

**In the
Supreme Court of Ohio**

State of Ohio ex rel. WILLIAM DUDLEY, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2024-0161
	:	
v.	:	Original Action in Mandamus
	:	
DAVE YOST, in his official capacity as OHIO ATTORNEY GENERAL,	:	
	:	
<i>Respondent.</i>	:	

MOTION TO DISMISS OF OHIO ATTORNEY GENERAL DAVE YOST

Donald J. McTigue
McTigue & Colombo, LLC
545 East Town Street
Columbus, Ohio 43215
(614) 263-7000
dmctigue@electionlawgroup.com

Ben Stafford
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0176
bstafford@elias.law

Jyoti Jasrasaria
Qizhou Ge
Elias Law Group LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
(202) 968-4490
Jjasrasaria@elias.law
age@elias.law

Counsel for Relators

DAVE YOST (0056290)
Ohio Attorney General

ANDREW D. MCCARTNEY (0099853)*
**Counsel of Record*

JULIE M. PFEIFFER (0069762)
ANN YACKSHAW (0090623)
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872 | Fax: 614-728-7592
Andrew.McCartney@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Ann.Yackshaw@OhioAGO.gov

Counsel for Respondent

**In the
Supreme Court of Ohio**

State of Ohio ex rel. WILLIAM DUDLEY, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2024-0161
	:	
v.	:	Original Action in Mandamus
	:	
DAVE YOST, in his official capacity as OHIO ATTORNEY GENERAL,	:	
	:	
<i>Respondent.</i>	:	

MOTION TO DISMISS OF OHIO ATTORNEY GENERAL DAVE YOST

Respondent Dave Yost, Ohio Attorney General, respectfully moves this Court to dismiss Relators' Complaint for failure to state a claim under S.Ct.Prac.R. 12.04 and Civ.R. 12(B)(6). A memorandum in support is attached.

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General

/s/ Andrew D. McCartney

ANDREW D. McCARTNEY (0099853)*

**Counsel of Record*

JULIE M. PFEIFFER (0069762)

ANN YACKSHAW (0090623)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Andrew.McCartney@OhioAGO.gov

Julie.Pfeiffer@OhioAGO.gov

Ann.Yackshaw@OhioAGO.gov

*Counsel for Respondent Dave Yost, Ohio Attorney
General*

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities..... iii

Memorandum in Support 1

Introduction..... 1

Factual and Procedural Background 2

Standard of Review..... 4

I. Motions to dismiss mandamus complaints. 4

II. Mandamus actions under R.C. 3519.01..... 4

Argument 5

I. The Attorney General may review the title of a proposed constitutional amendment to determine whether it is a fair and truthful summary of the amendment. 5

 A. The plain text of R.C. 3519.01(A) shows that the Attorney General may review a title to determine whether it is a “fair and truthful” summary of the proposed amendment..... 5

 B. Even if this Court determines that R.C. 3519.01(A) is ambiguous, statutory interpretation confirms that the Attorney General may review the title..... 9

 1. Relators incorrectly rely on R.C. 3519.05, which they also misread..... 9

 2. If this Court determines that R.C. 3519.01(A) is ambiguous, every interpretative analysis confirms that the Attorney General may review the title. 11

 a. R.C. 3519.01(A)’s purpose establishes that the Attorney General may review the title. 11

 b. Relators’ interpretation of R.C. 3519.01(A) would have absurd, damaging consequences..... 13

II. The Attorney General did not abuse his discretion because the summary was not a fair and truthful statement of the proposed constitutional amendment. 15

 A. The summary was not fair and truthful because the title falsely implied that the amendment gave voters enforceable rights. 15

 B. The summary was not fair and truthful because it used a title whose common definition did not match the amendment’s actual contents..... 17

 C. Any argument that the summary fairly and truthfully summarizes portions of the proposed amendment does not save Relators’ claim. 21

III. Relators’ request for relief is not only groundless, but also improper. 22

Conclusion 23

TABLE OF AUTHORITIES

Cases	Page(s)
<i>A. Philip Randolph Inst. v. LaRose</i> , 831 F. App'x 188 (6th Cir. 2020)	17
<i>State ex rel. Barren v. Brown</i> , 51 Ohio St.2d 169, 365 N.E.2d 887 (1977)	6
<i>Bd. of Regents v. Roth</i> , 408 U.S. 564, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972)	16
<i>Becerra v. Superior Court</i> , 19 Cal. App. 5th 967, 228 Cal. Rptr.3d 327 (Cal. Ct. App. 2017)	13
<i>Beck v. Cincinnati</i> , 162 Ohio St. 473, 124 N.E.2d 120 (1955)	14, 15
<i>Cincinnati v. Correll</i> , 141 Ohio St. 535, 49 N.E.2d 412 (1943)	18
<i>State ex rel. DeBlase v. Ohio Ballot Board</i> , 2023-Ohio-1823	4, 5, 15
<i>State ex rel. Evans v. Tieman</i> , 157 Ohio St. 3d 99, 2019-Ohio-2411, 131 N.E.3d 930	4, 15
<i>State ex rel. Foreman v. Brown</i> , 10 Ohio St.2d 139, 226 N.E.2d 116 (1967)	14
<i>Hart v. Andrews</i> , 103 Ohio St. 218, 132 N.E. 846 (1921)	18, 20
<i>State ex rel. Hildreth v. Larose</i> , 2023-Ohio-3667	1, 7, 8, 11
<i>State ex rel. Hubbell v. Bettman</i> , 124 Ohio St. 24, 176 N.E. 664 (1931)	7
<i>Jacobson v. Kaforey</i> , 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203	10
<i>State ex rel. Linnabery v. Husted</i> , 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940	22
<i>Mitchell v. Lawson Milk Co.</i> , 40 Ohio St.3d 190, 532 N.E.2d 753 (1988)	4

Cases	Page(s)
<i>Ne. Ohio Coal. for the Homeless v. LaRose</i> , No. 1:23-cv-26, 2024 U.S. Dist. LEXIS 3262 (N.D. Ohio Jan. 8, 2024)	17
<i>Ohio Democratic Party v. LaRose</i> , 10th Dist. Franklin Nos. 20AP-432, 20AP-439, 2020-Ohio-4778, 159 N.E.3d 1241	17
<i>State ex rel. Ohio Liberty Council v. Brunner</i> , 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410	5
<i>State ex rel. Ohioans for Secure & Fair Elections v. LaRose</i> , 159 Ohio St.3d 568, 2020-Ohio-1459, 152 N.E.3d 267	4, 15
<i>State ex rel. Portage Lakes Educ. Ass’n v. State Empl. Rels. Bd.</i> , 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853	5
<i>State ex rel. Schaengold v. Ohio Pub. Empl. Ret. Sys.</i> , 114 Ohio St.3d 147, 2007-Ohio-3760, 870 N.E.2d 719	5
<i>State v. White</i> , 142 Ohio St.3d 277, 2015-Ohio-492, 29 N.E.3d 939	13
<i>Stewart v. Vivian</i> , 151 Ohio St. 3d 574, 2017-Ohio-7526, 91 N.E.3d 716	6, 11
<i>Symmes Twp. Bd. of Trs. v. Smyth</i> , 87 Ohio St.3d 549, 721 N.E.2d 1057 (2000)	9, 10, 11
<i>Thrailkill v. Smith</i> , 106 Ohio St. 1, 138 N.E. 532 (1922)	1, 14
<i>Town of Castle Rock v. Gonzales</i> , 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005)	16
<i>Volbers-Klarich v. Middletown Mgmt., Inc.</i> , 125 Ohio St.3d. 494, 2010-Ohio-2057, 929 N.E.2d 434	4
<i>State ex rel. Williams v. Brown</i> , 52 Ohio St.2d 13, 368 N.E.2d 838 (1977)	4, 12, 14
<i>Wis. Educ. Ass’n Council v. Walker</i> , 705 F.3d 640 (7th Cir. 2013)	18

Statutes	Page(s)
R.C. 3519.01(A).....	<i>passim</i>
R.C. 3519.05	<i>passim</i>
R.C. 1.47(C).....	13
R.C. 1.49	11, 12
R.C. 2505.02(A)(1).....	16
R.C. 3501.32	18
R.C. 3505.06	14
R.C. 3509.01	19
R.C. 3509.03	19
R.C. 3509.04	19
R.C. 3509.05(C)(2)-(3)	16
52 U.S.C. § 10501(a)	16
52 U.S.C. § 10504.....	16
N.Y. Elec. Law § 4-108(1)-(2).....	13
N.Y. Elec. Law § 4-108(3).....	13
Other Authorities	Page(s)
Civ.R. 12(B)(6).....	4
Ohio Constitution, Article I, Section 3	20
Ohio Constitution, Article I, Section 4	20
Ohio Constitution, Article I, Section 5	20
Ohio Constitution, Article I, Section 8	18
Ohio Constitution, Article I, Section 11	20
Ohio Constitution, Article I, Section 14	20
Ohio Constitution, Article I, Section 19	18

Ohio Constitution, Article I, Section 22	20
Ohio Constitution, Article II, Section 1g.....	12
American Heritage Dictionary (5th ed. 2022)	17
Merriam-Webster’s Collegiate Dictionary (2003).....	6, 7, 8
Scalia & Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	12, 13

RETRIEVED FROM DEMOCRACYDOCKET.COM

MEMORANDUM IN SUPPORT

INTRODUCTION

Under Relators’ statutory theory, proponents of a new constitutional amendment could submit a proposed title reading, “All Ohioans to receive a million dollars if amendment passes,” or “This amendment will ensure that Ohio continues to have NFL football teams.” Under Relators’ theory, proponents of constitutional amendments have the unfettered right to mislead Ohio voters with titles such as these because the Attorney General allegedly lacks the statutory authority to reject these titles—or to review them at all.

Based on any interpretive methodology, Relators are wrong. The governing statute, R.C. 3519.01(A), is unambiguous. For purposes of the Attorney General’s certification authority, the statute categorizes the written petition submitted to the Attorney General as containing either (1) the text of the amendment or (2) the summary language describing it. Under that framework and the ordinary meaning of “summary,” the Attorney General may review the title. Indeed, in a similar context, this Court recently concluded that “[m]ore so than the text, the title immediately alerts signers to the nature of the proposed legislation.” *State ex rel. Hildreth v. LaRose*, 2023-Ohio-3667, ¶ 17 (quotations omitted). And this Court has long been concerned with petition or ballot language that inaccurately summarizes a proposed constitutional amendment and risks misleading signers or voters. *See, e.g., Thrailkill v. Smith*, 106 Ohio St. 1, 11, 138 N.E. 532 (1922). If adopted, Relators’ statutory interpretation would permit unreviewable and inaccurate titles—from all sides of the political spectrum—to mislead Ohioans into supporting constitutional amendments they would not otherwise support. And in a TikTok age where everyone is skimming, the title of a proposed amendment to Ohio’s Constitution is even more significant.

Relators' far-reaching statutory theory is wrong under any applicable interpretive framework. Thus, the Attorney General acted within his statutory authority when he declined to certify Relators' summary based on the title.

Nor did the Attorney General abuse his discretion in declining to certify Relators' summary, which included the title, "Ohio Voters Bill of Rights." The Attorney General determined that the title falsely implied that the proposed constitutional amendment would entitle voters to certain benefits. And the Attorney General found that the title "Ohio Voters Bill of Rights" misleads because it does not comport with the common understanding of a "Bill of Rights." These are easily sufficient reasons for declining to certify, and Relators' contrary contentions do not hold water. For all these reasons, this Court should dismiss Relators' Complaint.

FACTUAL AND PROCEDURAL BACKGROUND

On December 19, 2023, Relators submitted to the Attorney General a statewide initiative petition that included the text and summary of a proposed constitutional amendment entitled "Secure And Fair Elections." Compl. Exs. 7-8. Later that month, the Attorney General declined to certify the summary as fair and truthful, citing multiple omissions and misstatements. Compl. Ex. 9. In that letter, the Attorney General explained the misleading aspects of the term "Secure And Fair Elections" to summarize the proposed amendment. *Id.* at 2. Relators resubmitted a revised version of the petition to the Attorney General on January 16, 2024. Compl. Exs. 10-11. Relators changed the title of this resubmitted petition to "Ohio Voters Bill of Rights." Compl. Exs. 10-11.

On January 25, 2024, the Attorney General rejected this second submission. The Attorney General determined that "the title 'Ohio Voters Bill of Rights' does not fairly or truthfully

summarize or describe the actual content of the proposed amendment,” nor does it “fairly or truthfully summarize the common understanding of a ‘Bill of Rights.’” Compl. Ex. 12 at 2. While the Attorney General noted that the Office “has not always rigorously evaluated whether the title fairly or truthfully summarized a given proposed amendment,” recent authority from the Supreme Court of Ohio has “confirmed that the title for a ballot initiative is material to voters.” *Id.* at 1, citing *State ex rel. Hildreth v. Larose*, 2023-Ohio-3667, ¶ 17. The Attorney General concluded that “in our time of heightened polarization and partisanship, whether the title of a proposed amendment fairly or truthfully summarizes the proposal takes on even greater importance to voters asked to sign a petition.” *Id.* at 2. “At least on the formal ballot, the language should be as neutral as possible. This office will take a skeptical view of such efforts in its reviews, regardless of which political tribe may be offering its proposal to the sovereign people.” *Id.* (emphases omitted).

On February 1, 2024, Relators filed a complaint in mandamus against the Attorney General, requesting that this Court “direct[] [the Attorney General] to certify the proposed amendment’s summary as a fair and truthful statement of the proposed amendment and forward the petition to the Ballot Board.” Compl. at Prayer for Relief. The Complaint asserts that the Attorney General lacks the statutory authority to review the title of a proposed constitutional amendment to determine whether it is a fair and truthful summary of the amendment. *See* Compl. ¶¶ 29-38. The Complaint also asserts that, even if the Attorney General does have authority to review the title, “his stated reasons for rejection of the title are incorrect both factually and legally, and his rejection is an abuse of discretion and/or contrary to law.” *Id.* ¶ 41.

Relators also sought to expedite the case. Relators’ Mot. for Expedited Scheduling Order (Feb. 1, 2024). The Court denied Relators’ motion to expedite. Entry (Feb. 8, 2024).

STANDARD OF REVIEW

I. Motions to dismiss mandamus complaints

A motion to dismiss under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted challenges the sufficiency of the complaint itself, not any evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. When considering a Civ.R. 12(B)(6) motion, courts accept the factual allegations of the complaint as true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, conclusory allegations are insufficient to withstand a motion to dismiss. *Id.* at 193. This Court grants motions to dismiss where a mandamus complaint is legally insufficient to establish that the relator is entitled to mandamus relief on the facts alleged. *See, e.g., State ex rel. Evans v. Tieman*, 157 Ohio St. 3d 99, 2019-Ohio-2411, 131 N.E.3d 930, ¶ 11.

II. Mandamus actions under R.C. 3519.01

Mandamus is one of the “extraordinary remedies, to be issued with great caution and discretion and only when the way is clear.” *State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 15, 368 N.E.2d 838 (1977). To be entitled to a writ of mandamus, relators generally must establish “(1) a clear legal right to the requested relief, (2) a clear legal duty on the [respondent’s] part to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. DeBlase v. Ohio Ballot Board*, 2023-Ohio-1823, ¶ 15, citing *State ex. rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397, ¶ 11. In mandamus actions challenging decisions of the Ohio Ballot Board or the Secretary of State under R.C. 3519.01, “the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159

Ohio St.3d 568, 2020-Ohio-1459, 152 N.E.3d 267, ¶ 14; *see also DeBlase* at ¶ 15; *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, ¶ 30. The abuse-of-discretion standard applies equally to the Attorney General’s fair-and-truthful determination under the same statute.

Relators do not allege that the Attorney General engaged in fraud or corruption. *See, e.g.*, Compl. ¶ 41 (alleging that the Attorney General abused his discretion and/or acted contrary to law). Accordingly, his fair-and-truthful determination cannot be disturbed unless the Court determines that he abused his discretion or disregarded an applicable legal provision. “An abuse of discretion connotes an unreasonable, arbitrary, or unconscionable attitude.” *DeBlase* ¶ 27. If the record permits multiple conclusions on a fair-and-truthful review, mere disagreement with the Attorney General’s review is not sufficient for a writ to issue. *Cf. State ex rel. Portage Lakes Educ. Ass’n v. State Empl. Rels. Bd.*, 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853, ¶ 41 (“[W]e will not substitute our judgment for that of a board of elections if there is conflicting evidence on an issue.”). Indeed, the Attorney General does not abuse his discretion so long as some evidence supports his fair-and-truthful determination. *Cf. State ex rel. Schaengold v. Ohio Pub. Empl. Ret. Sys.*, 114 Ohio St.3d 147, 2007-Ohio-3760, 870 N.E.2d 719, ¶ 19.

ARGUMENT

- I. **The Attorney General may review the title of a proposed constitutional amendment to determine whether it is a fair and truthful summary of the amendment.**
 - A. **The plain text of R.C. 3519.01(A) shows that the Attorney General may review a title to determine whether it is a “fair and truthful” summary of the proposed amendment.**

Based on the plain text of R.C. 3519.01(A), the Attorney General may review a proposed title to determine whether it is a fair and truthful summary. R.C. 3519.01(A) reads, in relevant part:

Whoever seeks to propose a law or constitutional amendment by initiative petition shall, . . . *submit the proposed law or constitutional amendment and a summary of it to the attorney general for examination.* Within ten days after the receipt of the written petition and the summary of it, the attorney general shall conduct an examination of the summary. If, in the opinion of the attorney general, the summary is *a fair and truthful statement of the proposed law or constitutional amendment*, the attorney general shall so certify and then forward the submitted petition to the Ohio ballot board for its approval

(Emphases added.) R.C. 3519.01(A).

Thus, Ohio law directs proponents of a constitutional amendment to submit “the proposed law or constitutional amendment” and “a summary of it to the attorney general for examination.” R.C. 3519.01(A). By its plain terms, R.C. 3519.01(A) contemplates the submission of two items, and two items only, to the Attorney General: (1) the proposed law or constitutional amendment, and (2) a summary of the proposed law or constitutional amendment.¹ *Id.*

The Attorney General reviews just one of the two items submitted under R.C. 3519.01(A): the summary of the proposed law or constitutional amendment. He must determine whether the summary is “a fair and truthful statement of the proposed law or constitutional amendment.” R.C. 3519.01(A). “This factual determination is the extent of the role and authority of the Attorney General.” *State ex rel. Barren v. Brown*, 51 Ohio St.2d 169, 171, 365 N.E.2d 887 (1977).

R.C. 3519.01 does not define the word “summary.” Nor does any other relevant provision of Chapter 3519. In these circumstances, this Court “consider[s] the dictionary definition of the term.” *Stewart v. Vivian*, 151 Ohio St. 3d 574, 2017-Ohio-7526, 91 N.E.3d 716, ¶ 26. Merriam-Webster’s defines “summary” as “an abstract, abridgment, or compendium.” Merriam-Webster’s Collegiate Dictionary 1250 (2003). Relatedly, an “abstract” is “something that summarizes or concentrates the essentials of a larger thing or several things.” *Id.* at 5. These commonsense

¹ There is also a 1,000-signature requirement, which is not at issue in this case. R.C. 3519.01(A).

definitions underscore that the title of a proposed constitutional amendment is part of the summary—indeed, the most important part—as the title “concentrates the essentials” of the proposed amendment in the most prominent and immediately accessible fashion. *Id.*

R.C. 3519.01’s use of “summary” to include title fits with these commonsense definitions. As discussed above, by its plain terms, everything submitted as part of the written petition falls into one of two categories: (1) the text of the proposed amendment, or (2) the “summary of it.” R.C. 3519.01(A); *see, e.g.*, Compl. Ex. 8 (petition submitted on Dec. 19, 2023). The proposed title of a constitutional amendment is not the text of the proposed amendment. Thus, the title counts as part of the summary of the proposed amendment.

Whether the title is part of R.C. 3519.01(A)’s summary is an issue of first impression for this Court. But this Court’s case law (old and new) confirms that summary includes title in R.C. 3519.01(A). This Court has defined “summary” relative to an initiated petition as “a short, concise summing up,” which properly advises potential signers of a proposed measure’s “character and . . . purport.” *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24, 27-28, 176 N.E. 664 (1931). The title is arguably the *most* important part of the summary because it most clearly “advise[s] those who are asked to either sign the petition or to support the amendment at the polls of the character and of purport of the amendments without the necessity of perusing them at length.” *See id.*

Recent authority from the Court confirms the same. “A title ‘provides notice of the proposal to signers of an initiative petition. More so than the text, the title immediately alerts signers to the nature of the proposed legislation.’” *Hildreth*, 2023-Ohio-3667, at ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597, 575 N.E.2d 835 (1991) (considering a petition for a proposed ordinance). Thus, “[t]here is no question that the title of a

proposed ordinance is material to a petition.”² *Id.* Under the plain language of R.C. 3519.01(A) and this Court’s case law, the Attorney General may ensure that a title is a fair and truthful summary of a proposed amendment.

Here, the Attorney General remained well within his statutory authority under R.C. 3519.01(A). Relators’ submission included the requisite components: (1) the text of the proposed constitutional amendment, Compl. Ex. 11 at 8-14; and (2) a summary of the amendment, *id.* at 1-6. The Attorney General did not—and Relators do not allege otherwise—pass on the truthfulness of the proposed constitutional amendment. Rather, he judged that the summary, which included the title “Ohio Voters Bill of Rights,” was misleading.³

Relators say that they did not submit the title “Ohio Voters Bill of Rights” as part of the summary. But they also do not contend that the title “Ohio Voters Bill of Rights” is part of the other component of a submission under R.C. 3519.01(A)—that is, the text of the proposed constitutional amendment. Rather, Relators contend that the title is a third and separate component. And according to Relators, this third component cannot be reviewed under R.C. 3519.01(A). But Relators point to no language that allows them to submit an unreviewable title to the Attorney General under R.C. 3519.01(A). The statute’s plain text calls for the proposed

² This is not to say that a summary is *no more than* the title. Rather, title is included within the General Assembly’s use of “summary” in R.C. 3519.01(A). Again, the ordinary meaning of “summary” as a shortened version (e.g., abstract, abridgment) of a larger work that “concentrates the essentials” fits with R.C. 3519.01(A)’s use of “summary” to include everything submitted for review to the Attorney General that is not the text of the proposed constitutional amendment. R.C. 3519.01(A); Merriam-Webster’s Collegiate Dictionary at 5, 1250 (2003).

³ In addition, the Attorney General reasonably concluded that the title formed part of the summary because Relators included the title with the summary. Compl. Ex. 11 at 1. The title appears on the same page as the rest of the summary and pointedly *does not* recur on the proposed amendment’s text. *Compare id.* at 1-6 (summary), *with id.* at 8-14 (proposed amendment). Relators’ including the title with the summary and excluding it from the other components of their submission is an additional reason why the Attorney General reasonably concluded that the title formed part of the summary and reviewed it under R.C. 3519.01(A).

constitutional amendment itself and the summary of it. Relators' attempt to create a third submission component under R.C. 3519.01(A) flouts the plain language of the statute and cannot serve as the basis for relief.

B. Even if this Court determines that R.C. 3519.01(A) is ambiguous, statutory interpretation confirms that the Attorney General may review the title.

As discussed above, R.C. 3519.01(A) is unambiguous because (1) the statute makes clear that “summary” must include all summative language that is not the text of the proposed amendment, and (2) the use of “summary” to include the title (as well as any other words that attempt to sum up concisely what the proposed amendment says) comports with the ordinary meaning of “summary” and this Court’s case law. *Supra* Section I.A. However, even if this Court determines that R.C. 3519.01(A) is ambiguous, statutory interpretation establishes that the Attorney General may review the title of a proposed amendment.

1. Relators incorrectly rely on R.C. 3519.05, which they also misread.

Relators’ “plain-text theory” does not hold water. Relators contend, not that R.C. 3519.01(A) is ambiguous, but rather that the plain text unambiguously supports their theory that a proposed title is unreviewable. Compl. ¶ 30. But this plain-text theory is not actually a plain-text argument based on the governing statute—R.C. 3519.01(A). Instead, Relators’ “plain text” is a separate statute—R.C. 3519.05. *See, e.g.*, Compl. ¶ 16 (“Section 3519.05 of the Ohio Revised Code establishes that the title and summary are separate statutory requirements.”). That focus has no place in an argument that R.C. 3519.01(A) is unambiguous. If the governing statute is unambiguous, this Court does not look beyond the governing statute itself. *See, e.g., Symmes Twp. Bd. of Trs. v. Smyth*, 87 Ohio St.3d 549, 553, 721 N.E.2d 1057 (2000) (Emphasis added.) (“When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation.”). Only when the Court

determines that the statute is ambiguous does the Court consider “laws upon the same or similar subjects.” *Id.* at 554; *see also Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 9, quoting *Black-Clawson Co. v. Evatt*, 139 Ohio St. 100, 104, 38 N.E.2d 403 (1941) (in determining whether a statute is unambiguous, the Court “focus[es] on everything within ‘the four corners of the enactment’”).

In any event, Relators’ interpretation of R.C. 3519.05 is incorrect for at least two reasons. First, Relators’ interpretation conflicts with the plain language of R.C. 3519.01(A). As discussed above, R.C. 3519.01(A) contemplates that proponents submit two categories of material as part of a written petition: (1) the “proposed law or constitutional amendment” and (2) “a summary of it.” R.C. 3519.01(A). Necessarily, the Attorney General may review any summary language—whether in a title or in a longer form—because this summary language is not part of the “proposed law or constitutional amendment.” R.C. 3519.01(A).

Second, Relators misread R.C. 3519.05 by neglecting the statute’s stated purpose, which is to prescribe the “form of petition.” Unlike R.C. 3519.01(A), R.C. 3519.05 does not govern the Attorney General’s certification authority. Rather, R.C. 3519.05 sets forth, in granular detail, the form of “each part of the petition.” R.C. 3519.05(A). So while R.C. 3519.01(A), in establishing the reviewing authority of the Attorney General, reduces the written petition to two general categories—(1) the text of the proposed amendment and (2) any language summing up the amendment—R.C. 3519.05 breaks down these general categories into various subparts. Thus, for example, the “title,” the word “amendment,” “the names and addresses of the committee,” the “notice,” and the statement of the circulator are all distinct subparts of the larger petition. R.C. 3519.05(A); *see, e.g.,* Compl. Ex. 11 (petition submitted on Jan. 16, 2024). Thus, R.C. 3519.05 uses the words “title” and “summary” as distinct subparts of the larger “petition” because its

purpose is to prescribe the petition’s granular form. R.C. 3519.05(A). But the fact that A (the title) and B (the longer summary) are both subparts of C (the petition) does not mean that A cannot also be included within B. Relators’ statutory theory rests on a category mistake.

2. If this Court determines that R.C. 3519.01(A) is ambiguous, every interpretative analysis confirms that the Attorney General may review the title.

As discussed above, this Court should not use R.C. 3519.05 to interpret R.C. 3519.01(A) because R.C. 3519.01(A) is unambiguous. But even if the Court determines that R.C. 3519.01(A) is ambiguous, every tool of statutory interpretation establishes that the Attorney General may review a title to determine whether it is fair and truthful. “[I]nquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49” is therefore appropriate. *See Vivian*, 2017-Ohio-7526, at ¶ 30; *see also Symmes Twp. Bd. of Trs.*, 87 Ohio St. 3d at 553. Among other things, this Court may consider the “object sought to be attained” or the “consequences of a particular construction.” R.C. 1.49.

a. R.C. 3519.01(A)’s purpose establishes that the Attorney General may review the title.

The purpose of the Attorney General’s certification authority is to ensure that proponents provide “a fair and truthful statement of the proposed law or constitutional amendment.” R.C. 3519.01(A). As with the title of a proposed ordinance, the title of a proposed constitutional amendment “provides notice of the proposal to signers of an initiative petition.” *Hildreth*, 2023-Ohio-3667, ¶ 17, quoting *Esch*, 61 Ohio St.3d at 597. And “[m]ore so than the text, the title immediately alerts signers to the nature of the proposed legislation.” *Id.*, quoting *Esch*, 61 Ohio St.3d at 597.

Relators’ blinkered reading of R.C. 3519.01(A) would entirely frustrate the statute’s purpose. Relators’ Complaint lets the cat out of the bag: their theory is that no title need *ever* be

submitted to the Attorney General to determine whether it is fair and truthful. Compl. ¶¶ 15, 34. Indeed, under Relators' theory, a title is unreviewable. No one but the proponents themselves determine whether a title is a fair and truthful summary of a proposed constitutional amendment.⁴

“A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored.” Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). The Attorney General's interpretation of R.C. 3519.01(A)'s certification requirement is not only a “permissible interpretation”—it is the best reading of the statute because it also furthers the statute's purpose. By contrast, Relators' interpretation makes mincemeat of R.C. 3519.01(A)'s certification requirement. The Attorney General determining whether language summarizing a proposed constitutional amendment is “fair and truthful” is Ohio's only backstop to highly misleading titles that do the exact opposite of fairly summarizing the text of a proposed amendment. And Relators' interpretation is too cute by half. Under Relators' theory, proponents could add summary language that is not listed as the official “summary” and therefore not reviewable. For example, proponents could distinguish between an “executive summary” and R.C. 3519.01(A)'s “summary,” the latter being reviewable, the former not. All this fundamentally undermines the “object sought to be attained” through the Attorney General's statutory certification authority. R.C. 1.49(A). Relators' interpretation should be rejected because it obstructs R.C. 3519.01(A)'s purpose.⁵ See Scalia & Garner, *Reading Law*, at 63.

⁴ Relators inaptly assert that “the Secretary of State is ultimately responsible for prescribing the title that appears on the ballot[.]” Compl. ¶ 34, citing R.C. 3519.05. But R.C. 3519.05 does not give the Secretary any authority to certify whether a title is fair and truthful, nor does Article II, Section 1g of the Ohio Constitution. *Cf. State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 17, 368 N.E.2d 838 (1977) (referring to “the ministerial duty imposed upon the Secretary of State to place the proposed amendment on the ballot”).

⁵ Election laws in other States also support interpreting R.C. 3519.01(A) as allowing the Attorney General to review the title of a proposed constitutional amendment. California's Elections Code gives its attorney general the responsibility not simply to review the “titles and summaries” of

b. Relators’ interpretation of R.C. 3519.01(A) would have absurd, damaging consequences.

Under Relators’ statutory interpretation, proponents trying to garner as much support as possible could submit highly misleading titles like, “All Ohioans to receive a million dollars if amendment passes,” or “This amendment will ensure that Ohio continues to have NFL football teams.” Under Relators’ theory, the Attorney General would lack the statutory authority to reject any of these titles as not fair and truthful. This statutory reading is absurd—and would have damaging consequences on the electorate. It should be rejected for those reasons alone. “R.C. 1.47(C) establishes a presumption that in enacting a statute, ‘[a] just and reasonable result is intended.’” *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, 29 N.E.3d 939, ¶ 29, quoting R.C. 1.47(C). This Court has “therefore recognized that ‘statutes will be construed to avoid unreasonable or absurd consequences.’” *Id.*, quoting *State v. Wells*, 91 Ohio St.3d 32, 34, 740 N.E.2d 1097 (2001).⁶

Regardless of what one thinks of Relators’ current proposed title, the consequences of their statutory theory are far-reaching. The above examples of possible, highly misleading titles make

initiatives submitted to voters, but to draft them. *Becerra v. Superior Court*, 19 Cal. App. 5th 967, 979, 228 Cal. Rptr.3d 327 (Cal. Ct. App. 2017). Even so, California courts still review to determine whether “the Attorney General’s work product is inaccurate, argumentative or misleading, or otherwise beyond the bounds of the extensive discretion reposed in that office in fashioning a title and summary.” *Id.* at 979-80. The “main purpose” of these requirements is “to avoid misleading the public with inaccurate information.” *Id.* at 975 (quotations omitted). And relevant to interpreting “summary” in R.C. 3519.01(A), California’s Elections Code “defines the circulating title and summary as a single document.” *Id.* at 976. In New York, regarding proposed amendments to the state constitution that are submitted to a statewide vote, the state board of elections—not the proponents of the new amendment—prepares “an abstract” of the amendment that includes the title. N.Y. Elec. Law § 4-108(1)-(2). Moreover, the State’s attorney general “shall advise in the preparation of such form of submission,” including the title. N.Y. Elec. Law § 4-108(3).

⁶ Importantly, even under a strict textualist approach, “[s]ome outcome-pertinent consequences—what might be called textual consequences—are relevant to a sound textual decision” Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 352 (2012).

clear Relators' misplaced focus on R.C. 3519.05. Each of the above titles is "briefly expressed" and could be "printed in eight-point type," thus easily meeting the title-related "requirements" in R.C. 3519.05(A). This underscores that R.C. 3519.05's purpose is merely to set forth, in granular detail, the many subparts of the "form of petition." R.C. 3519.05. Because its purpose is not to govern certification for fairness and truthfulness, R.C. 3519.05 does not provide certification safeguards or cabin the Attorney General's certification authority.

This Court has long been concerned with the dangers of inaccurate summary language on petitions and ballots. *See, e.g., State ex rel. Williams v. Brown*, 52 Ohio St. 2d 13, 20, 368 N.E.2d 838 (1977) (considering whether "the language in the present caption on the ballot [can] be viewed as argumentative, misleading and coercive"); *State ex rel. Foreman v. Brown*, 10 Ohio St.2d 139, 151, 226 N.E.2d 116 (1967) (considering whether statements or omissions in the condensed text of a proposed constitutional amendment would "interfere with a full and fair expression of the voters' choice"); *Thraikill v. Smith*, 106 Ohio St. 1, 11, 138 N.E. 532 (1922) ("[I]f this court should be convinced that the matter printed upon the ballot[] . . . would in fact mislead, or deceive, or defraud the voters, we would not hesitate to enjoin the submission.").

Beck v. Cincinnati, 162 Ohio St. 473, 124 N.E.2d 120 (1955), is illustrative. *Beck* involved the following language, which appeared in the caption of the ballot: "If levy passes, there will be no city income tax in 1955 or 1956." *Id.* at 474. The City of Cincinnati relied on R.C. 3505.06, which provided that a ballot shall contain "a brief title descriptive of the question or issue to which it pertains." *Id.* However, this Court found "cogent" the lower court's analysis, which reasoned that "[i]f argumentation, promises, misrepresentations or coercive statements should be permitted on the face of the ballot, one could not predict the limits of such practice and the confusion which may ensue. Certainly if the proponent of such issue be permitted to introduce such material, the

opponent should have the same privilege.” *Id.* at 475. The court concluded that “the violative procedure in this instance is of such substantial nature as to void the results of the election” because “[i]t is a matter of common knowledge that the majority of electors are not property holders and therefore undoubtedly were persuaded by the unauthorized phrase at issue.” *Id.* at 476.

Once again, based on any interpretive methodology—textualist, consequentialist, or anything in between—Relators cannot meet the exacting standards for mandamus relief. The Attorney General did not engage in “clear disregard of applicable legal provisions” in declining to certify Relators’ summary based on the title. *Ohioans for Secure & Fair Elections*, 159 Ohio St.3d 568, at ¶ 14. Relators cannot demonstrate by clear and convincing evidence that the Attorney General has a clear legal duty to certify their summary or that they have a clear legal right to their requested relief. *See Evans*, 157 Ohio St. 3d 99, at ¶ 11; *DeBlase*, 2023-Ohio-1823, at ¶ 15.

II. The Attorney General did not abuse his discretion because the summary was not a fair and truthful statement of the proposed constitutional amendment.

The Attorney General reasonably concluded that the title “Ohio Voters Bill of Rights” did not fairly or truthfully summarize the proposed amendment. His determination rested on two independently sufficient grounds. First, the Attorney General determined that the title falsely implied that the proposed amendment would entitle voters to certain benefits. In fact, the amendment vested elections officials with discretion to offer certain voting conveniences. Second, the Attorney General found that the title “Ohio Voters Bill of Rights” misleads because it does not comport with the common understanding of a “Bill of Rights.”

A. The summary was not fair and truthful because the title falsely implied that the amendment gave voters enforceable rights.

First, the Attorney General correctly determined that the title “Ohio Voters Bill of Rights” creates an expectation that the proposed amendment would, if passed, create a “legitimate claim

of entitlement” to a benefit. *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972). Indeed, Ohio and federal law use the term “right” to describe something that a person may enforce or protect. *See, e.g.*, R.C. 2505.02(A)(1) (defining a “substantial right” as “a right that the United State Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect”); 52 U.S.C. §§ 10501(a), 10504 (prohibiting literacy or character tests that deny “the right to vote” and giving the Attorney General the authority to enforce the prohibition). This, of course, contrasts with a discretionary act, which does not create any claim or entitlement. A “benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756, 125 S. Ct. 2796, 162 L.Ed.2d 658 (2005).

The title “Ohio Voters Bill of Rights” leads voters to believe that the proposed amendment confers enforceable rights upon them. But the proposed amendment leaves crucial matters to the discretion of elections officials. For example, the proposed amendment gives elections officials the “discretion to place multiple secure drop boxes throughout their counties for the return of absentee ballots, and to designate multiple locations throughout their counties for early in person voting.” Proposed Amendment 1(D). This provision confers no “rights” upon voters. They do not have the right to demand multiple drop boxes in their county; indeed, they do not have the right to a drop box at all. *See id.*; R.C. 3509.05(C)(2)-(3) (allowing but not requiring boards of elections to place a “secure receptacle outside the office of the board . . . for the purpose of receiving absent voter’s ballots”). This mismatch between the amendment’s title and contents is particularly misleading in the area of drop boxes. Three recent lawsuits tried—and failed—to create an enforceable right to multiple drop boxes. *See Ne. Ohio Coal. for the Homeless v. LaRose*, No. 1:23-cv-26, 2024 U.S. Dist. LEXIS 3262, at *41-43 (N.D. Ohio Jan. 8, 2024) (rejecting

constitutional challenge to statute limiting counties to one drop box); *A. Philip Randolph Inst. v. LaRose*, 831 F. App'x 188, 190 (6th Cir. 2020) (staying injunction of directive limiting counties to one drop box); *Ohio Democratic Party v. LaRose*, 10th Dist. Franklin Nos. 20AP-432, 20AP-439, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 1 (reversing injunction of directive limiting counties to one drop box). The amendment's title promises enforceable rights, but it fails to deliver any right to drop boxes at all. Accordingly, the Attorney General correctly concluded that the title was misleading.

B. The summary was not fair and truthful because it used a title whose common definition did not match the amendment's actual contents.

Second, the Attorney General correctly concluded that the title "Ohio Voters Bill of Rights" does not fairly or truthfully summarize the common understanding of a "Bill of Rights." First, the title uses the language of individual rights for an amendment that largely regulates the procedural operations of state government. And second, the title invokes fundamental and inalienable rights, but the underlying amendment describes specific voter actions, not rights. Either defect, standing alone, would render the title misleading.

A "Bill of Rights" articulates specific, discrete rights that may be enforced by individuals against the government. It summarizes "those rights and liberties considered essential to a people or group of people." *Bill of rights*, American Heritage Dictionary (5th ed. 2022). Importantly, a "Bill of Rights" describes *individual* rights. It sets forth the rights that the government cannot intrude upon; it does not tell the government how the government must organize itself. As one federal court aptly put it, the "Bill of Rights enshrines negative liberties. It directs what government may not do its citizens, rather than what it must do for them." *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 645 (7th Cir. 2013).

For example, the people of Ohio set aside the very first article of their Constitution as their Bill of Rights. Ohio Constitution, Article I; *Hart v. Andrews*, 103 Ohio St. 218, 225, 132 N.E. 846 (1921) (“We have a ‘Bill of Rights,’ in which individual inalienable rights of man are declared and defined”); *Cincinnati v. Correll*, 141 Ohio St. 535, 538, 49 N.E.2d 412 (1943) (“Article I of the Constitution, known as the Bill of Rights, contains twenty sections defining rights of the people, collectively and individually, and guaranteeing the enjoyment of such rights.”). Each section of Ohio’s Bill of Rights describes an individual right or set of rights that an Ohioan may enforce against the government. But the Bill of Rights does *not* tell the government what it must do to preserve those rights. For example, the Bill of Rights confirms the “privilege of the writ of habeas corpus.” Ohio Constitution, Article I, Section 8. But the Bill of Rights does not tell the courts how to adjudicate habeas corpus actions. *See* R.C. Chapter 2725. Similarly, the Bill of Rights enshrines the right to just compensation for the taking of private property for public use. Ohio Constitution, Article I, Section 19. But it does not tell the government what takings procedures it must follow. *See* R.C. Chapter 163.

A reader of the title “Ohio Voters Bill of Rights” would expect to find individual rights contained within the proposed amendment. And to be sure, the proposed amendment does contain such language. *See, e.g.*, Proposed Amendment at 1(J). But the bulk of the amendment has nothing to do with voter’s rights; rather, it details elections procedures the government must implement. Indeed, some of the amendment’s provisions simply constitutionalize existing portions of Title 35, which regulates the State’s conduct of its elections. Section 1(C)(1) of the proposed amendment, for example, constitutionalizes R.C. 3501.32, which sets forth election day voting hours. And Section 1(E) constitutionalizes various provisions of Chapter 3509, including R.C. 3509.01 (allowing any voter to vote by absentee ballot), R.C. 3509.03 (requiring voters to submit

identification when applying for an absentee ballot), and R.C. 3509.04 (requiring boards to notify voters about insufficient applications for absentee ballots). Constitutionalizing these elections procedures does not change what they are. They are election-administration statutes, not individual rights.

The amendment also seeks to introduce new elections procedures, including automatic voter registration, new photo-identification procedures, and online absentee ballot applications. *See* Proposed Amendment at 1(C)(4), (C)(8), (E). These provisions, too, detail the processes the government must follow. As to photo identification, for example, the amendment sets forth the types of photo identification that must be accepted at the polls and a provision allowing voters to submit a declaration in lieu of photo identification. *See id.* at 1(C)(8)(a)-(b). The amendment provides a detailed procedure for election officials to review the voter's declaration, notify the voter of any deficiencies in the declaration, and permit the voter to cure the declaration. *Id.* at 1(C)(8)(b)-(c). Again, the proposed amendment describes the process of election administration, not individual rights.

If election-day voting hours or the "verification process" for declarations submitted in lieu of photo identification can be part of a "Bill of Rights," *all* of the election procedures set forth in Title 35 would qualify as well. That is, under Relators' construction of a "Bill of Rights," every government process would create a corresponding individual right. But as commonly understood, a "Bill of Rights" is limited to "those rights and liberties considered essential to a people or group of people." Bill of rights, American Heritage Dictionary. Because most of the proposed amendment describes election administration, not individual rights, the Attorney General correctly concluded that "Ohio Voters Bill of Rights" did not fairly or truthfully summarize the amendment's contents.

Additionally, the amendment's title promises a set of *fundamental* rights, but does not deliver them in the amendment's contents. By its nature, a "Bill of Rights" describes fundamental rights. In other words, a "Bill of Rights" describes those rights that a person need not *do anything* to enjoy. *See Hart*, 103 Ohio St. at 225 ("We have a 'Bill of Rights,' in which individual inalienable rights of man are declared and defined . . ."). Again, Article I of Ohio's Constitution, our Bill of Rights, exemplifies this characteristic. Article I, Section 1, for example, begins with a description of our inalienable rights: "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety." Likewise, an Ohioan need not do, say, or believe anything to enjoy her right to assemble, to bear arms, to be tried by a jury, to speak freely, to be free from unreasonable searches or seizures, or to make and carry out her own reproductive decisions. Ohio Constitution, Article I, Sections 3, 4, 5, 11, 14, 22. As used in Ohio, a "Bill of Rights" means fundamental and inalienable rights.

Accordingly, a reader of the title "Ohio Voters Bill of Rights" would expect to find fundamental and inalienable rights there. Stated differently, a "Voters Bill of Rights" should describe rights that exist independently of any duty or obligation on the voter's part. Instead, the reader finds in the proposed amendment certain actions that voters can take to satisfy voting requirements. For example, the proposed amendment states that voters who are not registered to vote in their county of residence can submit proof of identity and residential address to satisfy the requirements to cast a ballot. Amendment at 1(C)(6). Unlike a fundamental right described in a bill of rights, a voter must first present documentation to claim the right set forth in Section 1(C)(6) of the proposed amendment. Similarly, Section 1(E) describes the actions a voter must take—providing identification—to secure an absentee ballot. Again, Section 1(E) does not describe a

fundamental right, but an action that a voter may take to satisfy the State’s absentee-voting requirements.

A “Bill of Rights” does not require a person to do anything to claim the underlying right. A person has the rights described in a “Bill of Rights” because they are fundamental to human existence. The “Ohio Voters Bill of Rights,” on the other hand, repeatedly requires voters to follow certain steps to claim their right to vote. This makes sense. After all, the proposed amendment is an *election-administration* amendment, not a statement of fundamental and individual rights. The title “Bill of Rights” simply does not fit the contents of the proposed amendment. The Attorney General did not abuse his discretion by concluding that this title would mislead readers as to the content of the amendment.

C. Any argument that the summary fairly and truthfully summarizes portions of the proposed amendment does not save Relators’ claim.

Relators, no doubt, will point out that the proposed amendment does include some individual, fundamental, and enforceable rights and therefore constitutes an “Ohio Voters Bill of Rights.” For example, the amendment states that “[a]ny person who is a citizen of the United States, at least 18 years of age by the date of the election, a resident of Ohio, and registered in their county of residence . . . has the qualifications of an elector and is entitled to vote at all elections.” Proposed Amendment Section 1(A). This right to vote, Relators will likely argue, fits within the commonly understood definition of a “Bill of Rights.”

The Attorney General does not dispute that portions of the proposed amendment could fit within a “Bill of Rights.” But that is not the standard that applies to his fair-and-truthful review under R.C. 3519.01(A). This Court has long held that “strict compliance is the default for election laws and that that standard is lowered only when the statutory provision at issue expressly states that it is.” *State ex rel. Linnabery v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940,

¶ 40. R.C. 3519.01(A) requires the Attorney General to determine if “the summary is a fair and truthful statement of the proposed . . . constitutional amendment,” and if so, to certify it. The statute does not permit the Attorney General to certify partially fair and truthful summaries. Nor does the statute allow certification of summaries that describe portions of the constitutional amendment truthfully while misstating others. The statute requires the Attorney General to certify a summary when it is “a fair and truthful statement of the proposed . . . constitutional amendment.” R.C. 3519.01(A). As set forth above, the Attorney General correctly concluded that the summary misstated numerous provisions included in the proposed amendment. The fact that the summary fairly and truthfully stated *other* provisions in the proposed amendment is of no moment.

The Attorney General did not abuse his discretion when he determined that Relators’ summary did not fairly and truthfully summarize their proposed amendment.

III. Relators’ request for relief is not only groundless, but also improper.

Finally, even if this Court determined that the Attorney General may not review the title of a proposed constitutional amendment, the proper remedy in mandamus would not be automatic certification of the summary. R.C. 3519.01 does not provide that, at the expiration of the 10-day period of review, a summary is automatically certified as fair and truthful simply by the passage of time. Thus, Relators’ request that this Court “direct[] [the Attorney General] to certify the proposed amendment’s summary as a fair and truthful statement of the proposed amendment and forward the petition to the Ballot Board” is misplaced. Compl. at Prayer for Relief. The Attorney General did not reach the balance of the summary because he declined to certify based on the title alone. Compl. Ex. 12 at 3. Thus, the only proper mandamus request Relators can make at this time is that the Attorney General review the summary, not including the title, to determine whether the longform summary is a “fair and truthful statement of the . . . constitutional amendment.” R.C.

3519.01(A). And for all the reasons discussed above, Relators fall far short of demonstrating that they are entitled to any mandamus relief at all.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court dismiss Relators' Complaint.

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General

/s/ Andrew D. McCartney

ANDREW D. McCARTNEY (0099853)*

**Counsel of Record*

JULIE M. PFEIFFER (0069762)

ANN YACKSHAW (0090623)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Andrew.McCartney@OhioAGO.gov

Julie.Pfeiffer@OhioAGO.gov

Ann.Yackshaw@OhioAGO.gov

*Counsel for Respondent Dave Yost, Ohio Attorney
General*

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, the foregoing was filed electronically using the Court's e-filing system and served via electronic mail on the following:

Donald J. McTigue
Ben Stafford
Jyoti Jasrasaria
Qizhou Ge
dmctigue@electionlawgroup.com
bstafford@elias.law
jjasrasaria@elias.law
age@elias.law

Counsel for Relators

/s/ Andrew D. McCartney

ANDREW D. McCARTNEY (0099853)

Assistant Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM