See generally State ex rel. Combs v. Greene Cty. Bd. of Elections*, 158 Ohio St. 3d 70, 2019-Ohio-4110, 140 N.E.3d 555 (finding that a petitioner was not entitled to a writ of mandamus when he could not establish a clear legal right to the requested relief).

C. The Ballot Title complies with all constitutional and statutory requirements.

The same three-part test used to examine the sufficiency of ballot language is employed by this Court to assess a challenged ballot title:

“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.”

Voters First, 133 Ohio St.3d 257, 2012-Ohio-4149, 978 N.E.2d 119 at ¶ 26 (internal citation and quotation omitted). Such title “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.” R.C. 3519.21; *see also State ex rel. ResponsibleOhio v. Ohio Ballot Bd.*, 2015-Ohio-3758, ¶ 12. Relators contend that the ballot title prescribed by the Secretary is neither true nor impartial, in violation of Ohio law. *See Compl.* at ¶ 73. They are wrong.

At the May 18 hearing, Secretary LaRose prescribed the ballot title for the proposed amendment: “Elevating the standards to qualify for and pass any constitutional amendment[.]” Relators attack the use of the word “any” because “the Amendment’s changes to qualifying standards apply *only* to amendments that the people propose via initiative petition” and not those proposed by the General Assembly. *See Relators’ Br.* at p. 16. But the Amendment’s changes to

the requirements for passage of a constitutional amendment do apply to “any” and all proposed amendments placed on the ballot for consideration by the electors. Because “any” directly precedes the word “pass” in the ballot title, the prescribed title is an accurate and true statement of the measure, and certainly not likely to create prejudice for or against the proposed amendment.

Relators also complain that the use of “elevating” in the ballot title is not impartial. Here again, Relators ask this Court to choose between synonymous terms—a word adopted by the Secretary in exercise of his authority to prescribe the ballot title, and one preferred by Relators—against the weight of this Court’s own precedent. It is axiomatic that it is not “pertinent ‘whether the members of this court might have used different words to describe the language used in the proposed amendment, but, rather, whether the language adopted by the Ballot Board properly describes the proposed amendment.’” *Foreman*, 10 Ohio St.2d at 150. The same is true for the ballot title prescribed by the Secretary here.

Despite their claim that the title “‘is in the nature of a persuasive argument in favor’ of the Amendment,” Relators’ Br. at p. 16, Relators concede that the other terms they say could have been used, such as “raising,” “increasing,” or “heightening,” “convey the same meaning . . . but without the same strongly positive, prejudicial connotation that ‘elevating’ carries.” Compl. at ¶ 78; *see also* Relators’ Br. at p. 17. They object, then, not to the meaning of the word but rather to the positive connotation they claim the term can carry. This, again, is a question of semantics rather than substance. But what is determinative is whether the cumulative effect of these alleged technical defects is harmless or fatal to the validity of the ballot. When put to the test, the ballot title survives scrutiny. Because the ballot title properly informs the voter of the substance of the amendment to be considered, and does not rise to the level of a persuasive argument, the ballot title is valid. Therefore, Relators are not entitled to the relief they seek.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully ask this Court to enter judgment in their favor and dismiss the Complaint in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 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:

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