IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* William Dudley
6389 Pinehurst Ln.
Mason, OH 45040

State of Ohio *ex rel.* Terence Brennan
6219 Orchard Ln.
Cincinnati, OH 45213

State of Ohio *ex rel.* Michael Harrison
4185 Ledgewater Dr.
Mogadore, OH 44260

State of Ohio *ex rel.* Pamela Simmons
2581 E. 5th Ave.
Columbus, OH 43219

and

State of Ohio *ex rel.* Deidra Reese
5882 Warner Meadows Dr.
Westerville, OH 43081

Relators,

v.

Dave Yost, in his official capacity as Ohio Attorney General
30 E. Broad St., 16th Floor
Columbus, OH 43215

Respondent.

Case No. 2024-0161

Original Action in Mandamus and Under Section 3519.01(C) of the Ohio Revised Code

RELATORS' REPLY BRIEF

Donald J. McTigue (0022849)
Counsel of Record
MCTIGUE & COLOMBO, LLC
545 East Town Street
Columbus, OH 43215
(614) 263-7000
dmctigue@electionlawgroup.com

Ben Stafford (PHV 25433-2024)
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0176
bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2024)
Qizhou Ge (PHV 27430-2024)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, DC 20001
(202) 968-4490
jjasrasaria@elias.law
age@elias.law

Counsel for Relators

Dave Yost (0056290)
OHIO ATTORNEY GENERAL
Byers B. Emmerling (0098835)
Counsel of Record
Julie M. Pfeiffer (0069762)
Ann Yackshaw (0090623)
Stephen P. Tabatowski (0099175)
30 East Broad Street, 16th Floor
Columbus, OH 43215
(614) 466-2872
Byers.Emmerling@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Ann.Yackshaw@OhioAGO.gov
Stephen.Tabatowski@OhioAGO.gov

Counsel for Respondent

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INTRODUCTION

Stripped to its essence, the Attorney General's argument is that he is the only line of defense against the efforts of ill-intentioned petition circulators to deceive voters, and so it is good policy to afford him the power to review petition titles. But the General Assembly sets policy, this Court applies plain statutory text, and the Attorney General carries out his role as dictated by statute. The Attorney General's argument reads into the statute additional authority for himself, which cannot be squared with the carefully crafted statutory scheme setting forth the requirements of the petition process, including the Attorney General's limited role over the summary of the petition text of an amendment to be proposed by initiative petition.

After the Attorney General's certification, there are several additional steps to qualify a proposed amendment for the ballot. During the next phase of the petition process, petitioners must gather and submit signatures equivalent to 10% of the votes cast for governor in the last gubernatorial election—this cycle, more than 413,000 signatures—from at least 44 counties. The petition must contain—for the voter's review—the fair and truthful summary certified by the Attorney General, the complete text of the proposed amendment, and information about the committee representing the petitioners, in addition to a title. Before signing, the voter can also engage in a full conversation with the circulator about the petition. The petition circulator must witness each signature and attest under penalty of election falsification, a felony, that each voter signing the petition understood its contents. In other words, voters have dramatically more information before them when deciding whether to sign a petition than they do when deciding how to vote on an amendment in the voting booth. The Attorney General's apparent lack of confidence in Ohioans' ability to read and comprehend the information presented to them on the petition—other than the petition's title—is unfounded. After qualifying, the title and summary used during the petition circulation process do not automatically transfer to the ballot. The title and language

that ultimately appear on the ballot when voters decide whether to actually approve the petition are prescribed by the Secretary of State and the Ohio Ballot Board, subject to review by this Court.

At the summary certification stage, then, the Attorney General's statutory authority is narrow by design, not by error. Indeed, the General Assembly specifically sought to ensure that the Attorney General cannot block or impede the petition effort. *See Schaller v. Rogers*, 2008-Ohio-4464, ¶ 51 (10th Dist.). The Attorney General's attempt to aggrandize his authority is inconsistent with not only this legislative history and the plain text of the statute, but also Ohioans' right to direct democracy, a process that Ohioans take seriously, which "should be liberally construed to effectuate the rights reserved," *State ex rel. Hodges, v. Taft*, 64 Ohio St. 3d 1, 4 (1992), and that is subject to many checkpoints and steps, with responsibility given to many different actors.

The problem for the Attorney General is that he is not authorized to provide a "check" on the title under Ohio law, and he exceeded his authority when he rejected Relators' petition entitled the "Ohio Voters Bill of Rights." The plain text of R.C. 3519.01(A), the statutory scheme of the petition process, and the objectives of the petition process all require the conclusion that the petition title is not part of the petition summary, and the Attorney General has no authority to reject a petition over a perceived defect with the title. Because the Attorney General reviewed the summary within the allotted ten-day period and failed to identify any deficiencies with the summary, he must certify the petition. Even if the Court concludes that the Attorney General has authority to review the petition title, "Ohio Voters Bill of Rights" is fair and truthful, and the Attorney General abused his discretion in refusing to certify.

The Attorney General cannot now claim that he did not fully review the summary; that would be a clear dereliction of duty. Relators are entitled to a writ of mandamus directing the

Attorney General to certify the summary. Alternatively, if this Court finds it improper to issue a writ of mandamus requiring the Attorney General to certify, Relators are entitled to a writ directing the Attorney General to limit his review to the summary and to list all perceived deficiencies in the summary within a single ten-day period.

ARGUMENT

I. The Attorney General does not have authority to reject Relators' written petition solely on the basis of an allegedly deficient title.

As Relators set forth in their merit brief, the process of qualifying a proposed amendment for the ballot is a lengthy, multi-step process in which the Attorney General is prescribed a specific, limited role at the outset. That role is simply to conduct an examination of the summary within ten days; there is no basis for the Attorney General to decline to certify a petition *summary* based on a perceived defect with the petition *title*. The plain text of the statute, the statutory scheme of the petition process, and its underlying policy objectives all support that point.

A. The straightforward textual reading of R.C. 3519.01(A) is that the Attorney General has no authority to refuse to certify based on the title of a petition.

The plain text of Section 3519.01(A) of the Ohio Revised Code directs the Attorney General to "conduct an examination of the summary" and "certify and then forward the submitted petition to the Ohio ballot board" within ten days of submission of the proposed amendment and its summary if "the summary is a fair and truthful statement of the proposed . . . constitutional amendment." R.C. 3519.01(A). The straightforward reading of this plain text is, as it explicitly states, that the Attorney General's authority is limited to the petition summary and that he *must* certify if he finds no defects with the *summary* within his ten-day review period. *Id.*

In response, the Attorney General offers only a crabbed assumption that the petition's title is part of the summary. Resp't's Merit Br. at 5–7. Stated briefly, the Attorney General posits that the statute unambiguously states that a petition title is part of a petition summary, and thus subject

to his review, although the statute says nothing about titles at all. To describe that position is to refute it. In determining whether a statute is plain and unambiguous, this Court looks to see whether the statute "conveys a clear and definite meaning"; if so, there is no need to "resort[] to rules of statutory interpretation" because "an unambiguous statute is to be applied, not interpreted." *Jacobson v. Kaforey*, 2016-Ohio-8434, ¶ 8, quoting *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus. An unambiguous statute "means what it says" and cannot be modified by deleting or inserting words. *State v. Teamer*, 82 Ohio St. 3d 490, 491 (1998), quoting *Hakim v. Kosydar*, 49 Ohio St.2d 161, 164 (1977). The U.S. Supreme Court has also offered guidance that determining "whether a statutory term is unambiguous" cannot "turn solely on dictionary definitions of its component words" and must include "reference to the language itself," "the specific context in which that language is used," and "the broader context of the statute as a whole." *Yates v. United States*, 574 U.S. 528, 537 (2015), quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Directly contrary to his assertion that the statute is "unambiguous," the Attorney General (not Relators) is "insert[ing] a limitation not found in the text of the statute." Resp't's Merit Br. at 6–7. Section 3519.01(A) clearly directs the Attorney General to review only the summary, but the Attorney General, without any textual or other basis, argues that the summary has two components that he may review—the "body of the summary" and the "summary's title." Resp't's Merit Br. at 6–7. The Attorney General misunderstands: the title that petitioners included in their submission was the *petition* title, not the summary's title, and is an entirely separate element of the submission that serves a distinct function from the summary.

The Attorney General's argument that title must be part of the summary because it "falls . . . within the summary's ultimate purpose," Resp't's Merit Br. at 10, ignores that "title" and "summary" have different definitions and serve different functions. A title—a "distinguishing

name" or a "heading which names an act or statute," Relators' Merit Br. at 10—is a short-hand name used to *identify* the petition. A summary—an "abstract" or "short, concise summing up," *id.* at 10–11—is a detailed description that provides an overview of the *substance* of the petition. The title, which is an *optional* element of the initial written petition submission, need not (and cannot) cover every topic included in the petition, nor must it "alert[] people to the character and purport of the amendments without the necessity of reviewing the amendment further." Resp't's Merit Br. at 10 (cleaned up). If this were what was required, the General Assembly surely would have made that explicit in Section 3519.01. But the statute provides no such thing. Thus, as a matter of statutory construction (and common sense) the only reasonable conclusion is that, to the extent a petition's proponents opt to include a title with their initial written petition submission, it is merely to provide a name for easy reference to the petition. Just as the title of a book serves a different purpose and would not be mistaken by readers as part of the abstract or summary of the book, the title of the petition is not an element of the summary.[1]

Finally, in considering the Attorney General's plain language argument, it is worth underscoring that the Attorney General has *never before* rejected a petition summary because he objected to the title. Nor does the Attorney General refute the fact that he and past Attorneys General have approved several other submissions without raising any objections to similar "bill of rights" titles, including an "Ohio Voters Bill of Rights" petition in 2014. Resp't's Merit Br. at 11; Relators' Merit Br. at 16–17. The Attorney General's past practice suggests that either (1) the Attorney General does not have authority to review the title and therefore has not done so in the

[1] Although the Attorney General purports to cite definitions and "common meaning" in support of his position, he relies instead on circular dictionary definitions for "summary" ("an abstract, abridgment, or compendium") and "abstract" ("something that summarizes")—neither of which mention "title," let alone support his bald assertion that a title is part of a summary or abstract. Resp't's Merit Br. at 6, citing Merriam-Webster's Collegiate Dictionary 1250 (2003).

past, or (2) both Attorney General Yost and now-Governor Mike DeWine have rather dramatically and uniformly failed to perform their mandatory duty to review the title. The Attorney General attempts to attribute this dramatic shift to *State ex rel. Hildreth v. LaRose*, 2023-Ohio-3667, *see* Resp't's Merit Br. at 11, but *Hildreth* had nothing to do with the Attorney General's review of the summary of a proposed amendment during the pre-circulation phase. That case concerned the municipal ordinance petition process, which is governed by different statutes that assign *no* role to the Attorney General. *See Hildreth*, 2023-Ohio-3667, ¶ 14–15, citing R.C. 731.28 and 731.31. Furthermore, the statute at issue in *Hildreth explicitly required a title*. *Id. Hildreth* did not change or clarify the role of the Attorney General in the instant context, which has always been restricted to review of the summary.

Ultimately, every "textual" argument the Attorney General makes is quickly revealed to be, instead, a policy argument. At bottom, the Attorney General has decided that it would be better policy if he *did* have authority to review the title. *See* Resp't's Merit. Br. at 6–7, 9, 11–14; *see also infra* Section I.C. Even if this Court made decisions based on policy rather than statutory text, it is worth noting the consequences of embracing this position. Because the statute provides no guidance and the Attorney General has never before rejected a written petition based on its title, petition sponsors would be left to guess what he might approve. Is a truthful title one that covers all aspects of the petition, such that it would turn into a summary itself? Or, to ensure that it doesn't leave out a crucial aspect of the petition, should it always be extremely broad? Or would an extremely broad petition title then be unfair because it would not identify the scope of the amendment with specificity? Or something else?

To be sure, trying to craft a title the Attorney General would accept also makes clear that his review of the title "Ohio Voters Bill of Rights" is, at its core, an assessment of the proposed

amendment's merits. His objection is rooted in his belief that the rights listed (the fundamental right to vote, the right to in-person voting, the right to vote absentee, same-day voter registration, etc.) are not "essential" rights. As explained *infra* Section II, Relators disagree. But as a practical matter, it also bears emphasizing that Relators have absolutely no idea what title *would* satisfy the Attorney General. If the Attorney General is permitted to usurp this new role for himself, the consequence would be that petition proponents would have to collect and submit 1,000 signatures and wait ten days for the Attorney General to respond time and time again, until they finally divine a title that the Attorney General approves.[2] This is entirely contrary to what the statute is plainly devised to permit—that is, a simple and extremely limited review by the Attorney General, in a constrained period of time, to make sure that proponents are fairly and truthfully summarizing the full text of the measure, so as to not impede the people's right to engage in direct democracy. R.C. 3519.01(A); *Schaller*, 2008-Ohio-4464, at ¶ 51 (10th Dist.) (finding that the legislature imposed the ten-day window to limit the "attorney general's ability to impede the process" and unduly delay the people's exercise of their initiative power).

B. The statutory scheme of the petition process further supports the conclusion that the Attorney General has no authority over the title.

The statutory scheme laying out the process to qualify initiative petitions provides further support for the conclusion that a petition title is distinct from a petition summary. Relators' Merit Br. at 8–9. Section 3519.05, which sets forth the form requirements for an initiative petition after the Attorney General reviews the summary and submits the proposed amendment to the Ohio Ballot Board, expressly requires the petition title to appear *before* the summary and the Attorney

[2] According to historical petitions on the Attorney General's website, written petitions have been resubmitted to the Attorney General for his review upwards of nine times per petition and rejected each time. *See List of Petitions Submitted to the Attorney General's Office*, Ohio Att'y Gen, https://www.ohioattorneygeneral.gov/Legal/Ballot-Initiatives/Petitions-Submitted-to-the-Attorney-General-s-Offi (last accessed July 18, 2024).

General's certification of the summary.

> "Amendment" printed in fourteen-point boldface type shall precede the title, which shall be briefly expressed and printed in eight-point type. The summary shall then be set forth printed in ten-point type, and then shall follow the certification of the attorney general, under proper date, which shall also be printed in ten-point type. The petition shall then set forth the names and addresses of the committee of not less than three nor more than five to represent the petitioners in all matters relating to the petition or its circulation.

R.C. 3519.05. The title and summary are different elements by statute and are required to be printed in different font sizes, and the Attorney General's view that the title is part of the summary would thus lead to absurd consequences—Section 3519.01(A) would require the title to be printed in both eight-point and ten-point type.

Perhaps realizing that his argument as to Section 3519.01(A) is belied by the text of Section 3519.05, the Attorney General abandons his "common understanding" of the word "summary" when considering Section 3519.05. Resp't's Merit Br. at 7–9. Now, he reasons, title and summary are two entirely different elements that are required to be printed separately on the circulating petition. *Id.* at 7. Reading the two sections in isolation, however, makes no sense. If a title is distinct from a summary in Section 3519.05, there is no basis to conclude that "summary" unambiguously includes "title" for purposes of Section 3519.01(A).

In fact, although the Attorney General argues here that Section 3519.05 addresses a "different part[] of the petition process," Resp't's Merit Br. at 8, in a recent letter refusing to certify a different petition, he cited Section 3519.05 as "clearly set[ting] forth the form and substance that the petition must take" for his review under Section 3519.01(A).[3] Indeed, in his view, "R.C. 3519.05 is the sole and exclusive guidance on the form that a petition for constitutional amendment

[3] Letter from Dave Yost, Ohio Att'y Gen., to Mark Brown, Esq., at 2 (July 15, 2024), https://www.ohioattorneygeneral.gov/getattachment/672548a6-97ff-46e8-8796-5576b3733fe2/Untitled-Petition-for-Constitutional-Amendment.aspx.

must take," and, because Section 3519.05 requires a title, the written petition submitted to him at the pre-certification stage must include a title.[4] The Attorney General cannot have this both ways: he cannot claim both that the petition form requirements set forth in Section 3519.05 apply to the pre-certification petition submitted to him for review and that the elements set forth in R.C. 3519.05 take on a different meaning than they do under Section 3519.01(A).[5] In fact, that Section 3519.05 requires the certification of the Attorney General to be printed on the petition indicates both that not all of Section 3519.05's petition elements must be included in the initial written petition filed under 3519.01(A)—which, by definition, cannot include the Attorney General's certification—and that the later summary is the same summary contemplated under Section 3519.01(A).

Furthermore, the Attorney General's assertion that Section 3519.05 is a "different part[] of the petition process," Resp't's Merit Br. at 8, supports *Relators'* position that a title is not subject to review—and not required at all—at the pre-certification stage. Relators agree with the Attorney General that "the General Assembly's choice to distinguish between title and summary in R.C. 3519.05 indicates that R.C. 3519.01's omission of such distinctions was purposeful," Resp't's Merit Br. at 9, citing *Nacco Industries, Inc. v. Tracy*, 79 Ohio St.3d 314, 316 (1997) ("Congress is

[4] *Id.* The present case addresses the first time the Attorney General has ever rejected a petition summary because of objections to a proposed title. This new letter rejecting a different petition appears to reflect the first time that the Attorney General has ever rejected a summary because it *omits* the title required under RC 3519.05 subsequent to the Attorney General's certification.

[5] Indeed, the Attorney General's inconsistent position shows just how untenable his interpretation is. If, as he asserts here, a title is just part of a summary under Section 3519.01(A), then there is no reason that a petition in the pre-certification phase needs to include a title at all, so long as the summary itself is fair and truthful. But in his most recent rejection of another petition, he insisted that the title was a standalone requirement because, in his view, Section *3519.05's* separate title and summary requirements apply even at the pre-certification phase. The Attorney General's positions cannot be squared: he cannot simultaneously assert that a title is and is not part of the summary.

generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another."). Therefore, at the pre-certification stage, a title is completely optional, and the Attorney General does not have authority to review it or require it. Just because the statute does not explicitly provide for inclusion of information about the committee or the petition title, proponents are not precluded from including this information. Nor does proponents' choice to include this information automatically make it part of the summary. In other words, the complete omission of "title" in Section 3519.01(A) is not an opportunity for the Attorney General to seize authority over a title when one is included; the Revised Code grants only limited authority.

C. The Attorney General's policy argument fails.

Finding no strong footing in his textual arguments, the Attorney General falls back again and again throughout his brief on his overarching policy argument: that he *should* be able to review the title, for the sake of the petition process. Resp't's Merit Br. at 7, 9, 11–14. In the Attorney General's narrative, Relators—and all initiative proponents—are dishonest brokers, eager to deceive voters and mislead potential signatories about the substance of their petition. And Ohio voters, apparently, are hapless and easily hoodwinked. In his telling of the story, the Attorney General is the only hero who can save Ohio voters from being tricked into advancing absurd proposals. *See id.* at 14 ("[P]etition proponents would be licensed to mislead voters at the first step of the initiative process. In contrast, permitting review provides the only firewall against misleading titles at this stage of the initiative process; it bolsters election integrity and voter education, and deters fraud"). This characterization cannot be any further from the truth.

As an initial matter, the Attorney General's policy argument that he should be able to review the title to advance the purpose of the statute does not defeat the clear, unambiguous text of the statute setting out his limited role in the petition process. *State ex rel. Massie v. Gahanna-*

Jefferson Pub. Schools Bd. of Edn., 76 Ohio St.3d 584, 588 (1996) ("[C]ourts do not have the authority to ignore the plain language of a statute under the guise of statutory interpretation or liberal or narrow construction"). His policy concerns cannot change the text of the statute; only the General Assembly can. Under the law's clear text, the Attorney General does have a specified role regarding petitions, but it is a small part of a long, carefully-designed process. The Attorney General's review of the summary under Section 3519.01 is a step "prior to commencement of the initiative process." *State ex rel. Durell v. Celebrezze*, 63 Ohio App.2d 125, 130 (10th Dist. 1979). After his initial review of the summary of the petition, petition proponents are subject to several more steps before the proposal appears on the ballot, *see* Ohio Const., art. II, § 1g, and the Secretary of State and the Ohio Ballot Board are tasked with crafting the title and language, respectively, that ultimately appear on the ballot itself, R.C. 3519.21; Ohio Const., art. XVI, § 1.

By fearmongering about voters who might be tricked into voting for a petition that falsely promises them a million dollars or a tiger, Resp't's Merit Br. at 7, 12, the Attorney General fails to acknowledge that there is a fundamental difference between the title that appears on the pre-certification petition and the title that ultimately appears on the ballot. The *only* information about a proposed amendment that voters have ready access to in the voting booth is the ballot title and language prescribed by the Secretary of State and Ballot Board. There is no one to ask questions to, no way to get clarification about the measure, and no actual amendment language to read. Ohio Const., art. XVI, § 1 ("The ballot need not contain the full text nor a condensed text of the proposal."); Ohio Const., art. II, § 1g. It is therefore critical to get that ballot language right, and the Secretary of State and Ballot Board are assigned that responsibility, subject to this Court's review. Ohio Const., art. XVI, § 1; Ohio Const., art. II, § 1g.

At the petition circulation stage, however, the voter has many sources of information about

what they are being asked to sign. They can read the summary and, indeed, the full proposed amendment. Those must appear on the petition precisely so voters can review. R.C. 3519.05. Moreover, they can ask the circulator questions about the amendment. In response, circulators cannot promise the voter a million dollars, a tiger, or bread and circuses: the circulator is responsible—under penalty of the felony of election falsification—to attest that they witnessed every signature and "that the electors signing this petition did so with knowledge of the contents." R.C. 3519.05; R.C. 3501.38.

Given the availability of all this information to voters, and all these safeguards, the relative importance of the title at the circulation stage is simply not the same as when voters ultimately cast their ballots. *Cf. State ex rel. Voters First v. Ohio Ballot Bd.*, 2012-Ohio-4149, ¶ 57 (noting that misleading ballot language could not be considered harmless because voters cannot leave their voting booth to access the full text of the proposed amendment and many voters' only knowledge of the proposed amendment comes from the ballot language).

Likewise, the Attorney General's emphasis on case law about titles in other petition contexts is completely irrelevant. Resp't's Merit Br. at 11. For instance, the Attorney General quotes extensively from *State ex rel. Hildreth v. Larose*, 2023-Ohio-3667, to explain the importance of a title and, indeed, his own decision to start reviewing titles on written petitions. Resp't's Merit Br. at 11. But *Hildreth* concerns the process of proposing an ordinance as dictated by Section 731.31, for which each part of the petition *must* contain "the title and text of the proposed ordinance." 2023-Ohio-3667, at ¶ 15. In any event, *Hildreth* says nothing about whether the petition title is the same as the summary and whether the Attorney General has any authority to review it. Nor does *Hildreth* say anything about the title needing to be "fair and truthful." All it says is that the title is "material to a petition" and that it "alerts signers to the nature of [the]

proposed legislation," *id.* ¶ 17, quoting *State ex rel. Esch v. Lake Cty. Bd. of Elections*, 61 Ohio St.3d 595, 597 (1991), qualities that even the Attorney General does not argue are missing here. The fact is that—unlike here—there is no requirement for a summary, let alone a certification of a summary, on such petitions. *See* R.C. Ch. 731.

Finally, the Attorney General concocts absurd scenarios that distract from the issue here and ignore the fundamental policies underpinning the direct democracy process. The Attorney General warns of ill-intentioned petition proponents relying on deceptive titles to trick voters into signing, but that is both not permitted in the petition process, *see supra*, and a straw man argument. Relators have not proposed an absurd title of the sort the Attorney General warns. They are proposing an amendment that enshrines several voting rights and have named it "Ohio Voters Bill of Rights." They have made no false promises of money or tigers. And the Attorney General's distrust of Ohioans engaging in direct democracy disregards the importance of that process, which enshrines the right of Ohio *voters* (not state officials) to amend their own constitution—a right that is guaranteed to the people as a "reserved power[]" and should be "liberally construed to effectuate the rights reserved." *Hodges*, 64 Ohio St. 3d at 4. The Attorney General's approach directly infringes on that right.

II. In the alternative, even if the Court determines that the Attorney General may review the title, the Attorney General abused his discretion in basing his refusal to certify on the title "Ohio Voters Bill of Rights."

Even if the Attorney General has authority to review the title at this stage, he has abused his discretion in rejecting the written petition based on the title "Ohio Voters Bill of Rights." *First*, contrary to the Attorney General's contention, Resp't's Merit Br. 14, the amendment sets forth no fewer than ten "specific, discrete rights that may be enforced by individuals against the government":

1. "The right to vote,"

2. "The right, once registered to vote, to obtain and cast a ballot in person on election day,"
3. "The right, if registered to vote and either serving in the military or residing outside of the United States, to apply for an absentee ballot and have such absentee ballot sent to them,"
4. "The right, once registered to vote, to cast a ballot during the early voting period,"
5. "The right to be automatically and securely registered to vote or, if already registered, to have the elector's registration automatically and securely updated upon applying for, renewing, updating, or replacing an Ohio driver's license,"
6. "The right to register to vote or update their voter registration other than at a voting location through both non-electronic and electronic means,"
7. "The right, if not registered to vote in their county of residence, to register to vote and to be immediately eligible to cast a ballot,"
8. "The right, if already registered to vote in their county of residence, to update the elector's registration and to be immediately eligible to cast a ballot,"
9. "The right of registered electors who seek to cast a ballot in person to verify their identity, if required by law to do so, through the following methods at the time they request a ballot," and
10. "The right, once registered to vote, to apply for and cast an absentee ballot other than in person without providing an excuse and with return postage prepaid by the state."

(RELATORS_043–49). That some of these rights require the government to follow certain procedures to safeguard them only serves to underscore the individual's authority to enforce them. Rather than merely setting forth abstract rights, the amendment explains how officials must facilitate their exercise, providing clear bases for Ohio citizens to "bring an action for declaratory, injunctive, monetary, or any other appropriate relief to enforce the rights created" under the amendment. (RELATORS_049). Similarly, the Ohio Bill of Rights, in protection of the rights of crime victims, affirmatively sets out requirements the government must follow, including notifying the victim of "all public proceedings involving the criminal offense" and providing a mechanism to enforce the rights through "petition[ing] the court of appeals for the applicable district, which shall promptly consider and decide the petition." Ohio Const., art. I, § 10a.

Second, the Attorney General argues that fundamental rights in a "Bill of Rights" are only those that can be enjoyed without the person having to take any action to vindicate the right, Resp't's Merit Br. at 17–18, but that position runs counter to the very notion of "voting rights." It is elementary that voting rights are "fundamental political right[s] . . . preservative of all rights."

Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). The right to vote "in a free and unimpaired manner is preservative of other basic civil and political rights" and is a "fundamental matter in a free and democratic society." *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964). While a fundamental right, voting rights can be process-driven and often require actions from voters. For example, Article II, Section 4 of the Michigan Constitution protects the fundamental right to vote and includes actions that voters must take to register to vote by mail and in person, prove their identity when voting, vote absentee, and access other voting rights. Voters have the right to prove their identity, for instance, "when voting in person or applying for an absent voter ballot in person by (1) presenting their photo identification, including photo identification issued by a federal, state, local, or tribal government or an educational institution, or (2) if they do not have photo identification or do not have it with them, executing an affidavit verifying their identity." Mich. Const., art. II, § 4(1)(g). These detailed provisions do not render the right to vote any less "fundamental." The Attorney General's assertion that a bill of rights can only contain rights "that a person need not *do anything* to enjoy" also runs counter to Ohio's own Bill of Rights, which protects a crime victim's rights to "reasonable and timely notice of all public proceedings involving the criminal offense," to "reasonable notice of any release or escape of the accused," and to "confer with the attorney for the government"—but only "upon request" of the victim. Ohio Const., art. I, § 10a. The Attorney General's narrow approach to the content of a "Voters Bill of Rights" should be rejected.

Third, the Attorney General baselessly argues that a "Bill of Rights" must confer enforceable rights and cannot confer any discretion to government officials. Resp't's Merit Br. at 19–21. However, the two areas in which the amendment gives State and local election authorities discretion are in *service* of the enumerated guarantees and provisions requiring greater voting

accessibility. They give authorities some discretion only to further *improve* voting access in the spirit of the proposed amendment (i.e. to place secure drop boxes and to institute reliable additional options for voter identification and casting ballots). *Id.* These are the types of constitutional protections that are expected to be found in a "Bill of Rights."

The provisions setting forth "discretionary acts" are also entirely consistent with and belong in a "Bill of Rights." For example, the Ohio Bill of Rights provides discretion to "[t]he state, and a political subdivision to the extent authorized by state law, [to] provide for the regulation of [] waters" on privately owned land. Ohio Const., art. I, § 19b(E). Likewise, the provision ensuring that "[l]ocal election authorities shall have the discretion to place multiple secure drop boxes throughout their counties for the return of absentee ballots" creates a right to have local election officials determine that multiple drop boxes are warranted, regardless of the Secretary of State's or General Assembly's preferences. Relators' Merit Br. at 15–16 (citation omitted). Despite the Attorney General's insistence otherwise, this provision is, in effect, a negative right from state interference, much like the Tenth Amendment to the U.S. Constitution, which reserves the "powers not delegated to the United States by the Constitution. . . to the States." And as the Attorney General himself recognizes, the "Bill of Rights enshrines negative liberties." Resp't's Merit Br. at 15, citing *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 645 (7th Cir. 2013). Just as the Tenth Amendment protects certain state powers from federal intrusion, this provision reserves the right over certain kinds of expansions to the franchise to local officials and protects that power from state government actors. Similarly, that the State "may institute reliable additional secure options for qualified electors to verify their identity and cast their ballots as such methods become available through technological advancements" guarantees that those advancements must "maintain ballot secrecy and security" and that existing methods remain

acceptable. Relators' Merit Br. at 16 (citation omitted). This provision *constrains* the State's discretion to institute procedures that violate voters' rights to ballot secrecy and security and *guarantees* voters' rights already specified in the proposed amendment.

In any event, the two provisions that provide discretion to further the enumerated rights comprise a small fraction of the amendment's more than fifteen enumerated rights and required State actions to support the fundamental right to vote. Relators' Merit Br. at 16–17. It is not true, as the Attorney General claims, that the proposed amendment "leaves crucial matters to the discretion of elections officials," Resp't's Merit Br. at 20, when the vast majority of the amendment enumerates specific rights and creates a private right of action for individuals to enforce them.

III. Relators are entitled to a writ of mandamus.

Because they meet the requirements for a writ of mandamus, Relators are entitled to relief. First, the Attorney General had a clear legal duty to review the summary within the ten-day statutory period and certify it absent a finding that the summary was not fair or truthful, or, in the alternative, his conclusion that it was not a fair or truthful representation of the proposed amendment was an abuse of discretion. Second, Relators have a clear legal right to their requested relief as, per Section 3519.01(C), they are persons aggrieved by the Attorney General's refusal to certify the summary on an improper basis. Third, Relators lack an adequate remedy in the ordinary course of the law. This Court should issue a writ of mandamus directing the Attorney General to certify.

The Attorney General fulfilled his statutory obligation within the allotted ten days—acknowledging in his response letter that he had "reviewed the renewed submission," Relators' Merit Br. at 19 (citation omitted)—and did not identify any deficiencies with the summary; therefore, his refusal to certify was improper. He has also confirmed in other public

communications that, in his view, the "misleading title is the only matter of contention." *Id.* at 19–20 (citation omitted). The Attorney General cannot now claim that "he did not reach the balance of the summary." Resp't's Merit Br. at 22. The statutorily-prescribed window for his review has elapsed, and, as in *Barren*, the Attorney General refused to certify on an improper basis. *Barren v. Brown*, 51 Ohio. St. 2d 169, 170–71 (1977) (per curiam). As the Attorney General acknowledges, in *Barren*, the Court found it "implicit" that the "summary meets the requirement of being a fair and truthful statement." Resp't's Merit Br. at 23. So, too, here. The Attorney General reviewed Relators' submission and identified not a single issue with the summary. The only element he took issue with was the title.

If the Court finds that the title is not part of the summary and that the Attorney General's authority does not extend to the summary, he has identified no issues with the summary and cannot withhold certification. Furthermore, Relators here submitted a substantially similar summary just weeks earlier and corrected every deficiency that the Attorney General identified. Relator's Merit Br. at 5. Rewarding the Attorney General for his abdication of duty and allowing him another opportunity to belatedly re-review and scour the summary for new purported deficiencies to delay certification runs counter to the intent of the statute. The General Assembly added the ten-day deadline to Section 3519.01(A) precisely to prevent state officials from delaying the petition process and to ensure that the Attorney General could not "impede the process" and "block a petition effort altogether" by dragging out his preliminary review. *Schaller*, 2008-Ohio-4464, at ¶ 51 (10th Dist.). Now, the Attorney General demands this Court's leave to do just that. Under the Attorney General's preferred approach, he could identify a singular issue in each rejection letter, requiring proponents to correct the supposed flaw, gather 1,000 more signatures, and resubmit upwards of ten or more times. Each time, he could say, he simply did not reach the balance of the

summary. His reading would allow him to transform his statutorily-prescribed singular review within a short window into an infinite cycle in which he could stall a petition indefinitely. This result runs counter to the intent of the legislature. *State ex rel. Sinay v. Sodders*, 80 Ohio St.3d 224, 227 (1997) ("[t]he paramount consideration in construing statutes is legislative intent"); *see also State Farm Mut. Auto. Ins. Co. v. Grace*, 2009-Ohio-5934, ¶ 25 (collecting cases). In sum, because the Attorney General has exhausted his review of the summary within his ten-day window, he should not be granted yet another opportunity to review, and the proper remedy is a writ of mandamus directing him to certify.

In the alternative, if the Court finds it improper to issue a writ directing the Attorney General to certify Relators' petition, Relators are entitled to an order directing the Attorney General to limit his review to the summary and list all perceived deficiencies with that summary within a single ten-day period. The Attorney General must certify if there are no deficiencies with the summary, as R.C. 3519.01(A) dictates, and may not defer his examination of any part of the summary beyond his ten-day deadline.

CONCLUSION

Because the Attorney General has a clear legal duty to certify the petition, Relators are aggrieved parties and have a right to bring this action under Section 3519.01(C) and a clear legal right to the requested relief, and there is no adequate remedy in the ordinary course of the law, the Court should issue a writ of mandamus directing the Attorney General to certify the summary of the proposed amendment or, in the alternative, to review the summary and list all deficiencies within ten days. Even if the Court determines that the Attorney General had the authority to review the title, it should nevertheless find that the Attorney General's failure to certify was an abuse of discretion and issue a writ of mandamus directing him to certify.

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Respectfully submitted,

/s/ Donald J. McTigue

Donald J. McTigue (0022849)
Counsel of Record
McTigue & Colombo, LLC
545 East Town Street
Columbus, OH 43215
(614) 263-7000
dmctigue@electionlawgroup.com

Ben Stafford (PHV 25433-2024)
Elias Law Group LLP
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
(206) 656-0176
bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2024)
Qizhou Ge (PHV 27430-2024)
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
(202) 968-4490
jjasrasaria@elias.law
age@elias.law

Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 18th day of July 2024 to the following:

Byers B. Emmerling (0098835)
Counsel of Record
Julie M. Pfeiffer (0069762)
Ann Yackshaw (0090623)
Stephen P. Tabatowski (0099175)
30 East Broad Street, 16th Floor
Columbus, OH 43215
(614) 466-2872
Byers.Emmerling@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Ann.Yackshaw@OhioAGO.gov
Stephen.Tabatowski@OhioAGO.gov

Counsel for Respondent

/s/ Donald J. McTigue
Donald J. McTigue (0022849)