IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* Citizens Not Politicians, *et al.*, **Relators,** **v.** **Ohio Ballot Board, *et al.*,** **Respondents.**	**Case No. 2024-1200** Original Action in Mandamus Pursuant to Article XVI, Section 1 of the Ohio Constitution Expedited Election Case Pursuant to Supreme Court Rule of Practice 12.08 Peremptory and Alternative Writs Requested

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INTRODUCTION

This November, the people of Ohio will vote on Issue 1, a proposed constitutional amendment that will remove redistricting power from politicians and entrust it to a citizens' redistricting commission (the "Amendment"). If adopted, the Amendment would expressly "ban partisan gerrymandering" by setting forth robust redistricting criteria to ensure fair maps, selection standards to ensure the new commission's impartiality and accountability, and transparency measures to ensure public information and participation. (RELATORS_016 at Sec. 6(B)).

But the ballot title and language that Respondents the Ohio Ballot Board and Secretary of State Frank LaRose adopted would have voters believe exactly the opposite. According to the adopted text, the Amendment would: "require[] . . . gerrymander[ing]" based on "partisan outcomes as the dominant factor"; mandate that commissioners "belong to the state's two largest political parties" and be insulated from removal even for egregious misconduct; and prohibit public participation in, or legal challenges to, the Commission's work. (RELATORS_034–36 ¶ 2–5, 8). This is not accurate. The Court need not take Relators' word for it. Earlier this year, Attorney General Dave Yost certified that the Amendment's summary was "fair and truthful." (RELATORS_042); *see* R.C. 3519.01(A). That summary states, consistent with the Amendment's plain text, that the Amendment would "ban partisan gerrymandering." (RELATORS_001–06).

Whether the new Amendment offers better public policy than the existing system is for voters to decide. The Ballot Board's job is to provide ballot language that gives voters the facts so that they can make up their own minds. Specifically, "to pass constitutional muster" under Article XVI, ballot language "must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected." *State ex rel. Voters First v. Ohio Ballot Bd.*, 2012-Ohio-4149, ¶ 29 (per curiam), quoting *State ex rel. Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 (1981); *see also Jurcisin v. Cuyahoga Cty. Bd. of Elections*,

35 Ohio St. 3d 137, 141–42 (1988). And the ballot title must be "true and impartial." R.C. 3519.21. The present language and title are none of these things. The Ballot Board's attempt to put a thumb on the scale against the Amendment is a thumb in the eye of Ohioans who expect their representatives on the Board to carry out their mandatory duties impartially.

The stakes of placing Respondents' obviously distorted language and title on the ballot are high. As this Court has repeatedly explained, "in many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot." *Voters First*, 2012-Ohio-4149, at ¶ 29, quoting *Schnoerr v. Miller*, 2 Ohio St.2d 121, 125 (1965). Allowing Respondents' title and language to go unchecked would be akin to giving Ohio's elected officials carte blanche to manipulate election outcomes—not just for this Amendment, but for all citizen initiatives. As Chief Justice Kennedy has recognized: "Our state Constitution is founded on the fundamental principle that '[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary.'" *State ex rel. DeBlase v. Ohio Ballot Bd.*, 2023-Ohio-1823, ¶ 30 (Kennedy, C.J., concurring), quoting Ohio Const., art. I, § 2. But when politicians use ballot text to obscure the purpose and effect of a citizen-initiated amendment, the political power inherent in the people is subverted; the people cannot fairly decide whether it is necessary to reform their Constitution if the ballot text misleads them about what they are being asked to do.

This Court has never hesitated to strictly enforce the legal requirements for the text that appears on the ballot, in recognition of Ohioans' century-old right to amend their Constitution and laws through direct democracy. The Court should do the same here, by directing Respondents to start over and adopt ballot language and a ballot title that are consistent with their clear legal duties.

STATEMENT

I. Ohio citizens proposed an amendment to the Ohio Constitution to replace the existing redistricting process with a citizen-led commission.

On October 31, 2023, Ohio citizens submitted to Attorney General Yost an initiative petition including part-petitions bearing the signatures of more than a thousand qualified electors, a detailed summary, and the full text of a proposed constitutional amendment entitled: "An amendment to replace the current politician-run redistricting process with a citizen-led commission required to create fair state legislative and congressional districts through a more open and independent system." (RELATORS_001). As the Amendment's detailed summary notes: "The proposed Amendment would repeal all existing sections in Articles XI and XIX of the Ohio Constitution related to state and congressional redistricting and add Article XX to the Constitution setting forth a structure and criteria to govern the process for drawing Ohio General Assembly and Ohio Congressional districts." *Id.*

The initial written petition's submission triggered the Attorney General's duty to transmit the part-petitions to the appropriate county boards of elections for signature verification, and to "conduct an examination of the summary." R.C. 3519.01(A). On November 9, 2023, by letter, Attorney General Yost confirmed that the county boards of elections had verified "at least 1,000 signatures" and that he had determined that the summary was "a fair and truthful statement of the proposed . . . constitutional amendment." (RELATORS_042); *see* R.C. 3519.01(A).

On July 1, 2024, the petition committee submitted the Amendment petition, which bore more than 731,000 Ohioans' signatures, to the Secretary of State's office. (RELATORS_044). On July 23, the Secretary's office certified that the petitioners had submitted 535,005 valid signatures from 58 counties, far more than the 413,487 signatures from 44 counties required by Article II.

(RELATORS_048). Accordingly, the Amendment qualified for the November 5, 2024 general election ballot. *See* Ohio Const., art. II, §§ 1a, 1g.

II. The Amendment's proponents proposed using ballot language mirroring the ballot language used for 2015 and 2018 redistricting amendment proposals.

The Ballot Board scheduled a meeting on August 16 to adopt ballot language. In advance of the meeting, the Amendment's proponents proposed ballot language for the Ballot Board's consideration. The language was crafted to mirror the approach taken by the Ballot Board in 2015 and 2018 to concisely summarize proposed amendments that established politician-controlled processes to draw state legislative and congressional districts, respectively.

[continued on next page]

The 2015 ballot language read:

Issue 1
Creates a bipartisan, public process for drawing legislative districts

Proposed Constitutional Amendment

Proposed by Joint Resolution of the General Assembly

To enact new Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Article XI and to repeal Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Article XI of the Constitution of the State of Ohio.

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

The proposed amendment would:

- End the partisan process for drawing Ohio House and Senate districts, and replace it with a bipartisan process with the goal of having district boundaries that are more compact and politically competitive.

- Ensure a transparent process by requiring public meetings, public display of maps, and a public letter explaining any plan the Commission adopts by a simple majority vote.

- Establish the bipartisan Ohio Redistricting Commission, composed of 7 members including the Governor, the Auditor of State, the Secretary of State, and 4 members appointed by the majority and minority leaders of the General Assembly.

- Require a bipartisan majority vote of 4 members in order to adopt any final district plan, and prevent deadlock by limiting the length of time any plan adopted without bipartisan support is effective.

If passed, the amendment will become effective immediately.

	YES	**SHALL THE AMENDMENT BE APPROVED?**
	NO	

(RELATORS_050).

The 2018 ballot language read:

Issue 1

TITLE

Proposed Constitutional Amendment

Proposed by Joint Resolution of the General Assembly

To amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

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

The proposed amendment would:

- End the partisan process for drawing congressional districts, and replace it with a process with the goals of promoting bipartisanship, keeping local communities together, and having district boundaries that are more compact.

- Ensure a transparent process by requiring public hearings and allowing public submission of proposed plans.
- Require the General Assembly or the Ohio Redistricting Commission to adopt new congressional districts by a bipartisan vote for the plan to be effective for the full 10-year period.

- Require that if a plan is adopted by the General Assembly without significant bipartisan support, it cannot be effective for the entire 10-year period and must comply with explicit anti- gerrymandering requirements.

If passed, the amendment will become effective immediately.

	YES	**SHALL THE AMENDMENT BE APPROVED?**
	NO	

(RELATORS_051).

In both cases, the ballot language briefly lays out, in plain English: (a) the process used to draw redistricting plans; (b) the affirmative goal of the redistricting process established; and (c) the process by which redistricting plans are adopted by the established Commission and General

Assembly. The language focused on informing the voters and did not extol the virtues of the redistricting system being replaced or denigrate the system being proposed.

Accordingly, this Amendment's proponents, including Relator Annette Tucker Sutherland, proposed that the Ballot Board adopt ballot language mirroring the even-handed approach taken by the Ballot Board for the 2015 and 2018 redistricting amendments. (RELATORS_053–55).

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The Amendment's proponents submitted the following proposed ballot language:

Issue 1
Amendment to the Constitution setting forth a structure and criteria to govern the process for drawing Ohio General Assembly and Ohio Congressional districts.

Proposed Constitutional Amendment
Proposed by Initiative Petition
To repeal Articles XI and XIX of the Ohio Constitution and enact Article XX of the Constitution of the State of Ohio.
A majority yes vote is necessary for the amendment to pass.

The proposed amendment would:

- Establish the Ohio Citizens Redistricting Commission, composed of 15 Ohio citizens, to draw and adopt Ohio General Assembly and Ohio Congressional districts.
- Require that the Commission consist of 15 members who have demonstrated the absence of any disqualifying conflicts of interest and who have shown an ability to conduct the redistricting process with impartiality, integrity, and fairness.
- Set forth that the Commission shall operate in a transparent manner by requiring public hearings that invite broad public participation throughout the state, public displays of redistricting plans, and a public report explaining any plan the Commission adopts.
- Provide that each redistricting plan shall contain single-member districts that are geographically contiguous, comply with federal law, closely correspond to the statewide partisan preferences of Ohio voters, and preserve communities.
- Require that all deliberations and actions of the Commission shall be in public meetings and all actions by the Commission require an affirmative vote of at least 9 of 15 members.

If passed, the amendment will become effective 30 days after the election.

	YES	**SHALL THE AMENDMENT BE APPROVED?**
	NO	

(RELATORS_053).

III. Secretary LaRose drafted and proposed false, misleading, deceptive, and prejudicial ballot language amounting to a persuasive argument against the Amendment, which the Ballot Board voted to make even more biased and inaccurate before adopting.

The Ballot Board met to prescribe and certify ballot language for the Amendment on August 16, 2024. At the outset, the Ballot Board's Secretary advised the Board of its substantive obligations. She explained that "[t]he ballot language must properly identify the substance of the proposal to be voted on," that it "may contain the full text or a condensed version of the proposal," that "[i]f a condensed version of the proposal is used[,] the ballot language must not omit substance of the proposal that is material," and that "if the proposed amendment is condensed[,] the resulting language must not result in or imply a persuasive argument." (RELATORS_057 at 7:2–17).

After public testimony, Board member and State Senator Paula Hicks-Hudson moved to adopt the ballot language proposed by the Amendment's proponents as set out above. The motion failed on a 3-2 party line vote. (RELATORS_071–72 at 61:13–66:10).

Secretary LaRose then proposed adoption of his draft ballot language for the Amendment. (RELATORS_072 at 66:11–67:4); *see also* (RELATORS_081–83). As other Ballot Board members pointed out, Secretary LaRose's proposed language contained numerous inaccuracies and misrepresented many aspects of the Amendment in an improper attempt to persuade voters to vote against it. *See, e.g.*, (RELATORS_072–73 at 68:5–69:18, 70:12–71:2).

The Board's majority did not correct these inaccuracies, but instead made them even worse. Board member and State Senator Theresa Gavarone moved to substitute alternative language into paragraph 2 of Secretary LaRose's proposed ballot language. Rather than falsely state that the Amendment would require the Commission to "manipulate district boundaries" to favor the two major political parties, Senator Gavarone proposed ballot language that went even further,

asserting that the Amendment would *require* the Commission to "gerrymander" the district boundaries to favor either of the two largest political parties. (RELATORS_074 at 75:3–24).[1]

Board member and State Representative Terrance Upchurch rued that the Ballot Board was being asked to make a bad situation worse. (RELATORS_075 at 77:9–12). And, after a short recess, Senator Hicks-Hudson stated her opposition to Senator Gavarone's alternative language, noting, among other things, that the Amendment's text does not *require* partisan gerrymandering to favor a political party—it expressly *prohibits* partisan gerrymandering to favor a political party. (RELATORS_076 at 81:17–82:17). The Ballot Board then immediately voted, on a 3-2 party line vote, to adopt the language introduced by Secretary LaRose as amended by Senator Gavarone. (RELATORS_076–77 at 83:10–84:4, 87:22–88:17).

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[1] Senator Gavarone's successful proposal also included inserting the words "either of" into paragraph 2 such that the language would read, in relevant part: "Establish a new taxpayer-funded commission of appointees required to gerrymander the boundaries of state legislative and congressional districts to favor either of the two largest political parties in the State of Ohio according to a formula based on partisan outcomes as the dominant factor." (RELATORS_034); *see also* (RELATORS_074 at 75:11–24).

The final ballot language adopted by the Ballot Board and ballot title prescribed by Secretary LaRose read as follows:

Issue 1

To create an appointed redistricting commission
not elected by or subject to removal by the voters of the state

Proposed Constitutional Amendment

Proposed by Initiative Petition

**To repeal Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Article XI,
Repeal sections 1, 2 and 3 of Article XIX,
And enact Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Article XX of the Constitution of the State of Ohio**

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

The proposed amendment would:

1. Repeal constitutional protections against gerrymandering approved by nearly three quarters of Ohio electors participating in the statewide elections of 2015 and 2018, and eliminate the longstanding ability of Ohio citizens to hold their representatives accountable for establishing fair state legislative and congressional districts.

2. Establish a new taxpayer-funded commission of appointees required to gerrymander the boundaries of state legislative and congressional districts to favor either of the two largest political parties in the state of Ohio, according to a formula based on partisan outcomes as the dominant factor, so that:

   A. Each district shall contain single-member districts that are geographically contiguous, but state legislative and congressional districts will no longer be required to be compact; and

   B. Counties, townships and cities throughout Ohio can be split and divided across multiple districts, and preserving communities of interest will be secondary to the formula that is based on partisan political outcomes.

3. Require that a majority of the partisan commission members belong to the state's two largest political parties.

4. Prevent a commission member from being removed, except by a vote of their fellow commission members, even for incapacity, willful neglect of duty or gross misconduct.

5. Prohibit any citizen from filing a lawsuit challenging a redistricting plan in any court, except if the lawsuit challenges the proportionality standard applied by the commission, and then only before the Ohio Supreme Court.

6. Create the following process for appointing commission members: Four partisan appointees on the Ohio Ballot Board will choose a panel of 4 partisan retired judges (2 affiliated with the first major political party and 2 affiliated with the second major political party). Provide that the 4 legislative appointees of the Ohio Ballot Board would be responsible for appointing the panel members as follows: the Ballot Board legislative appointees affiliated with the same major political party would select 8 applicants and present those to the Ballot Board legislative appointees affiliated with the other major political party, who would then select 2 persons from the 8 for appointment to the panel, resulting in 4 panel appointees. The panel would then hire a private professional search firm to help them choose 6 of the 15 individuals on the commission. The panel will choose those 6 individuals by initially creating a pool of 90 individuals (30 from the first major political party, 30 from the second major political party, and 30 from neither the first nor second major political parties). The panel of 4 partisan retired judges will create a portal for public comment on the applicants and will conduct and publicly broadcast interviews with each applicant in the pool. The panel will then narrow the pool of 90 individuals down to 45 (15 from the first major political party; 15 from the second major political party; and 15 from neither the first nor second major political parties). Randomly, by draw, the 4 partisan retired judges will then blindly select 6 names out of the pool of 45 to be members of the commission (2 from the first major political party; 2 from the second major political party; and 2 from neither the first nor second major political parties). The 6 randomly drawn individuals will then review the applications of the remaining 39 individuals not randomly drawn and select the final 9 individuals to serve with them on the commission, the majority of which shall be from the first and the second major political parties (3 from the first major political party, 3 from the second major political party, and 3 from neither the first nor second major political parties).

7. Require the affirmative votes of 9 of 15 members of the appointed commission to create legislative and congressional districts. If the commission is not able to determine a plan by September 19, 2025, or July 15 of every year ending in one, the following impasse procedure will be used: for any plan at an impasse, each commissioner shall have 3 days to submit no more than one proposed redistricting plan to be subject to a commission vote through a ranked-choice selection process, with the goal of having a majority of the commission members rank one of those plans first. If a majority cannot be obtained, the plan with the highest number of points in the ranked-choice process is eliminated, and the process is repeated until a plan receives a majority of first-place rankings. If the ranked-choice process ends in a tie for the highest point total, the tie shall be broken through a random process.

8. Limit the right of Ohio citizens to freely express their opinions to members of the commission or to commission staff regarding the redistricting process or proposed redistricting plans.

9. Require the commission to immediately create new legislative and congressional districts in 2025 to replace the most recent districts adopted by the citizens of Ohio through their elected representatives.

10. Impose new taxpayer-funded costs on the State of Ohio to pay the commission members, the commission staff and appointed special masters, professionals, and private consultants that the commission is required to hire; and an unlimited amount for legal expenses incurred by the commission in any related litigation.

If passed, the amendment will become effective 30 days after the election.

	YES	**SHALL THE AMENDMENT BE APPROVED?**
	NO	

(RELATORS_034–36).

LEGAL STANDARD

"A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18.

ARGUMENT

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

The Ballot Board's prescribed ballot language is contrary to the Constitution and laws of the State of Ohio. Rather than properly identifying the substance of the proposal, it misleads and deceives the voters, and it attempts to persuade them to vote against the Amendment. It suffers from a host of defects, ranging from bald falsehoods and material omissions to improperly

deceptive and out-of-context language. The cumulative effect of these defects is to render the language, as a whole, unlawful under the Ohio Constitution.

Article XVI of the Ohio Constitution establishes the standard that the ballot language must satisfy. Ohio Const., art. XVI, § 1; *see id.*, art. II, § 1g (applying the Article XVI standard to ballot language for citizen-initiated amendments); *see also* R.C. 3505.062(B) (restating the constitutional standard). Specifically, where the Ballot Board elects to summarize a proposed amendment rather than using its full text, Article XVI, Section 1 provides that the ballot language must "properly identify the substance of the proposal to be voted upon," and may not be "such as to mislead, deceive, or defraud the voters."[2]

This Court has developed several principles to enforce this constitutional command. The Court generally determines first "whether the language tells voters what they are being asked to vote on and whether the language impermissibly amounts to persuasive argument for or against the issue." *State ex rel. One Person One Vote v. Ohio Ballot Bd.*, 2023-Ohio-1928, ¶ 8 (per curiam), citing *Bailey*, 67 Ohio St.2d at 519; *accord State ex rel. Ohioans United for Reproductive Rights v. Ohio Ballot Bd.*, 2023-Ohio-3325, ¶ 12. In making that determination, the Court looks to several specific considerations:

> The ballot [language] must be complete enough to convey an intelligent idea of the scope and import of the amendment. It ought not to be clouded by undue detail as not to be readily understandable. It ought to be free from any misleading tendency, whether of amplification, or omission. It must in every particular be fair to the voter to the end that intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.

[2] Section 3505.062(B) of the Revised Code similarly requires the Ballot Board to "[p]rescribe the ballot language for constitutional amendments . . . which language shall properly identify the substance of the proposal to be voted upon."

Markus v. Trumbull Cty. Bd. of Elections, 22 Ohio St.2d 197, 202–03 (1970). The Court considers material omissions to be just as misleading as explicit inaccuracies. An "omission in the ballot[] board's condensed ballot language . . . is in the nature of a persuasive argument against its adoption" because it misleads voters by implication. *Voters First*, 2012-Ohio-4149, at ¶ 48.

If the Court determines that "there are defects in ballot language," it next "examine[s] the defects as a whole and determine[s] whether their cumulative effect violates the constitutional standard." *One Person One Vote*, 2023-Ohio-1928, at ¶ 8, citing *Bailey*, 67 Ohio St.2d at 519. In assessing the cumulative effect of any defects, the Court has usually looked to the ultimate purpose of the ballot language and asked whether the language adequately serves that purpose. "It is only from the ballot statement that the ultimate deciders of the question can arrive at an efficacious and intelligent expression of opinion." *Markus*, 22 Ohio St.2d at 203.

Finally, the Court's analysis takes into account the critical importance of ballot language to voters' decision-making. In this regard, the Court has recognized that "in many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot." *Voters First*, 2012-Ohio-4149, at ¶ 29, quoting *Schnoerr*, 2 Ohio St.2d at 125.

A. The ballot language is defective.

The Ballot Board's prescribed language misleads the voters about "what they are being asked to vote on" and "is impermissibly argumentative . . . against" the Amendment. *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 12. Accordingly, the ballot language is defective and thus unlawful. *One Person One Vote*, 2023-Ohio-1928, at ¶ 8. The ballot language suffers from at least the following defects:

(1) It falsely states that the Amendment would mandate partisan gerrymandering rather than ban it.

(2) It inappropriately includes information about the vote margin and method by which current law was adopted in an attempt to persuade voters to maintain the status quo and vote against the Amendment, and it mischaracterizes the Amendment's general impact as a "repeal" of "constitutional protections against gerrymandering."

(3) It falsely states that the Amendment would populate the Ohio Citizens Redistricting Commission with partisans, when in fact it would bar partisan politicians and other political actors from serving on the Commission.

(4) It falsely states that the Amendment would limit Ohio citizens from communicating with the Commission, rather than mandate an open, public, and transparent process for all citizens to be able to have input on redistricting plans.

(5) It misstates the scope of judicial review under the Amendment.

(6) It misleadingly states that, under the Amendment, "[c]ounties, townships and cities throughout Ohio can be split and divided across multiple districts, and preserving communities of interest will be secondary to the formula that is based on partisan political outcomes," omitting the fact that the current redistricting system already permits such splits across multiple districts.

(7) It mischaracterizes the Amendment as *preventing* a commissioner from being removed, even in the case of incapacity or egregious misconduct.

(8) It inappropriately and misleadingly states that the Amendment would "replace the most recent districts adopted by the citizens of Ohio through their elected representatives,"

despite the fact that Ohio citizens do not elect members to serve on the existing Ohio Redistricting Commission.

(9) It mischaracterizes the Amendment's impact on public expenditures.

See (RELATORS_034–36). In all these respects, the ballot language is false, deceptive, misleading, and aimed at persuading voters to vote against the Amendment. Because none can survive under this Court's precedent, each defect violates Ohio law and must be corrected.

1. The Amendment would explicitly "ban partisan gerrymandering and prohibit the use of redistricting plans that favor one political party and disfavor others"—but the adopted ballot language claims it says the opposite.

The Ballot Board voted to adopt ballot language falsely stating that the Amendment would require the Commission to "gerrymander [district] boundaries" to "favor either of the two largest political parties in the state of Ohio." (RELATORS_034 ¶ 2). And the Ballot Board members who supported this language explained themselves by merely arguing that because "the term gerrymander has been used [in the Amendment] . . . it must not be an off limits word." (RELATORS_075 at 79:8–24).[3] This logic defies credulity. It is akin to saying that an amendment banning drunk driving *permits* drunk driving because the word "drunk" is not an "off limits word." In fact, in its own words, the Amendment would "*ban* partisan gerrymandering and *prohibit* the use of redistricting plans that favor one political party and disfavor others." (Emphases added.) (RELATORS_016 at Sec. 6(B)). And Attorney General Yost approved proponents' summary stating that the Amendment would "ban partisan gerrymandering and redistricting plans that favor or disfavor a political party," (RELATORS_003 ¶ 22), as "fair and truthful," (RELATORS_042).

[3] These Ballot Board members also noted that the definition of "gerrymander . . . is to manipulate the boundaries of an electoral constituency so as to favor one party over another." (RELATORS_074 at 76:12–17).

The Amendment prohibits gerrymandering by ensuring that the plans adopted by the Commission seek to approximate the statewide partisan preferences of Ohioans while drawing geographically contiguous districts that also reflect communities of interest. (RELATORS_016 at Sec. 6(A)–(B)). Preventing partisan gerrymandering through this kind of partisan neutrality standard is not a new concept in Ohio law. Under current law, the Ohio Redistricting Commission is required to attempt drawing General Assembly district plans that do not favor or disfavor a political party and in which "[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party [] correspond closely to the statewide preferences of the voters of Ohio." Ohio Const., art. XI, § 6(B). And yet the ballot language used by the Ballot Board in 2015 to explain this process did not describe it as "gerrymandering"—it said that the relevant proposal would "[e]nd the partisan process for drawing Ohio House and Senate districts." (RELATORS_050). If that was an accurate description of similar language, then it cannot possibly be the case that the Ballot Board is accurately describing the Amendment here.[4]

Thus, the Ballot Board's language is legally deficient because it is deceptive and "impermissibly argumentative . . . against" the Amendment, and it does not "tell[] voters what they are being asked to vote on." *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 12.

2. The ballot language describing the general impact of the Amendment is deceptive, misleading, and impermissibly persuasive.

The very first paragraph of the Ballot Board's language is crafted to be deceptive and misleading, and thereby fails to properly convey "the scope and import" of the Amendment,

[4] At the Ballot Board's meeting, public testimony from undersigned counsel noted that the word "draw" accurately reflects what the Commission does, whereas the Secretary's proposed language used "manipulate," which is a word with "very negative connotations to most people." (RELATORS_059 at 16:12–24).

"impermissibly amount[ing] to persuasive argument . . . against the issue." *One Person One Vote*, 2023-Ohio-1928, at ¶ 8, 11, quoting *Markus*, 22 Ohio St.2d at 203. That language reads:

> Repeal constitutional protections against gerrymandering approved by nearly three-quarters of Ohio electors participating in the statewide elections of 2015 and 2018, and eliminate the longstanding ability of Ohio citizens to hold their representatives accountable for establishing fair state legislative and congressional districts.

(RELATORS_034 ¶ 1). There are numerous fatal flaws with this language.

First, it is patently inappropriate, irrelevant, and seemingly unprecedented for the Ballot Board to include information about the vote margin or method by which current law was adopted. The *only* reason to include this information is to persuade voters that they are being asked to repeal a "popular" redistricting system. *See One Person One Vote*, 2023-Ohio-1928, at ¶ 10–12 (explaining that ballot language need not "inform voters about current law" or "describe the pre-amendment status quo").

Second, it is misleading and prejudicial to characterize the Amendment as a "repeal" of "constitutional protections against gerrymandering," and to juxtapose that claim with the second paragraph's claim the Amendment would require the Commission to "gerrymander" district boundaries for partisan purposes. (RELATORS_034 ¶ 1–2). This is (inaccurate) campaign rhetoric designed to persuade—it is not impartial, factual information meant to inform voters.

Third, and similarly, the claim that the Amendment would "eliminate the longstanding ability of Ohio citizens to hold their representatives accountable for establishing fair state legislative and congressional districts," is nonsense. *Id.* ¶ 1. This is not a neutral statement of what the Amendment would do. The Amendment is needed precisely because representatives are *not* accountable in districts that are carefully rigged to inoculate politicians from voter dissatisfaction.

Where the Ballot Board wishes to neutrally describe a ballot measure shifting governmental authority to an appointed commission, it knows how to do so. For example, in

language adopted for the 2015 constitutional amendment regarding the commercial production and sale of marijuana, the Ballot Board described that amendment as "[l]imit[ing] the ability of the legislature and local governments from regulating the manufacture, sales, distribution and use of marijuana . . . [and] [c]reat[ing] a new state government agency called the marijuana control commission (with limited authority) to regulate the industry, comprised of seven Ohio residents appointed by the Governor . . . ." (RELATORS_109). But here the Ballot Board has adopted language that is "impermissibly argumentative . . . against" the Amendment and does not properly "tell[] voters what they are being asked to vote on." *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 12. Because it is not an impartial description of the Amendment's effects, this language is legally deficient under Ohio law.

3. The Amendment does not require a majority of commissioners to "belong to" the State's two largest political parties.

Paired with the baseless allegation that the Amendment's prohibition on gerrymandering actually *requires* gerrymandering, the Ballot Board's ballot language inaccurately and misleadingly describes who can serve on the new Ohio Citizens Redistricting Commission: It asserts that a majority of the "partisan" commissioners must "belong to" the two largest political parties. (RELATORS_034 ¶ 3). The plain intent of this falsehood is to mislead voters into believing that the proposed Amendment would constitutionalize partisan control of the Commission rather than prohibiting such partisan control.

As an initial matter, the Amendment does not use the word "belong to" and in fact does *not* require any Ohio citizen serving on the Commission to "belong to" a political party. The Amendment actually *bars* from service: (1) current elected or appointive officials; (2) candidates; (3) officers, paid consultants, or contractors to any political party, political action committee, or campaign committee; staff members, paid consultants, or contractors to any elected official or

candidate; (4) registered lobbyists and legislative agents; (5) people who have served in those capacities over the last six years; and (6) family members of such individuals. (RELATORS_012–13 at Sec. 3(C)).

Instead, to ensure that the Commission is independent and *not* dominated by any political party, the Amendment requires that no more than five commissioners be "affiliated" with each of the two major political parties, and it requires that five commissioners must be *unaffiliated* with either of the two major parties. (RELATORS_007 at Sec. 1(C)). And the Amendment sets out exactly what it means to be "affiliated" with a party: "Party affiliation shall be determined based on the applicant's voting record in party primaries and various other relevant factors including, but not limited to, political contributions, campaign activities, and other reliable indicia of partisan affiliation." (RELATORS_009 at Sec. 2(D)(2)(a)).

By contrast, "belongs to" implies membership, and being a member of a political party is different from being affiliated with a political party. *See* R.C. 3513.19(A)(3) (explaining that a person is entitled to vote in a partisan primary if they are "affiliated with" *or* a "member of the political party whose ballot the person desires to vote"). It is misleading to suggest that a person *must* "belong to"—i.e., be a member of—one of the two major political parties to serve on the Ohio Citizens Redistricting Commission.

The Amendment sets rules and restrictions on who can and cannot serve on the Commission, including barring a wide array of political actors. The ballot language falsely describes who can serve on the Commission and does not indicate how many commissioners there will be from each affiliation category. Notably, the Amendment also requires the affirmative vote of at least nine commissioners, including at least two from each affiliation category (including unaffiliated commissioners), for all actions by the Commission. *See* (RELATORS_013 at

Sec. 4(A)). The balanced, tripartite commission structure and minimum cross-affiliation and non-affiliation voting requirements ensure that the Commission's actions will *not* be dominated by partisan actors.

Thus, paragraph 3 of the Ballot Board's language is both false and deceptive. And, likewise, the material omissions of any mention of the Amendment's rules barring conflicts of interest and requiring a demonstration of a commissioner's ability to serve with impartiality, integrity, and fairness, along with the Commission's voting requirements, further render it legally deficient.

4. The Amendment does not limit the right of any Ohioan to freely express their public opinions to the Commission.

The Ballot Board's language falsely states that the Amendment will "[l]imit the right of Ohio citizens to freely express their opinions to members of the commission or to commission staff regarding the redistricting process or proposed redistricting plans." (RELATORS_035–36 ¶ 8). This baseless statement is explicitly contradicted by numerous provisions of the Amendment, all of which exemplify its clear aims to ensure maximum transparency and opportunities for all Ohioans to participate and be heard. And Attorney General Yost likewise agreed at the summary certification stage that the Amendment would require the Ohio Citizens Redistricting Commission to operate in an "open and transparent process" that "invites broad participation throughout the state" and includes public meetings and hearings. (RELATORS_001–03, 005 ¶ 2, 11, 14–18, 46); *see* (RELATORS_042).

Nothing in the Amendment prohibits any Ohioan from exercising their right to express their opinions to the Commission. The Amendment explicitly requires that "[a]ll deliberations and actions of the commission shall be in public meetings," (RELATORS_013 at Sec. 4(A)), and guarantees that "[t]he commission shall conduct its hearings in a manner that *invites broad public*

participation throughout the state, including by using technology to broadcast commission meetings and to facilitate meaningful participation from a range of Ohioans." (Emphasis added.) (RELATORS_014 at Sec. 5(A)). The Amendment also requires the Commission to "hold at least three rounds of public meetings" before adopting a redistricting plan, as well as at least five public input hearings across Ohio both before and after the release of draft redistricting plans.[5] (RELATORS_014–15 at Sec. 5(B)). In addition to peripatetically traversing the State to hold public hearings, the Commission is also required to "provide a portal for digital submission of public comments." (RELATORS_015 at Sec. 5(C)).

The Amendment further requires that all "commissioners and commission staff, professionals and consultants . . . adhere to all applicable public records and open meetings laws." (RELATORS_014 at Sec. 5(A)(1)). And because the Commission is required to conduct its business transparently in open public meetings, the Amendment prohibits the Commission and its staff from communicating with "any outside person about the redistricting process or redistricting plan outcomes" outside public meetings and official Commission portals. *Id.* at Sec. 5(A)(2).

Although the Amendment prohibits such *ex parte* communications between the Commission and outside persons, it does so in furtherance of *ensuring* transparency and opportunities for all Ohioans to participate on equal footing and preventing undue influence through behind-the-scenes communications. To be sure, the Amendment provides that "no person shall attempt to contact any member or members of the commission or commission staff, professional, or consultants with the intent to influence the redistricting process or redistricting

[5] These hearings must "take place in all five regions of Ohio, with at least one hearing in the northwest region, one in the northeast region, one in the southeast region, one in the southwest region, and one in the central region." (RELATORS_014–15 at Sec. 5(B)(1)); *see also* (RELATORS_015 at Sec. 5(B)(2)).

plan outcomes *other than through designated public meetings or official commission portals*." (Emphasis added.) *Id.* at Sec. 5(A)(3). But the Amendment *does not* prohibit any person from opining on the redistricting process or proposed redistricting plans—it simply includes a sunshine provision to ensure attempts to influence the outcome occur publicly.

These purposes are evident from the consequences for noncompliance: If a commissioner, for example, receives such an *ex parte* communication, *they* must "immediately disclose[] [it] to the commission as a whole including legal counsel." (RELATORS_014 at Sec. 5(A)(3)). The person *making* the communication faces no punishment or consequences. Instead, if the Commission determines that the communication is a material violation and that the identity of the person making that communication would be of public interest, it may vote to make public the attempt to influence the Commission privately. *Id.* The person making the communication is not "limited" from expressing their opinion—other Ohioans will simply be informed of it, thereby allowing them to express their own opinions about other forces seeking to influence the Commission. Thus, far from limiting any Ohio citizen's ability to freely express themselves before the Commission, these procedures ensure fairness both in Ohioans' opportunities to participate and in the Commission's own decision making. *Cf. Myers v. Pub. Util. Comm.*, 64 Ohio St. 3d 299, 303 (1992) (recognizing that purpose of prohibition on *ex parte* communications "is to prevent a party from gaining an unfair advantage"); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 2013-Ohio-881, ¶ 29 (recognizing that Ohio's Sunshine Law is "aimed at promoting openness in government" and does not guarantee anonymity for citizens participating in public meetings). The Amendment allows every Ohioan to freely express their opinion to the Commission. But if that opinion is expressed outside the Commission's public process, and is a material communication about the redistricting process, the Commission can vote to make the communication public.

Not only does the ballot language flatly misstate what the Amendment would require, but it also *says nothing at all* about the public process requirements outlined above. Again, the Court has long recognized that ballot language marred by material omissions is defective. *Voters First*, 2012-Ohio-4149, at ¶ 27–31.

5. The ballot language falsely states the Amendment's effects on the scope of judicial review.

The Ballot Board's language falsely states that the Amendment will "[p]rohibit any citizen from filing a lawsuit challenging a redistricting plan in any court, except if the lawsuit challenges the proportionality standard applied by the commission, and then only before the Ohio Supreme Court." (RELATORS_034–35 ¶ 5). Again, this assertion is outright wrong: The Amendment simply does not say or do what the Ballot Board's language claims.

First, the Amendment does not preclude federal courts from hearing redistricting challenges otherwise falling within their jurisdiction. Thus, the Amendment does not preclude "any court" from hearing a challenging to a redistricting plan passed by the Commission, because it could not do so. The Supremacy Clause of the U.S. Constitution would preclude any such attempt. *See United States v. Washington*, 596 U.S. 832, 835 (2022) (recognizing that states cannot "directly regulate or discriminate against" the federal government without its consent). Naturally, only the federal government—i.e., Congress—has the power to strip federal courts from hearing cases that are otherwise properly before them. *See Patchak v. Zinke*, 583 U.S. 244, 250–51 (2018); *see also Cary v. Curtis*, 44 U.S. 236, 245 (1845) ("[T]he judicial power of the United States . . . is . . . dependent . . . entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction[.]"). Federal courts thus remain free to hear and decide any number of cases related to redistricting in Ohio, such as malapportionment claims under the U.S. Constitution, *see*

Harris v. Arizona Indep. Redistricting Comm., 578 U.S. 253, 258–59 (2016), quoting *Reynolds v. Sims*, 377 U.S. 533, 577, 579 (1964), or vote dilution claims under the Voting Rights Act, *see Allen v. Milligan*, 599 U.S. 1, 17–18 (2023).

Second, the Amendment does not limit lawsuits brought before this Court to only those challenging a so-called "proportionality standard." As an initial matter, the Amendment does not expressly authorize challenges *to* the "proportionality standard," but rather to the Commission's *application* of the requirement that a plan not unduly favor or disfavor a party compared to Ohioans' actual voting preferences." (RELATORS_016, 019 at Secs. 6(B), 8(A)). Moreover, this Court is granted jurisdiction over "*all cases* which contend that a redistricting plan adopted by the commission fails to comply *with the requirements of section 6(B)*." (Emphases added.) (RELATORS_019 at Sec. 8(A)). And Section 6(B) covers a range of redistricting criteria and requirements. It does, of course, "ban partisan gerrymandering and prohibit the use of redistricting plans that favor one political party and disfavor others." (RELATORS_016 at Sec. 6(B)). But it additionally prohibits any redistricting plan from considering "the place of residence of any incumbent elected official or any candidate for state or congressional office." *Id.* at Sec. 6(B)(4). Likewise, it prohibits the Commission from accounting for "senators whose terms will not expire within two years of the plan's effective date" in the state legislative redistricting process. *Id.* at Sec. 6(B)(5). Both criteria are clearly distinct from what the Ballot Board characterizes as the "proportionality standard."

Thus, the Ballot Board's language purporting to describe the Amendment's effect on judicial review is legally deficient because it does not "tell[] voters what they are being asked to vote on." *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 12.

6. The ballot language mischaracterizes Amendment provisions regarding communities of interest in an improper attempt to persuade.

In addition to the aforementioned defects in paragraph 2 of the Ballot Board's language, *see supra* Section I.A.1, sub-paragraph 2(B) does not accurately convey the criteria the Commission is to use to draw districts. That ballot language says that "[c]ounties, townships and cities throughout Ohio can be split and divided across multiple districts, and preserving communities of interest will be secondary to the formula that is based on partisan political outcomes." (RELATORS_034 ¶ 2(B)). This suggests that, under the current redistricting system, counties, cities, and towns *cannot* be split across multiple districts, and that preservation of communities of interest is a redistricting criterion of predominant importance. Neither is true.

This Court knows from experience that the current constitutional provisions *do* allow political subdivisions to be split and *do not* provide any protection for communities of interest. *Cf. Adams v. DeWine*, 2022-Ohio-89, ¶ 62 (recognizing that "keeping communities of interest together" is a *traditional* redistricting criterion rather than one mandated by Ohio law), quoting *Rucho v. Common Cause*, 588 U.S. 684, 706 (2019). And, in fact, the Amendment affirmatively sets out extensive *new* constitutional rules for "preserv[ing] communities of interest to the extent practicable," including political subdivisions. (RELATORS_017 at Sec. 6(C)(3)).

7. The ballot language mischaracterizes the Amendment as generally preventing a commissioner from being removed, even in cases of incapacity or egregious misconduct.

Paragraph 4 of the Ballot Board's adopted ballot language flips the Commission's power to remove commissioners on its head. The ballot language asserts that the Amendment would "*[p]revent* a commission member from being removed, except by a vote of their fellow commission members, even for incapacity, willful neglect of duty or gross misconduct." (Emphasis added.) (RELATORS_034 ¶ 4). The only reason for this elliptical sentence construction

is to mislead voters, suggesting that commission members will be generally insulated from scrutiny. This language is particularly rich given that the constitutional provisions that govern the current Ohio Redistricting Commission provide *no way* to remove a commissioner, no matter how egregious their conduct.

In reality, the Amendment sets out mandatory duties and responsibilities of commissioners and establishes a procedure for the Commission to remove commissioners for "cause," such as "acts that undermine the public's trust in the commission and the redistricting process." (RELATORS_013 at Sec. 4(C)(5)). The Amendment *establishes* a removal procedure to ensure accountability, rather than *preventing* removal to shield commissioners from scrutiny.

8. The ballot language misleadingly suggests that Ohio citizens get a vote in the current redistricting process.

Next, paragraph 9 of the Ballot Board's adopted ballot language inaccurately and misleadingly implies that voters themselves adopted the current redistricting plan, stating that Commission-adopted plans would "replace the most recent districts adopted by the citizens of Ohio through their elected representatives." (RELATORS_036 ¶ 9). But citizens of Ohio do not get a vote on the existing Ohio Redistricting Commission, which adopted the existing state legislative and congressional districts. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2023-Ohio-4271, ¶ 1. Moreover, the overwhelming majority of Ohioans did not have an opportunity to vote for a majority of the current commissioners, because a majority of the current Commission were members of the General Assembly elected from specific state legislative districts. *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, ¶ 10 (noting that four of seven members were members of the General Assembly).

The Court has seen this kind of gambit from the Ballot Board before—adoption of language suggesting that action of the State is coterminous with action of citizens. *See Ohioans United for*

Reproductive Rights, 2023-Ohio-3325, at ¶ 24–26 (rejecting Ballot Board argument that "the 'State' and the 'citizens of the State' are synonymous from the standpoint of the exercise of governmental power"). Just as in the matter before the Court last year, this is an improper attempt at persuasion and should be corrected.

9. The ballot language mischaracterizes the Amendment's impact on public expenditures.

Finally, paragraph 10 of the Ballot Board's adopted ballot language provides a misleading and prejudicial description of the costs associated with the Amendment. Under current law, the "general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article and Article XIX of this constitution." Ohio Const., art. XI, § 1(D). This includes paying for staff hired by the Ohio Redistricting Commission. *Id.* § 1(B)(2)(a). And, famously, the Ohio Redistricting Commission and Ohio General Assembly have incurred more than a million dollars in legal fees defending its recidivist violations of Ohio law. (RELATORS_084–87).

Thus, it is grossly misleading and prejudicial to describe the Amendment's preservation of current practices as "[i]mpos[ing] new taxpayer-funded costs on the State of Ohio" and requiring payment of "unlimited" legal fees. (RELATORS_036 ¶ 10).

B. The ballot language's myriad and cumulative defects violate the constitutional and statutory standards.

Clearly, there are numerous "defects in [the] ballot language." *One Person One Vote*, 2023-Ohio-1928, at ¶ 8. Accordingly, this Court must "examine the defects as a whole and determine whether their cumulative effect violates the constitutional standard." *Id.*; *accord Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 12. That standard asks whether the ballot language "properly identif[ies] the substance of the proposal to be voted upon," or instead is "such as to mislead, deceive, or defraud the voters." Ohio Const., art. XVI, § 1. Put another way, the question

is whether the ballot language will assist the voters in casting intelligent, fully and accurately informed votes: "It is only from the ballot statement that the ultimate deciders of the question can arrive at an efficacious and intelligent expression of opinion." *Markus*, 22 Ohio St.2d at 203.

As the Ballot Board would have Ohio voters believe, the Amendment would *require* partisan gerrymandering, rather than prevent it. *But see supra* Section I.A.1. To do so, the Ballot Board's version of the Amendment creates a redistricting commission dominated by unaccountable partisan actors, leaving it for voters to fill in the blank with whichever political party they oppose. *But see supra* Sections I.A.2–I.A.3, I.A.7–I.A.8. This allegedly partisan-dominated commission would draw redistricting plans, without regard to Ohio's communities of interest, while limiting the free input of Ohio citizens exercising their right to express their opinions. *But see supra* Sections I.A.4, I.A.6. And, according to the Ballot Board, any legal challenges to the actions of that commission would be exclusively limited to actions challenging the "proportionality standard." *But see supra* Section I.A.5. All this at the apparent greater expense of the State of Ohio and its taxpayers. *But see supra* Section I.A.9. Taken as a whole, the Ballot Board's adopted ballot language describes a fundamentally different constitutional amendment—it does not fairly or accurately describe the Amendment in any sense of those words.

In contrast, Attorney General Yost—who *now defends* the Ballot Board's false and misleading language—*previously confirmed* that the summary submitted by the Amendment's proponents was "a fair and truthful statement of the proposed initiated constitutional amendment." (RELATORS_042). In contrast to the Ballot Board's language, proponents' summary stated that the Amendment would in fact "ban partisan gerrymandering and redistricting plans that favor or disfavor a political party," (RELATORS_003 ¶ 22), by creating a 15-member commission composed of an even bipartisan split of partisan-affiliated and unaffiliated commissioners,

(RELATORS_001–02 ¶ 1, 3–4, 6–7), who are subject to for-cause removal procedures, (RELATORS_003 ¶ 12), and who must operate in an "open and transparent process" that "invites broad participation throughout the state" and includes public meetings and hearings, (RELATORS_001–03, 005 ¶ 2, 11, 14–18, 46). The proponents' Yost-approved summary also provided that redistricting plans should prioritize "preserv[ing] communities of interest to the extent practicable," (RELATORS_003–04 ¶ 23, 26–29), "that the Ohio Supreme Court will have exclusive original jurisdiction in all cases that contend that an adopted plan fails to comply with the proportionality *and incumbency and candidacy provisions* set forth in Section 6(B) of the Amendment," (emphasis added.) (RELATORS_004–05 ¶ 33), and that the Amendment sets forth rules for "adequate[ly] funding" the new redistricting process, (RELATORS_005 ¶ 38–42).

But despite the Attorney General's apparent about-face, the Ballot Board's language cannot withstand scrutiny under Ohio law. Each of the individual defects identified and discussed in Section I.A, *supra*, violates the constitutional standard and is material in and of itself. These defects "mislead, deceive, [and] defraud the voters" and impermissibly seek to persuade those voters against the Amendment, rather than identify "the substance of the proposal," Ohio Const., art. XVI, § 1. The ballot language utterly fails to "accurately tell the voters what they are being asked to vote on." *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 29. Far from "convey[ing] an intelligent idea of the scope and import of the amendment," *Markus*, 22 Ohio St.2d at 202–03, the ballot language cumulatively seeks to rewrite the Amendment in a painfully obvious attempt to prejudice voters against it. Such fundamental defects are contrary to Ohio law and cannot be permitted to appear on the November 2024 general election ballot.

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

The ballot title prescribed by Secretary LaRose at the Ballot Board's August 16 meeting—"To create an appointed redistricting commission not elected by or subject to removal by the voters of the state"—also violates state law. Under Section 3519.21 of the Revised Code, the ballot title must be "true and impartial" and not likely to "create prejudice for or against the measure." Accordingly, this Court "must examine whether the ballot title tells voters what they are being asked to vote on and whether it impermissibly uses language that amounts to persuasive argument." *One Person One Vote*, 2023-Ohio-1928, at ¶ 24, citing *Jurcisin*, 35 Ohio St. 3d at 141. Secretary LaRose's prescribed title does not pass the test.

First, the ballot title is inaccurate—particularly when read consistently with the ballot language that was adopted simultaneously—and it doubles down on the falsehoods injected into the Ballot Board's adopted language. As explained above, paragraph 4 of the ballot language mischaracterizes the Amendment by suggesting that it inappropriately insulates commissioners from accountability when in fact the Amendment seeks to *introduce* additional safeguards to ensure redistricting in Ohio is accountable to the citizens, not the politicians. *See supra* Section I.A.7. Meanwhile, paragraph 9 misleadingly states that, under the current Commission structure, the "citizens of Ohio" themselves "adopted" the "most recent districts" drawn by the Commission. *See supra* Section I.A.8. They did not. Partisan politicians serving on the Commission did—most of whom were elected to represent only a few slivers of the electorate. In stark juxtaposition, the title states that the Ohio Citizens Redistricting Commission would "not [be] elected by or subject to removal by the voters of the state." (RELATORS_034). Simply put, the Ballot Board and Secretary LaRose cannot have their cake and eat it too. If the "voters" act through the Commission under the current system, then so, too, would the voters act through the

bipartisan screening panel of Ohio citizens who select commissioners, and thus through the Ohio citizens who ultimately serve on the new Commission. For one, if the Amendment is approved, the voters themselves will have authorized the operations of the new Commission. More importantly, however, the new Commission in fact shortens the chain of accountability between the voters and the decisionmakers drawing Ohio's electoral districts by permitting the voters themselves to serve as commissioners, and by cutting out the middlemen politicians who retain vested interests in their own district borders and consequent electoral prospects.

In any event, and fatally, the title is improperly persuasive because it presents a distorted description of the Ohio Citizens Redistricting Commission and thus "is 'in the nature of a persuasive argument . . . against the issue.'" *One Person One Vote*, 2023-Ohio-1928, at ¶ 28, quoting *Bailey*, 67 Ohio St.2d at 519. By stating *only* that the Commission is "not elected by or subject to removal by the voters of the state," the title ignores not only how the commissioners *are* selected and removed, but also the myriad other things that the Commission is *not.* For the title to cherry-pick a single negative descriptor is nothing if not improperly persuasive. Indeed, the Secretary's prescribed title is akin to a title such as: "To create an appointed redistricting commission not authorized to lower Ohioans' taxes." The Secretary cannot include whatever he wants in a ballot title—rather, the title must affirmatively describe the Amendment's text, and it must do so in a way that is not designed to mislead or persuade.

Respondents may attempt to argue that the ballot title's language simply emphasizes a point of contrast to the existing Ohio Redistricting Commission. But that is not the case. The current Commission is neither "elected" nor "subject to removal by the voters of the state." Rather, it consists of *ex officio* members, only a minority of whom were elected by all Ohio voters—and that, too, to serve in positions that are largely unrelated to redistricting (Governor, Secretary of

State, and Auditor of State). *See generally* Ohio Const., art. XI, § 1. Indeed, the majority of the commissioners are appointed by the leaders of each state legislative caucus without public input; they need not be elected representatives at all. *Id.* And there is no procedure set forth for removing any of the commissioners from the Commission. *Id.*; *cf. supra* Section I.A.7. Regardless, this Court has explained that ballot language need not "inform voters about current law" or "describe the pre-amendment status quo." *One Person One Vote*, 2023-Ohio-1928, at ¶ 10–12.

As a point of comparison, the ballot title proposed by the Amendment's proponents is impartial, factually accurate, and not designed to prejudice voters for or against the measure, stating simply and neutrally that Issue 1 presents an "Amendment to the Constitution setting forth a structure and criteria to govern the process for drawing Ohio General Assembly and Ohio Congressional districts." (RELATORS_053).

The defects in the Secretary's title are fatal to the validity of the ballot because they render the title neither "true" nor "impartial"—in direct contravention of the Secretary's statutory mandate. *See* R.C. 3519.21.

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

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

legal duty to provide the requested relief because he has a mandatory duty under Section 3519.21 to prescribe a lawful ballot title. Thus far, he has abused his discretion and acted in clear disregard of applicable law and his legal duty. And Relators lack an adequate remedy at law because this Court has original and exclusive jurisdiction of the subject matter of the action under Article XVI and has long treated mandamus as the only available remedy an elector seeks to challenge the form in which a ballot issue is to be submitted. *See, e.g.*, *Voters First*, 2012-Ohio-4149, at ¶ 22.

This Court should therefore grant a writ of mandamus that specifies each of the existing language's defects, as set out above, and notes the specific corrections necessary to redress those defects, as follows:

- **Paragraph 1:** The ballot language must avoid irrelevant language whose purpose is to improperly persuade. Accordingly, this paragraph must be removed entirely. *See supra* Section I.A.2.
- **Paragraph 2:** The ballot language must not inaccurately state that the Amendment *requires* gerrymandering to favor Ohio's two largest political parties when it expressly does the opposite. It should thus omit language stating that the Ohio Citizens Redistricting Commission is "required to gerrymander the boundaries of state legislative and congressional districts to favor either of the two largest political parties in the state of Ohio" and instead accurately describe the criteria by which districts must be drawn.[6] *See supra* Section I.A.1. Furthermore, the ballot language must omit language that suggests that, under the current redistricting system,

[6] Importantly, the Secretary's original proposed term ("manipulate") is also inappropriately persuasive because of its negative connotations. *See* (RELATORS_081); *see also supra* notes 3–5. Appropriate and neutral terms for describing the act of creating districting plans include "draw," "create," or "craft."

counties, cities, and towns *cannot* be split across multiple districts, or that preservation of communities of interest is a redistricting criterion of predominant importance. *See supra* Section I.A.6.

- **Paragraph 3:** The ballot language must accurately describe the composition of the new Ohio Citizens Redistricting Commission and replace language stating that the Amendment "require[s] that a majority of the partisan commission members belong to the state's two largest political parties" with language explaining the requirements for the composition of the Commission's entire membership and for its voting procedures. *See supra* Section I.A.3.
- **Paragraph 4:** The ballot language must not distort the Commission's power to remove commissioners. The existing language here must be replaced with language accurately describing the removal process. *See supra* Section I.A.7.
- **Paragraph 5:** The ballot language must not falsely state that the Amendment prohibits or limits challenges to Commission-drawn redistricting plans. The existing language here must be replaced with language accurately describing the Ohio Supreme Court's exclusive, original jurisdiction under the Amendment. *See supra* Section I.A.5.
- **Paragraph 8:** The ballot language must not inaccurately state or imply that Ohioans will not have the ability to provide input during the redistricting process. The existing language here must be replaced with language describing the Amendment's transparency and public participation provisions. *See supra* Section I.A.4.

- **Paragraph 9:** The ballot language must not misleadingly state that Ohio citizens adopted the current redistricting plans, which were adopted by the former Ohio Redistricting Commission, of which the majority were General Assembly members elected from specific state legislative districts. This paragraph should omit language stating that the most recent plans were "adopted by the citizens of Ohio through their elected representatives." *See supra* Section I.A.8.
- **Paragraph 10:** The ballot language must not use prejudicial language to describe the Amendment's costs. This paragraph should set forth any information about such costs in a neutral manner. *See supra* Section I.A.9.

See (RELATORS_088–89) (Relators' demonstrative ballot title and language); *see also* (RELATORS_001–006) (Amendment proponents' Yost-approved summary).

Likewise, the Court should grant a writ of mandamus ordering that Respondent Secretary LaRose prescribe a lawful ballot title that omits the inaccurate and prejudicial phrase "not elected by or subject to removal by the voters of the state." (RELATORS_034).

Finally, this Court has inherent and express authority to retain jurisdiction of an action, and it should do so here. Ohio courts have inherent authority to enforce their orders. *See Infinite Sec. Solutions, L.L.C. v. Karam Properties, II, Ltd.,* 2015-Ohio-1101, ¶ 27 ("Courts have inherent authority to enforce their final judgments and decrees."), citing *Rieser v. Rieser*, 2010-Ohio-6227, ¶ 5 (2d Dist.) and *In re Whallon* 6 Ohio App. 80, 83 (1st Dist. 1915). This Court has previously retained jurisdiction where doing so was necessary to effectuate an order in time for an upcoming election. *League of Women Voters of Ohio*, 2022-Ohio-65, at ¶ 136–37 ("[B]ecause the election cycle should not proceed with a General Assembly-district map that we have declared invalid, . . . [w]e also retain jurisdiction to review the [remedial] plan that the commission adopts for

compliance with our order."). And the Revised Code expressly confirms the Court's authority, in an action for mandamus, "to carry its order and judgment into execution, or to punish any officer . . . for contempt or disobedience of its orders or writs." R.C. 2731.16.

Insofar as the Court grants relief, it should also retain jurisdiction to ensure Respondents fully comply with its remedial orders, given the limited time there would be to bring a second lawsuit in the current election calendar. *See* Ohio Const., art. XVI, § 1 ("No such case challenging the ballot language . . . shall be filed later than sixty-four days before the election."); *see also* 52 U.S.C. § 20302(a)(8)(a) (requiring Ohio to transmit ballots to overseas and military voters "not later than 45 days before the election"—meaning, this cycle, by September 21). Retaining jurisdiction is thus necessary to afford complete relief, protect the Court's own authority, and preserve the separation of powers.

CONCLUSION

For the foregoing reasons, Relators request that this Court issue a writ of mandamus directing the Ohio Ballot Board to reconvene and prescribe lawful ballot language for the Amendment, as detailed in Part III, *supra*. *See also supra* Part I.

Relators also request that the Court issue a writ of mandamus directing Respondent Secretary LaRose to prescribe a lawful ballot title for the Amendment, meaning that the title must not use words or phrases that are likely to create prejudice against the Amendment or mislead electors about the Amendment's operation. *See supra* Part II.

Relators further request that this Court retain jurisdiction of this action pursuant to its inherent enforcement authority and Revised Code Section 2731.16, and render any and all further orders that the Court may deem necessary, including, but not limited to, determining the validity of any new ballot language prescribed by the Ohio Ballot Board and any new ballot title prescribed by the Secretary of State.

Finally, Relators request that this Court grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators' reasonable costs.

Dated: August 29, 2024

Respectfully submitted,

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I hereby certify that the foregoing was sent via email this 29th day of August 2024 to the following:

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APPENDIX
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ohio Constitution, Article II

Section 1a: Initiative and referendum to amend constitution.

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

Section 1g: Requirements for initiative and referendum petitions.

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

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

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

determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

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

Ohio Constitution, Article IV

Section 2: Organization and jurisdiction of Supreme Court

. . .

(B)

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

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

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

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

. . .

Ohio Constitution, Article XVI

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

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

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

five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

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

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

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

Ohio Constitution, Article XI

Section 1: Ohio redistricting commission.

(A) The Ohio redistricting commission shall be responsible for the redistricting of this state for the general assembly. The commission shall consist of the following seven members:

(1) The governor;

(2) The auditor of state;

(3) The secretary of state;

(4) One person appointed by the speaker of the house of representatives;

(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;

(6) One person appointed by the president of the senate; and

(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.

No appointed member of the commission shall be a current member of congress.

The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.

(B)(1) Unless otherwise specified in this article or in Article XIX of this constitution, a simple majority of the commission members shall be required for any action by the commission.

(2)(a) Except as otherwise provided in division (B)(2)(b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do any of the following:

(i) Adopt rules of the commission;

(ii) Hire staff for the commission;

(iii) Expend funds.

(b) If the commission is unable to agree, by the vote required under division (B)(2)(a) of this section, on the manner in which funds should be expended, each co-chairperson of the commission shall have the authority to expend one-half of the funds that have been appropriated to the commission.

(3) The affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly shall be required to adopt any general assembly district plan. For the purposes of this division and of Section 1 of Article XIX of this constitution, a member of the commission shall be considered to represent a political party if the member was appointed to the commission by a member of that political party or if, in the case of the governor, the auditor of state, or the secretary of state, the member is a member of that political party.

(C) At the first meeting of the commission, which the governor shall convene only in a year ending in the numeral one, except as provided in Sections 8 and 9 of this article and in Sections 1 and 3 of Article XIX of this constitution, the commission shall set a schedule for the adoption of procedural rules for the operation of the commission.

The commission shall release to the public a proposed general assembly district plan for the boundaries for each of the ninety-nine house of representatives districts and the thirty-three senate districts. The commission shall draft the proposed plan in the manner prescribed in this article. Before adopting, but after introducing, a proposed plan, the commission shall conduct a minimum of three public hearings across the state to present the proposed plan and shall seek public input regarding the proposed plan. All meetings of

the commission shall be open to the public. Meetings shall be broadcast by electronic means of transmission using a medium readily accessible by the general public.

The commission shall adopt a final general assembly district plan not later than the first day of September of a year ending in the numeral one. After the commission adopts a final plan, the commission shall promptly file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective.

Four weeks after the adoption of a general assembly district plan or a congressional district plan, whichever is later, the commission shall be automatically dissolved.

(D) The general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article and Article XIX of this constitution.

Section 2: Number of representatives per house of representatives district; number of senators per senate district.

Each house of representatives district shall be entitled to a single representative in each general assembly. Each senate district shall be entitled to a single senator in each general assembly.

Section 3: Ratio of representation in house and senate; requirements for general assembly district plan; priority for creation and numbering of house districts; splitting of counties, municipal corporations, or townships.

(A) The whole population of the state, as determined by the federal decennial census or, if such is unavailable, such other basis as the general assembly may direct, shall be divided by the number "ninety-nine" and by the number "thirty-three" and the quotients shall be the ratio of representation in the house of representatives and in the senate, respectively, for ten years next succeeding such redistricting.

(B) A general assembly district plan shall comply with all of the requirements of division (B) of this section.

(1) The population of each house of representatives district shall be substantially equal to the ratio of representation in the house of representatives, and the population of each senate district shall be substantially equal to the ratio of representation in the senate, as provided in division (A) of this section. In no event shall any district contain a population of less than ninety-five per cent nor more than one hundred five per cent of the applicable ratio of representation.

(2) Any general assembly district plan adopted by the commission shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law.

(3) Every general assembly district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(C) House of representatives districts shall be created and numbered in the following order of priority, to the extent that such order is consistent with the foregoing standards:

(1) Proceeding in succession from the largest to the smallest, each county containing population greater than one hundred five per cent of the ratio of representation in the house of representatives shall be divided into as many house of representatives districts as it has whole ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining house of representatives district.

(2) Each county containing population of not less than ninety-five per cent of the ratio of representation in the house of representatives nor more than one hundred five per cent of the ratio shall be designated a representative district.

(3) The remaining territory of the state shall be divided into representative districts by combining the areas of counties, municipal corporations, and townships. Where feasible, no county shall be split more than once.

(D)(1)(a) Except as otherwise provided in divisions (D)(1)(b) and (c) of this section, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district.

(b) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for the purposes of this section.

(c) If a municipal corporation or township that is located in a county that contains a municipal corporation or township that has a population of more than one ratio of representation is split for the purpose of complying with division (E)(1)(a) or (b) of this section, each portion of that municipal corporation or township shall be considered to be a separate municipal corporation or township for the purposes of this section.

(2) Representative districts shall be drawn so as to split the smallest possible number of municipal corporations and townships whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(3) Where the requirements of divisions (B), (C), and (D) of this section cannot feasibly be attained by forming a representative district from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.

(E)(1) If it is not possible for the commission to comply with all of the requirements of divisions (B), (C), and (D) of this section in drawing a particular representative district, the commission shall take the first action listed below that makes it possible for the commission to draw that district:

(a) Notwithstanding division (D)(3) of this section, the commission shall create the district by splitting two municipal corporations or townships whose contiguous portions do not contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(b) Notwithstanding division (D)(2) of this section, the commission shall create the district by splitting a municipal corporation or township whose contiguous portions contain a population of more than fifty per cent, but less than one hundred per cent, of one ratio of representation.

(c) Notwithstanding division (C)(2) of this section, the commission shall create the district by splitting, once, a single county that contains a population of not less than ninety-five per cent of the ratio of representation, but not more than one hundred five per cent of the ratio of representation.

(d) Notwithstanding division (C)(1) of this section, the commission shall create the district by including in two districts portions of the territory that remains after a county that contains a population of more than one hundred five per cent of the ratio of representation has been divided into as many house of representatives districts as it has whole ratios of representation.

(2) If the commission takes an action under division (E)(1) of this section, the commission shall include in the general assembly district plan a statement explaining which action the commission took under that division and the reason the commission took that action.

(3) If the commission complies with divisions (E)(1) and (2) of this section in drawing a district, the commission shall not be considered to have violated division (C)(1), (C)(2), (D)(2), or (D)(3) of this section, as applicable, in drawing that district, for the purpose of an analysis under division (D) of Section 9 of this article.

Section 4: Composition and numbering of senate districts.

(A) Senate districts shall be composed of three contiguous house of representatives districts.

(B)(1) A county having at least one whole senate ratio of representation shall have as many senate districts wholly within the boundaries of the county as it has whole senate ratios of representation. Any fraction of the population in excess of a whole ratio shall be a part of only one adjoining senate district.

(2) Counties having less than one senate ratio of representation, but at least one house of representatives ratio of representation, shall be part of only one senate district.

(3) If it is not possible for the commission to draw representative districts that comply with all of the requirements of this article and that make it possible for the commission to comply with all of the requirements of divisions (B)(1) and (2) of

this section, the commission shall draw senate districts so as to commit the fewest possible violations of those divisions. If the commission complies with this division in drawing senate districts, the commission shall not be considered to have violated division (B)(1) or (2) of this section, as applicable, in drawing those districts, for the purpose of an analysis under division (D) of Section 9 of this article.

(C) The number of whole ratios of representation for a county shall be determined by dividing the population of the county by the ratio of representation in the senate determined under division (A) of Section 3 of this article.

(D) Senate districts shall be numbered from one through thirty-three and as provided in Section 5 of this article.

Section 5: Determining which senator will represent district when senate district boundaries are changed in general assembly district plan.

At any time the boundaries of senate districts are changed in any general assembly district plan made pursuant to any provision of this article, a senator whose term will not expire within two years of the time the plan becomes effective shall represent, for the remainder of the term for which the senator was elected, the senate district that contains the largest portion of the population of the district from which the senator was elected, and the district shall be given the number of the district from which the senator was elected. If more than one senator whose term will not so expire would represent the same district by following the provisions of this section, the plan shall designate which senator shall represent the district and shall designate which district the other senator or senators shall represent for the balance of their term or terms.

Section 6: Standards for Ohio redistricting commission in drawing general assembly district plan.

The Ohio redistricting commission shall attempt to draw a general assembly district plan that meets all of the following standards:

(A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party.

(B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.

(C) General assembly districts shall be compact.

Nothing in this section permits the commission to violate the district standards described in Section 2, 3, 4, 5, or 7 of this article.

Section 7: District boundaries to be created by using boundaries of counties, municipal corporations, and townships as they exist at time of federal decennial census on which redistricting is based.

Notwithstanding the fact that boundaries of counties, municipal corporations, and townships within a district may be changed, district boundaries shall be created by using the boundaries of counties, municipal corporations, and townships as they exist at the time of the federal decennial census on which the redistricting is based, or, if unavailable, on such other basis as the general assembly has directed.

Section 8: Proceedings when Ohio redistricting commission fails to timely adopt final general assembly district plan under Art. XI, § 1.

(A)(1) If the Ohio redistricting commission fails to adopt a final general assembly district plan not later than the first day of September of a year ending in the numeral one, in accordance with Section 1 of this article, the commission shall introduce a proposed general assembly district plan by a simple majority vote of the commission.

(2) After introducing a proposed general assembly district plan under division (A)(1) of this section, the commission shall hold a public hearing concerning the proposed plan, at which the public may offer testimony and at which the commission may adopt amendments to the proposed plan. Members of the commission should attend the hearing; however, only a quorum of the members of the commission is required to conduct the hearing.

(3) After the hearing described in division (A)(2) of this section is held, and not later than the fifteenth day of September of a year ending in the numeral one, the commission shall adopt a final general assembly district plan, either by the vote required to adopt a plan under division (B)(3) of Section 1 of this article or by a simple majority vote of the commission.

(B) If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 9 of this article.

(C)(1)(a) Except as otherwise provided in division (C)(1)(b) of this section, if the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B)(3) of Section 1 of this article, the plan shall take effect upon filing with the secretary of state and shall remain effective until two general elections for the house of representatives have occurred under the plan.

(b) If the commission adopts a final general assembly district plan in accordance with division (A)(3) of this section by a simple majority vote of the commission, and not by the vote required to adopt a plan under division (B) of Section 1 of this article, and that plan is adopted to replace a plan that

ceased to be effective under division (C)(1)(a) of this section before a year ending in the numeral one, the plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until a year ending in the numeral one, except as provided in Section 9 of this article.

(2) A final general assembly district plan adopted under division (C)(1)(a) or (b) of this section shall include a statement explaining what the commission determined to be the statewide preferences of the voters of Ohio and the manner in which the statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party corresponds closely to those preferences, as described in division (B) of Section 6 of this article. At the time the plan is adopted, a member of the commission who does not vote in favor of the plan may submit a declaration of the member's opinion concerning the statement included with the plan.

(D) After a general assembly district plan adopted under division (C)(1)(a) of this section ceases to be effective, and not earlier than the first day of July of the year following the year in which the plan ceased to be effective, the commission shall be reconstituted as provided in Section 1 of this article, convene, and adopt a new general assembly district plan in accordance with this article, to be used until the next time for redistricting under this article. The commission shall draw the new general assembly district plan using the same population and county, municipal corporation, and township boundary data as were used to draw the previous plan adopted under division (C) of this section.

Section 9: Jurisdiction; proceedings upon determination of invalidity by unappealed, final court order.

(A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.

(B) In the event that any section of this constitution relating to redistricting, any general assembly district plan made by the Ohio redistricting commission, or any district is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the commission shall be reconstituted as provided in Section 1 of this article, convene, and ascertain and determine a general assembly district plan in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the general assembly from districts designated in the plan, to be used until the next time for redistricting under this article in conformity with such provisions of this constitution as are then valid.

(C) Notwithstanding any provision of this constitution or any law regarding the residence of senators and representatives, a general assembly district plan made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election.

(D)(1) No court shall order, in any circumstance, the implementation or enforcement of any general assembly district plan that has not been approved by the commission in the manner prescribed by this article.

(2) No court shall order the commission to adopt a particular general assembly district plan or to draw a particular district.

(3) If the supreme court of Ohio determines that a general assembly district plan adopted by the commission does not comply with the requirements of Section 2, 3, 4, 5, or 7 of this article, the available remedies shall be as follows:

(a) If the court finds that the plan contains one or more isolated violations of those requirements, the court shall order the commission to amend the plan to correct the violation.

(b) If the court finds that it is necessary to amend not fewer than six house of representatives districts to correct violations of those requirements, to amend not fewer than two senate districts to correct violations of those requirements, or both, the court shall declare the plan invalid and shall order the commission to adopt a new general assembly district plan in accordance with this article.

(c) If, in considering a plan adopted under division (C) of Section 8 of this article, the court determines that both of the following are true, the court shall order the commission to adopt a new general assembly district plan in accordance with this article:

(i) The plan significantly violates those requirements in a manner that materially affects the ability of the plan to contain districts whose voters favor political parties in an overall proportion that corresponds closely to the statewide political party preferences of the voters of Ohio, as described in division (B) of Section 6 of this article.

(ii) The statewide proportion of districts in the plan whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party does not correspond closely to the statewide preferences of the voters of Ohio.

Ohio Constitution, Article XIX

Section 1: Adoption of congressional district plan.

(A) Except as otherwise provided in this section, the general assembly shall be responsible for the redistricting of this state for congress based on the prescribed number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States.

Not later than the last day of September of a year ending in the numeral one, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(B) If a congressional district plan is not passed not later than the last day of September of a year ending in the numeral one and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall adopt a congressional district plan not later than the last day of October of that year by the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly. The plan shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(C)(1) If the Ohio redistricting commission does not adopt a plan not later than the last day of October of a year ending in the numeral one, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.

(2) If the general assembly passes a congressional district plan under division (C)(1) of this section by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-third of the members of each of the two largest political parties represented in that house , and the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(3) If the general assembly passes a congressional district plan under division (C)(1) of this section by a simple majority of the members of each house of the general assembly, and not by the vote described in division (C)(2) of this section, all of the following shall apply:

(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.

(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.

(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.

(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (C)(3)(a) to (c) of this section.

(e) If the plan becomes law, the plan shall remain effective until two general elections for the United States house of representatives have occurred under the plan, except as provided in Section 3 of this article.

(D) Not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section, the general assembly shall pass a congressional district plan in the form of a bill by the affirmative vote of three-fifths of the members of each house of the general assembly, including the affirmative vote of at least one-half of the members of each of the two largest political parties represented in that house. A congressional district plan that is passed under this division and becomes law shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

A congressional district plan passed under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(E) If a congressional district plan is not passed not later than the last day of September of the year after the year in which a plan expires under division (C)(3)(e) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, then the Ohio redistricting commission described in Article XI of this constitution shall be reconstituted and reconvene and shall adopt a congressional district plan not later than the last day of October of that year by the affirmative vote of four members of the commission, including at least two members of the commission who represent each of the two largest political parties represented in the general assembly. A congressional district plan adopted under this division shall take effect upon filing with the secretary of state and shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(F)(1) If the Ohio redistricting commission does not adopt a congressional district plan not later than the last day of October of the year after the year in which a plan expires under division (C) (3)(e) of this section, then the general assembly shall pass a congressional district plan in the form of a bill not later than the last day of November of that year.

A congressional district plan adopted under this division shall be drawn using the federal decennial census data or other data on which the previous redistricting was based.

(2) If the general assembly passes a congressional district plan under division (F)(1) of this section by the affirmative vote of three-fifths of the members of each house, including the affirmative vote of at least one-third of the members of each of the two largest political parties represented in that house, and the plan becomes law, it shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(3) If the general assembly passes a congressional district plan under division (F)(1) of this section by a simple majority vote of the members of each house of the

general assembly, and not by the vote described in division (F)(2) of this section, all of the following shall apply:

(a) The general assembly shall not pass a plan that unduly favors or disfavors a political party or its incumbents.

(b) The general assembly shall not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations.

(c) Division (B)(2) of Section 2 of this article shall not apply to the plan. The general assembly shall attempt to draw districts that are compact.

(d) The general assembly shall include in the plan an explanation of the plan's compliance with divisions (F)(3)(a) to (c) of this section.

(e) If the plan becomes law, the plan shall remain effective until the next year ending in the numeral one, except as provided in Section 3 of this article.

(G) Before the general assembly passes a congressional district plan under any division of this section, a joint committee of the general assembly shall hold at least two public committee hearings concerning a proposed plan. Before the Ohio redistricting commission adopts a congressional district plan under any division of this section, the commission shall hold at least two public hearings concerning a proposed plan.

(H) The general assembly and the Ohio redistricting commission shall facilitate and allow for the submission of proposed congressional district plans by members of the public. The general assembly shall provide by law the manner in which members of the public may do so.

(I) For purposes of filing a congressional district plan with the governor or the secretary of state under this article, a congressional district plan shall include both a legal description of the boundaries of the congressional districts and all electronic data necessary to create a congressional district map for the purpose of holding congressional elections.

(J) When a congressional district plan ceases to be effective under this article, the district boundaries described in that plan shall continue in operation for the purpose of holding elections until a new congressional district plan takes effect in accordance with this article. If a vacancy occurs in a district that was created under the previous district plan, the election to fill the vacancy for the remainder of the unexpired term shall be held using the previous district plan.

Section 2: Requirements for congressional district plan.

(A)(1) Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress.

(2) The whole population of the state, as determined by the federal decennial census or, if the federal decennial census is unavailable, another basis as directed by the general assembly, shall be divided by the number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States, and the quotient shall be the congressional ratio of representation for the next ten years.

(3) Notwithstanding the fact that boundaries of counties, municipal corporations, and townships within a district may be changed, district boundaries shall be created by using the data from the most recent federal decennial census or from the basis directed by the general assembly, as applicable.

(B) A congressional district plan shall comply with all of the following requirements:

(1) The plan shall comply with all applicable provisions of the constitutions of Ohio and the United States and of federal law, including federal laws protecting racial minority voting rights.

(2) Every congressional district shall be compact.

(3) Every congressional district shall be composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line.

(4) Except as otherwise required by federal law, in a county that contains a population that exceeds the congressional ratio of representation, the authority drawing the districts shall take the first of the following actions that applies to that county:

(a) If a municipal corporation or township located in that county contains a population that exceeds the congressional ratio of representation, the authority shall attempt to include a significant portion of that municipal corporation or township in a single district and may include in that district other municipal corporations or townships that are located in that county and whose residents have similar interests as the residents of the municipal corporation or township that contains a population that exceeds the congressional ratio of representation. In determining whether the population of a municipal corporation or township exceeds the congressional ratio of representation for the purpose of this division, if the territory of that municipal corporation or township completely surrounds the territory of another municipal corporation or township, the territory of the surrounded municipal corporation or township shall be considered part of the territory of the surrounding municipal corporation or township.

(b) If one municipal corporation or township in that county contains a population of not less than one hundred thousand and not more than the congressional ratio of representation, that municipal corporation or township shall not be split. If that county contains two or more such

municipal corporations or townships, only the most populous of those municipal corporations or townships shall not be split.

(5) Of the eighty-eight counties in this state, sixty-five counties shall be contained entirely within a district, eighteen counties may be split not more than once, and five counties may be split not more than twice. The authority drawing the districts may determine which counties may be split.

(6) If a congressional district includes only part of the territory of a particular county, the part of that congressional district that lies in that particular county shall be contiguous within the boundaries of the county.

(7) No two congressional districts shall share portions of the territory of more than one county, except for a county whose population exceeds four hundred thousand.

(8) The authority drawing the districts shall attempt to include at least one whole county in each congressional district. This division does not apply to a congressional district that is contained entirely within one county or that cannot be drawn in that manner while complying with federal law.

(C)(1) Except as otherwise provided in division (C)(2) of this section, for purposes of this article, a county, municipal corporation, or township is considered to be split if, based on the census data used for the purpose of redistricting, any contiguous portion of its territory is not contained entirely within one district.

(2) If a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county shall be considered to be a separate municipal corporation or township for purposes of this section.

Section 3: Jurisdiction; legal challenges; procedures upon invalidation of congressional district plan.

(A) The supreme court of Ohio shall have exclusive, original jurisdiction in all cases arising under this article.

(B)(1) In the event that any section of this constitution relating to congressional redistricting, any congressional district plan, or any congressional district or group of congressional districts is challenged and is determined to be invalid by an unappealed final order of a court of competent jurisdiction then, notwithstanding any other provisions of this constitution, the general assembly shall pass a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The general assembly shall pass that plan not later than the thirtieth day after the last day on which an appeal of the court order could have been filed or, if the order is not appealable, the thirtieth day after the day on which the order is issued.

A congressional district plan passed under this division shall remedy any legal defects in the previous plan identified by the court but shall include no changes to the previous plan other than those made in order to remedy those defects.

(2) If a new congressional district plan is not passed in accordance with division (B)(1) of this section and filed with the secretary of state in accordance with Section 16 of Article II of this constitution, the Ohio redistricting commission shall be reconstituted and reconvene and shall adopt a congressional district plan in accordance with the provisions of this constitution that are then valid, to be used until the next time for redistricting under this article in accordance with the provisions of this constitution that are then valid.

The commission shall adopt that plan not later than the thirtieth day after the deadline described in division (B)(1) of this section.

A congressional district plan adopted under this division shall remedy any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.

Ohio Revised Code, Title 27

Section 2731.01: Mandamus defined.

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

Section 2731.02: Courts authorized to issue writ – contents.

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

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

Section 2731.04: Application for writ.

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

Section 2731.05: Adequacy of law remedy bar to writ.

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

Section 2731.06: Peremptory writ in first instance.

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

Section 2731.16: Power of court.

Sections 2731.14 and 2731.15 of the Revised Code do not limit the power of the court to carry its order and judgment into execution, or to punish any officer named therein for contempt or disobedience of its orders or writs.

Ohio Revised Code, Title 35

Section 3501.05: Election duties of secretary of state.

The secretary of state shall do all of the following:

…

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

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

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

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

Section 3505.06: Questions and issues ballot.

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

(B)

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

and issues shall be grouped together on the ballot, in the following order from top to bottom, after the state questions and issues:

(a) County questions and issues;

(b) Municipal questions and issues;

(c) Township questions and issues;

(d) School or other district questions and issues.

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

(2) Questions and issues shall be grouped together on the ballot, from top to bottom, in the following order when it is not practicable to group them together as required by division (B)(1) of this section because of the type of voting machines used by the board of elections: state questions and issues, county questions and issues, municipal questions and issues, township questions and issues, and school or other district questions and issues. The particular order in which each of a group of state questions or issues is placed on the ballot shall be determined by, and certified to each board of elections by, the secretary of state.

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

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

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

passage," or such other brief statement as will be descriptive of the percentage of affirmative votes required.

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

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

(G) No portion of a ballot question proposing to levy a property tax in excess of the ten-mill limitation under any section of the Revised Code, including the renewal or replacement of such a levy, may be printed in boldface type or in a font size that is different from the font size of other text in the ballot question. The prohibitions in division (G) of this section do not apply to printed matter either described in division (D) of this section related to such a ballot question or located in the area of the ballot in which votes are indicated for or against that question.

Section 3505.061: Ohio ballot board.

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

(B)

(1) The initial appointees to the board shall serve until the first Monday in February, 1977. Thereafter, terms of office shall be for four years, each term ending on the first Monday in February. The term of the secretary of state on the board shall coincide with the secretary of state's term of office. Except as otherwise provided in division (B)(2) of this section, division (B)(2) of section 3505.063, and division

(B)(2) of section 3519.03 of the Revised Code, each appointed member shall hold office from the date of appointment until the end of the term for which the member was appointed. Except as otherwise provided in those divisions, any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Except as otherwise provided in those divisions, any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or a period of sixty days has elapsed, whichever occurs first. Any vacancy occurring on the board shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy shall be of the same political party as that required of the member whom the member replaces.

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

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

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

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

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

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

Section 3505.062: Ohio ballot board duties.

The Ohio ballot board shall do all of the following:

(A) Examine, within ten days after its receipt, each written initiative petition received from the attorney general under section 3519.01 of the Revised Code to determine whether it contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately. If the board so determines, it shall certify its approval to the

attorney general, who then shall file with the secretary of state in accordance with division (A) of section 3519.01 of the Revised Code a verified copy of the proposed law or constitutional amendment together with its summary and the attorney general's certification of it.

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

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

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

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

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

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

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

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

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

Section 3513.19: Challenges.

(A) It is the duty of any precinct election official, whenever any such official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote. The right of a person to vote at a primary election may be challenged upon the following grounds:

(1) That the person whose right to vote is challenged is not a legally qualified elector;

(2) That the person has received or has been promised some valuable reward or consideration for the person's vote;

(3) That the person is not affiliated with or is not a member of the political party whose ballot the person desires to vote. Such party affiliation shall be determined by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of section 3513.05 of the Revised Code. Division (A)(3) of this section and the seventh paragraph of section 3513.05 of the Revised Code do not prohibit a person who holds an elective office for which candidates are nominated at a party primary election from doing any of the following:

(a) If the person voted as a member of a different political party at any primary election within the current year and the immediately preceding two calendar years, being a candidate for nomination at a party primary held during the times specified in division (C)(2) of section 3513.191 of the Revised Code provided that the person complies with the requirements of that section;

(b) Circulating the person's own petition of candidacy for party nomination in the primary election.

(B) When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, made under penalty of election falsification, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

Section 3519.01: Restrictions on contents of initiative petition; attorney general's approval of petition required; duties of secretary of state regarding petitions; challenge of certification decisions.

(A) Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that

proposal separately. A petition shall include the text of any existing statute or constitutional provision that would be amended or repealed if the proposed law or constitutional amendment is adopted.

Whoever seeks to propose a law or constitutional amendment by initiative petition shall, by a written petition signed by one thousand qualified electors, 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 under division (A) of section 3505.062 of the Revised Code. If the Ohio ballot board returns the submitted petition to the attorney general with its certification as described in that division, the attorney general shall then file with the secretary of state a verified copy of the proposed law or constitutional amendment together with its summary and the attorney general's certification.

Whenever the Ohio ballot board divides an initiative petition into individual petitions containing only proposed law or constitutional amendment under division (A) of section 3505.062 of the Revised Code resulting in the need for the petitioners to resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, the attorney general shall review the resubmitted summaries, within ten days after their receipt, to determine if they are a fair and truthful statement of the respective proposed laws or constitutional amendments and, if so, certify them. These resubmissions shall contain no new explanations or arguments. Then, the attorney general shall file with the secretary of state a verified copy of each of the proposed laws or constitutional amendments together with their respective summaries and the attorney general's certification of each.

(B)(1) Whoever seeks to file a referendum petition against any law, section, or item in any law shall, by a written petition signed by one thousand qualified electors, submit the measure to be referred and a summary of it to the secretary of state and, on the same day or within one business day before or after that day, submit a copy of the petition, measure, and summary to the attorney general.

(2) Not later than ten business days after receiving the petition, measure, and summary, the secretary of state shall do both of the following:

(a) Have the validity of the signatures on the petition verified;

(b) After comparing the text of the measure to be referred with the copy of the enrolled act on file in the secretary of state's office containing the law, section, or item of law, determine whether the text is correct and, if it is, so certify.

(3) Not later than ten business days after receiving a copy of the petition, measure, and summary, the attorney general shall examine the summary and, if in the

attorney general's opinion, the summary is a fair and truthful statement of the measure to be referred, so certify.

(C) Any person who is aggrieved by a certification decision under division (A) or (B) of this section may challenge the certification or failure to certify of the attorney general in the supreme court, which shall have exclusive, original jurisdiction in all challenges of those certification decisions.

Section 3519.21: Ballot title and order.

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

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

United States Code, Title 52

Section 20302: State responsibilities.

(a) In general

Each State shall--

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 20303 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 20301 of this title) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this chapter, use the standard oath prescribed by the Presidential designee under section 20301(b)(7) of this title;

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures--

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot application be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter--

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office--

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in manner1 that gives them sufficient time to vote in the runoff election;

(10) carry out section 20304(b)(1) of this title with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under subsection (c) and such other data as the Presidential designee determines appropriate in accordance with the standards developed by the Presidential designee under section 20301(b)(11) of this title.

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