

In the
Supreme Court of Ohio

STATE OF OHIO <i>ex rel.</i> CITIZENS	:	
NOT POLITICIANS <i>et al.</i> ,	:	Case No. 2024-1200
	:	
<i>Relators,</i>	:	
	:	Original Action in Mandamus
v.	:	Expedited Elections Case
	:	
OHIO BALLOT BOARD <i>et al.</i> ,	:	
	:	
<i>Respondents.</i>	:	

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Case No. 2024-1200

**Original Action in Mandamus
Expedited Elections Case**

MERIT BRIEF OF RESPONDENTS

I. INTRODUCTION

For the fifth time in nearly 20 years, Ohioans will vote on a proposed constitutional amendment that would, again, change the way we draw our political maps.

The Ohio Ballot Board adopted ballot language that accurately identifies the substance of the proposed constitutional amendment that voters will consider in the upcoming 2024 general election. The ballot language does not mislead, deceive, or defraud voters as to the substance of the amendment either. Yet, Relators want this Court to block the approved ballot language claiming—in contradictory fashion—that some of the language is false and other parts of the language make misleading implications, yet at the same time, contain material omissions. Over and over again, Relators try to turn this Court’s attention to their preferred language written in their preferred gloss. But this Court does not decide whether it would have preferred Relators’ proposed ballot language over the language adopted by the Ballot Board. The Court decides only whether the ballot language accurately identifies the substance of the proposal to be voted on and does not mislead, deceive, or defraud the voters.

The ballot language is fully supported by the language of the Amendment and its related petition. It is a far more accurate description than Relators' preferred language, which would have told voters almost nothing of the substance of the Amendment that they are voting on. Relators have failed to meet their burden, and thus, the ballot language approved by the Ballot Board must stand.

II. BACKGROUND

On October 31, 2023, Relators submitted an initiative petition, including part-petitions, a summary, and the full text of the proposed constitutional amendment (“the Amendment”) with the Office of Ohio Attorney General Dave Yost. Relators_001-033. Such proposed changes include, but are not limited to, (1) repealing the current constitutional provisions that provide for the Ohio Redistricting Commission, comprised of state officials elected by Ohio's voters, and replacing it with a commission that is not chosen by Ohio's voters (Relators_009-013); (2) limiting citizens' ability to communicate with members of the newly created commission (Relators_014); and (3) adding additional expenditures that Ohio's taxpayers will be required to fund (Relators_009, 014, 019, 021). On November 9, 2023, the Attorney General's Office confirmed that the petition contained enough signatures, as verified by the county boards of elections, and determined that the proffered five-page single-spaced summary was a fair and truthful statement of the proposed constitutional amendment under R.C. 3519.01(A). Relators_001-005, 042. On two prior occasions—August 23, 2023, and September 14, 2023—Relators submitted petition summaries that were *not* fair and truthful statements of their proposed amendment. <http://ohioattorneygeneral.gov/Legal/Ballot-Initiatives/Petitions-Submitted-to-the-Attorney-General-s-Off> (last accessed September 2, 2024).

On July 23, 2024, the Secretary of State’s Office certified that Relators had submitted the required amount of signatures and qualified to be placed on the November 2024 General Election ballot. Relators_048.

Pursuant to its authority and duty prescribed by Ohio Const., art. XVI, § 1 and R.C. 3505.062(B), the Ballot Board convened a hearing on August 16, 2024, to prescribe and certify ballot language for the Amendment “regarding redistricting.” Relators_056. In advance of the hearing, the Secretary of State’s Office prepared and circulated draft ballot language (“Ballot Language”) to committee members. Relators_057. After a public comment period and consideration of arguments for and against the Ballot Language, the Ballot Board adopted the Ballot Language with some amendments. Relators_076-077; *see also* Relators_034-037 (full version of Ballot Language).

Finally, Secretary LaRose prescribed the Ballot Title for the Amendment, pursuant to his duty under R.C. 3519.21, which states: “To create an appointed redistricting commission not elected by or subject to removal by the voters of the state.” Relators_034. The Ballot Board also adopted this language as part of its vote on the overall ballot language.

III. LAW AND ANALYSIS

A. Standard of Review – Mandamus

Relators seek a writ of mandamus compelling (1) the Ballot Board to “reconvene ... [and] prescribe lawful ballot language” and (2) Secretary LaRose to “prescribe a lawful ballot title.” *See* Compl. at 36, 38. The purpose of a writ of mandamus is to compel a public officer to perform an act the law requires him or her to do. *See State ex rel. Husted v. Brunner*, 2009-Ohio-4805, ¶ 17. In order to be entitled to an extraordinary writ, Relators must establish: (1) a clear legal right to the requested relief; (2) a clear legal duty owed by the Ballot Board and Secretary LaRose to perform the requested relief; and (3) that they lack an adequate remedy at law. *See State ex rel.*

Evans v. Blackwell, 2006-Ohio-5439, ¶ 18 (citing *State ex rel. Marsalek v. S. Euclid City Council*, 2006-Ohio-4973, ¶ 8). As to the first two requirements, “in the absence of any evidence of fraud or corruption, the dispositive issue is whether the ballot board abused its discretion and clearly disregarded applicable law in adopting the ballot language of the proposed constitutional amendment.” *State ex rel. Voters First v. Ohio Ballot Bd.*, 2012-Ohio-4149, ¶ 23 (citing *State ex rel. Ohio Liberty Council v. Brunner*, 2010-Ohio-1845, ¶ 30). Relators must shoulder the heavy burden of demonstrating entitlement to mandamus relief by clear and convincing evidence. *State ex rel. Doner v. Zody*, 2011-Ohio-6117, ¶ 55. Relators have not carried their burden.

B. The Ballot Language passes constitutional muster.

In order to safeguard the process, the Ohio Constitution tasks the Ballot Board with preparing official ballot language for all citizen-initiated proposed amendments to the Ohio Constitution, and it offers the Board several guidelines for exercising its judgment. *See* Ohio Const., art. II, § 1g. For one, the Board must treat citizen-initiative proposed amendments on parity with proposed amendments submitted by the General Assembly. *Id.* In determining what language to include in its summary, the Ballot Board has discretion over whether to include the full text of the proposed amendment. Ohio Const., art. XVI, § 1; *see also* *Voters First* at ¶ 24. In lieu of the full text—which may be longer than most voters can comfortably digest in the voting booth—the Ballot Board can elect to include a condensed text of the proposed amendment. *Id.* (quoting Ohio Const., art. XVI, § 1); *see also* R.C. 3505.06(E). If the Ballot Board elects to include a condensed text of the proposed amendment, then the General Assembly has ensured that the full text of the proposed amendment “together with the percentage of affirmative votes necessary for passage as required by law shall be posted in each polling place in some spot that is easily accessible to the voters.” R.C. 3505.06(E).

In adopting ballot language, the Ballot Board is required to identify “the substance of the proposal to be voted upon.” R.C. 3505.062(B). If the Ballot Board approves a condensed text of the proposed amendment, “the sole issue is whether the board’s approved ballot language ‘is such as to mislead, deceive, or defraud the voters.’” *Voters First* at ¶ 26 (quoting Ohio Const., art. XVI, § 1).

By the same token, it is not relevant whether “the members of this court might have used different words to describe the language used in the proposed amendment.” *Bailey v. Celebrezze*, 67 Ohio St.2d 516, 519 (1981). Rather, this Court considers only “whether the language adopted by the ballot board properly describes the proposed amendment.” *Id.*

To answer whether the Ballot Language properly describes the proposed amendment, this Court has devised a three-step test. “First, a voter has the right to know what it is he is being asked to vote upon.” *Bailey* at 519 (citing *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St.2d 34, 37 (1966)). Second, the Ballot Board is prohibited from using language that is “in the nature of a persuasive argument in favor of or against the issue” *Id.* (quoting *Beck v. Cincinnati*, 162 Ohio St. 473, 474-475 (1955)). Third—and generally dispositive—“is whether the cumulative effect of these technical defects [in ballot language] is harmless or fatal to the validity of the ballot.” *Id.* (quoting *State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 19 (1957), and citing *Sinking Fund*, 167 Ohio St. 71 (1957)).

Consistent with the original understanding of the Ballot Board’s watchdog role in Ohio’s citizen-initiative process, “[i]n order to pass constitutional muster, ‘[t]he text of a ballot statement . . . must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected.’” *Id.* (quoting *Markus v. Trumbull Cty. Bd. of Elections*, 22 Ohio St.2d 197 (1970), at paragraph four of the syllabus). Under this standard, ballot language adopted by the Ballot Board will be held unlawful only where the

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

Here, Relators attack Paragraphs 1–5 and 8–10 of the Ballot Language. Their attack on each paragraph fails.

1. Paragraph 1 accurately describes the direct legal effect of passing the Amendment on existing constitutional provisions.

Paragraph 1 of the Ballot Language passes constitutional muster. Paragraph 1 provides, in full, that the Amendment would:

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. Relators do not contend that any part of this paragraph is inaccurate or false. Instead, Relators assert that it is “inappropriate” for ballot language to inform voters “about the margin or method by which current law was adopted” and that it is “misleading and prejudicial to characterize [their proposed] Amendment as a ‘repeal’ of ‘constitutional protections against gerrymandering.’” Compl. at p. 31, ¶ 81; *see also* Relators’ Br. at 19. It is Relators’ characterization—not the approved Ballot Language—that is false. Paragraph 1 does not mislead, deceive, or defraud the voters, but rather fairly and accurately presents the voters with the issue to be decided. Relators’ arguments are without merit.

First, paragraph 1 accurately informs voters that the Amendment would repeal the existing constitutional provisions adopted by voters to prevent gerrymandering in 2015 and 2018. As this Court observed:

Demanding change following Ohio’s 2011 reapportionment of its state legislative and congressional districts, Ohio voters overwhelmingly voted to impose constraints on the government’s ability to draw districts based on partisan

gerrymandering, amending Article XI of the Ohio Constitution in 2015 for the drawing of state legislative districts, and adopting Article XIX of the Ohio Constitution in 2018 for the drawing of congressional districts. The adoption of these amendments to the Ohio Constitution made it unequivocally clear that more of the same was not an option.

Adams v. DeWine, 2022-Ohio-89, ¶ 3 (citations omitted).

Article XI's anti-gerrymandering provisions are largely contained in Sections 3, 4, and 6.

In short, those provisions include the following requirements:

- house and senate districts must be substantially equal in population, Ohio Const., art. XI, § 3(B)(1);
- house and senate districts must be contiguous, *id.*, § 3(B)(3), 4(A);
- house and senate districts must be created wholly within counties larger than one ratio of representation—the substantially equal population of each district achieved by dividing the whole population of the state by 99, the number of districts in the Ohio House of Representatives, or 33, the number of districts in the Ohio Senate—with any excess population to be included in only one adjoining house or senate district, *id.*, § 3(C)(1), 4(B);
- house districts must be created from a single whole county where that county's population falls within 95-105% of the ratio of representation, *id.*, § 3(C)(2);
- house districts must be created by dividing the remaining territory of the state into house districts by combining the areas of counties, municipal corporations, and townships, and where feasible, splitting no county more than once, *id.*, § 3(C)(3);
- house districts must be created by splitting the smallest number of municipal corporations and townships, *id.*, § 3(D)(2);
- where districts cannot be feasibly created by combining whole municipal corporations or townships, no more than one municipal corporation or township per house district may be split, *id.*, § 3(D)(3);
- a redistricting plan cannot be drawn primarily to favor or disfavor a political party, *id.*, § 6(A);
- the statewide proportion of districts favoring each political party must correspond closely to the statewide preferences of the voters of Ohio during the preceding ten years, *id.*, § 6(B); and
- districts must be compact. *Id.*, § 6(C).

Article XI further contains detailed rules for creating house districts when it is not possible for the Redistricting Commission to comply with the requirements of section (B), (C), and (D) and section 4(B)(1) and (2). *Id.*, § 3(E) and 4(B)(3). Moreover, “[t]he affirmative vote of four members of the [seven-member] 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.” *Id.*, § 1(B)(3).

The 2015 voter-approved amendment for General Assembly redistricting only partially revised Article XI (originally adopted in 1967). *See, e.g.*, former Ohio Const., art. XI, § 2 (calculating house and senate ratios of representation), *id.*, § 3-4 (house and senate districts to be substantially equal in population), § 7(A) (compactness and contiguity), *id.*, § 8, 10(C), and 11 (creation of house and senate districts wholly within counties larger than one ration of representation with any excess population to be included in only one adjoining district), *id.*, § 9 (creation of house districts from a single whole county where that county’s population falls within 95-105% of the ratio of representation), and *id.*, § 7(B) and 10(D) (remaining territory of state to be combined into house districts), and § 7(C) (prohibition of splitting more than one county, township, municipality, or city ward between districts). These provisions “generally coincide with the traditional criteria of compactness, contiguity, and respect for political subdivisions ...” *Quilter v. Voinovich*, 981 F.Supp. 1032, 1045, fn. 10 (N.D. Ohio 1997), *aff’d*, 523 U.S. 1043 (1998).

With regard to congressional redistricting, prior to the 2018 voter-approved amendment to Article XIX of the Ohio Constitution, plans were adopted by a simple majority of each house of the General Assembly. Section 2 of Article XIX, as adopted in 2018, imposed rules for drawing congressional districts similar to the rules for drawing General Assembly districts summarized

above. Ohio Const., art. XIX, § 2. The 2018 amendment required that a congressional plan be adopted by a bill approved by supermajority of three-fifths of each house. *Id.*, § 1(A). If the General Assembly was not able to adopt a plan with the required supermajority by a specified deadline, then the responsibility for adopting a congressional plan passed to the Redistricting Commission created under Article XI. *Id.*, § 1(B).

As noted above, paragraph 1 of the Ballot Language is accurate. Relators do not and cannot contend that the above-summarized provisions are not “constitutional protections against gerrymandering” as described in paragraph 1. Indeed, the U.S. Supreme Court has observed that the disregard of these “traditional districting principles such as compactness, contiguity, and respect for political subdivisions” is evidence of gerrymandering. *Shaw v. Reno*, 509 U.S. 630, 647 (1993). “[M]aintaining communities of interest and traditional boundaries” are also considered “traditional districting principles.” *Bush v. Vera*, 517 U.S. 952, 977 (1996).

Moreover, Relators do not and cannot claim that these provisions were not part of the constitutional amendments adopted by voters in 2015 and 2018 or that the margins by which those amendments were adopted—“nearly three-quarters of the Ohio electors participating in the statewide elections of 2015 and 2018”—are not accurate. *See Adams*, 2022-Ohio-89, at ¶ 3 (indicating that Ohio voters “overwhelmingly” adopted the 2015 and 2018 constitutional amendments). Publicly available certified election results indicate that the 2015 amendment was approved by 71.47% of the electorate, *see* <https://www.ohiosos.gov/globalassets/elections/2015/general/officialsummary.xlsx> (accessed August 23, 2024), and that the 2018 amendment was approved by 74.89% of the electorate, *see* <https://www.ohiosos.gov/globalassets/elections/2018/pri/summaryissues.xlsx> (accessed August 23, 2024). Relators assert that it is inappropriate for the Ballot Language “to include information

about the margin or method by which the current law was adopted,” Compl. at 31, ¶ 81; *see also* Relators’ Br. at 19. But Relators cite no authority for the proposition that including this truthful information for the purpose of providing relevant historical context violates the constitutional standards for ballot language.

Instead, Relators merely cite this Court’s decision in *State ex rel. One Person One Vote v. Ohio Ballot Bd.*, 2023-Ohio-1928, for the proposition that “ballot language need not ‘inform voters about current law’ or ‘describe the pre-amendment status quo.’” Relators’ Br. at 19. Saying that ballot language does not have to describe current law is a far cry from holding, as Relators assert, that it is impermissible for ballot language to inform the voters about “the vote margin or method by which current law was adopted.” *Id.* Rather, the Court merely rejected imposition of a requirement “that ballot language *must* describe existing law.” *One Person One Vote* at ¶ 13 (emphasis added). Yet this Court specifically noted that “recent events” could be “relevant” in developing ballot language that adequately informs voters. *Id.*

Relators also complain that the Ballot Language adopted here did not mirror the brevity of the language adopted for the 2015 and 2018 proposed constitutional amendments. Relators’ Br. at 4-6. This Court, however, previously held that “[p]ast practice does not inform whether the ballot language at issue in this case will ‘mislead, deceive, or defraud the voters.’” *One Person One Vote* at ¶ 16 (citation omitted). And *if* this Court were to look to past ballot language, a true apples-to-apples comparison would be the two citizen-initiated proposals on redistricting in 2005 and 2012. The 2005 and 2012 ballot language are substantially similar to the language adopted here, both in terms of length and descriptiveness. *See* Exhibits A and B.

Relators curiously eschew comparison to those ballot issues, while focusing instead on the apples-to-oranges comparison of the agreed-upon, legislatively-proposed initiatives that they cite

in their Complaint and their brief from 2015 and 2018. But the language of the 2005 and 2012 issues aptly show that the Ballot Board’s adopted language here is consistent with past practice.

Finally, Relators do not and cannot claim that the above-summarized provisions—indeed the entirety of current Article XI and XIX of the Ohio Constitution—would not be repealed by the adoption of the Amendment. *See* Compl. at 3 (the Amendment “would repeal Articles XI and XIX of the Ohio Constitution related to state and congressional redistricting”); Relators’ Br. at 3; Relators_023-032. Rather, they assert that it is somehow “misleading and prejudicial” to “characterize” their amendment “as a ‘repeal’ of the constitutional protections against gerrymandering.” *See* Compl. at 31, ¶ 81, Relators’ Br. at 19.

Yet that is precisely what the Amendment would do. It would repeal the “traditional districting principles” embodied in current Articles XI and XIX, particularly in Article XI, Sections 3, 4, and 6 and Article XIX, Sections 1 and 2, and would replace these principles with a new Article XX. Article XX would elevate partisan proportionality above all other considerations (except for contiguity) in drafting state and congressional redistricting plans. *See* Relators_016. Other factors *may* be considered, such as equal population, “the ability of politically cohesive and geographically proximate racial, ethnic, and language minorities to participate in the political process and elect candidates of choice, and “communities of interest,” *but only if* consideration of these factors would not violate the contiguity or proportionality requirements of the proposed amendment. *Id.* (“Each redistricting plan shall also comply, to the extent possible, with the criteria listed below in order of priority; provided, however, that *application of the criteria below does not permit adoption of a redistricting plan that violates paragraphs (A) or (B) of this section . . .*.”) (emphasis added). Relators_017.

Absent from the Amendment is any requirement that the new commission respect political subdivision boundaries as is found in current Articles XI and XIX. While it purportedly directs the commission to adopt districts that “preserve communities of interest,” *id.*, such consideration, as noted above, is subordinated to partisan proportionality. *Id.* Moreover, the Amendment provides that “[c]ounties, municipal corporations, townships, and school districts *may* constitute communities of interest” under the proposed amendment, *but only if* “the record before the commission *clearly and convincingly* demonstrates such subdivision is a community of people who have broadly shared interests and representational needs that are greater than those of other overlapping communities of interest.” *Id.* (emphasis added). And while Relators correctly note that “the current constitutional provisions *do* allow political subdivisions to be split,” Relators’ Br. at 27 (emphasis in original), they fail to acknowledge that those current provisions require that districts “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” and that “[w]here . . . a representative district [cannot feasibly be drawn] from whole municipal corporations and townships, not more than one municipal corporation or township may be split per representative district.” Ohio Const., art. XI, § 3(D)(2)-(3). The Amendment contains no such constraints.

Finally, completely absent from the Amendment is any requirement that districts be compact. Indeed, neither the word “compact” nor any form of that word appears in any part of the Amendment, *other than in the provisions of current Articles XI and XIX that would be repealed*. It is beyond contention that the Amendment would repeal Ohio’s anti-gerrymandering districting criteria, replacing them only with criteria that elevates supposed partisan proportionality over all else, except for contiguity.

Relators also take issue with that portion of paragraph 1 that advises voters that the Amendment would “eliminate the longstanding ability of Ohio citizens to hold their representatives accountable for establishing fair state legislative and congressional districts.” *See* Relators’ Br. at 19. But, again, that is precisely what the Amendment would do. The current Redistricting Commission created in Article XI of the Ohio Constitution consists of the Governor, Auditor of State, Secretary of State, and four persons chosen by the legislative leaders of both houses of the General Assembly. Ohio Const., art. XI, § 1(A). The current Redistricting Commission is tasked with adopting a redistricting plan for both houses of the General Assembly. Ohio Const., art. XI, § 1(A). Under Article XIX, the General Assembly is tasked with the primary responsibility for adopting a congressional redistricting plan in the form of a bill which must be signed by the Governor. *See* Ohio Const., art. XIX, §1(A); Ohio Const., art. I, § 16 (bills passed by the General Assembly are to be presented to the Governor for his approval and signature); *Adams*, 2022-Ohio-89, at ¶ 21 (noting that the Governor signed the congressional redistricting bill). These executive officials and elected representatives are accountable to the People because they may be voted out of office. *See Chambers v. St. Mary’s School*, 82 Ohio St.3d 563, 566-67 (1998) (“Members of the General Assembly are accountable to their constituents because they are elected to office.... If the constituents are unhappy with policy determinations made by members of the General assembly, they can change the makeup of the General assembly at the voting booth.”). They are also accountable to the People because they may be contacted by constituents at any time, and not merely at one of several predetermined public meetings. The Amendment, on the other hand, would prohibit all communication with “outside person[s]...other than through designated public meetings or official commission portals.” Relators_014, Amendment § 5(A)(2).

The Amendment also would prohibit citizens from attempting to contact commissioners or commission staff “with the intent to influence the redistricting process.” *Id.* at § 5(A)(3).

The Amendment would replace these accountable elected officials with a commission consisting entirely of appointed members. *See Relators_007*. Indeed, it would prohibit any current or former elected or appointed officials (within the preceding six years) or even candidates for elective office (within the preceding six years)—or their family members—from serving on the commission. *Relators_012*. These new commissioners would not be accountable to Ohio citizens for establishing fair electoral districts. And indeed, as discussed in more detail below, they would not be accountable to *anyone* other than themselves, because they could not be removed except by the commission itself. The language of paragraph 1 of the Ballot Language is, therefore, accurate and not false or misleading.

Because paragraph 1 complies with the constitutional standards prescribed for ballot language, this Court should reject Relators’ claims with respect to that paragraph.

2. Paragraph 2 accurately describes the formula the Amendment would require legislative and congressional districts to satisfy, subordinating compactness and communities of interest to partisan proportionality.

Paragraph 2 of the Ballot Language also passes constitutional muster. That paragraph provides, in full, that the Amendment would:

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.

Relators_034. Relators assert that this language “gets it entirely backward,” Compl. at 24, ¶ 55, because the avowed purpose of the Amendment is to “ban partisan gerrymandering and prohibit the use of redistricting plans that favor one political party and disfavor others.” *Id.* (quoting Relators_016). Notwithstanding the avowed purpose of the Amendment, paragraph 2 of the Ballot Language accurately sets forth the effect of that proposal. Because paragraph 2 does not mislead, deceive, or defraud the voters, but rather fairly and accurately presents the voters with the issue to be decided, Relators’ arguments with respect to that paragraph are without merit.

Relators make much of the Attorney General’s certification of their summary of the Amendment as a “fair and truthful statement of the proposed . . . constitutional amendment.” *See* Relators’ Brief at 1, 30-31. As is customary, however, the Attorney General advised Relators that his “certification of the summary under Section 3519.01(A) should not be construed as an affirmation of the enforceability and constitutionality of the proposed amendment,” and that his “role, as executed here, is limited to determining whether the wording of the summary properly advises potential petition signers of a measure’s material components.” Relators_042. Both the Amendment and Relators’ summary indicated that the Amendment was intended “[t]o ban partisan gerrymandering” Relators_016; Relators_003. The summary was, therefore, a fair and accurate representation *of the provisions contained in Relators’ proposed amendment*. The Attorney General ***did not*** certify that the Amendment would actually do what Relators professed, only that they had accurately summarized their own proposed amendment. *See State ex rel. Barren v. Brown*, 51 Ohio St.2d 169, 170 (1977) (“Under [R.C. 3519.01(A)], the authority of the Attorney General is limited to whether the summary is fair and truthful.”). And nothing in Ohio law binds the Ballot Board to accept at face value the purported goals of those proposing an initiated

amendment to the Ohio Constitution even if the Attorney General has certified, as he did here, that they had accurately summarized their own proposed amendment.

Moreover, as noted in the preceding section, Article XX, under the Amendment, would elevate partisan proportionality above all other considerations (except for contiguity) in drafting state and congressional redistricting plans. *See* Relators_016. It thus *requires* that the redistricting of General Assembly and congressional districts be based almost entirely on partisan political considerations.

The Amendment, after setting forth the professed goal of banning “partisan gerrymandering and prohibit[ing] the use of redistricting plans that favor one political party over another,” Relators_016, expressly requires that in any plan adopted by the commission, “the statewide proportion of districts in each redistricting plan that favors each political party shall correspond closely to the statewide partisan preferences of the voters of Ohio.” *Id.* The proposed amendment thus *requires* that the “First Major Party,” defined as “the political party whose candidate for governor received the highest number of votes in the last election held for such office,” (Relators_022) be favored in the largest number of districts in any redistricting plan adopted by the commission (Relators_016). It likewise requires that the “Second Major Party,” defined as “the political party whose candidate for governor received the second highest number of votes in the last election held for such office,” (Relators_022) be favored in the second highest number of such districts (Relators_016). As the Ballot Language accurately states, the Amendment would, therefore, require any redistricting plan adopted by the commission to “favor either of the two largest political parties in the State of Ohio.” Relators_034.

To Relators, that may seem to be a fairer way to draw legislative districts. But that is not the question before this Court. The issue is whether the Ballot Language accurately describes the

proposal. It does. Not only does the Amendment favor the two largest or “major” political parties, but it affirmatively requires the new commission to, as the Ballot Language correctly states, “gerrymander the boundaries of state legislative and congressional districts to favor either of the two largest political parties.” *Id.* As Ballot Board Chairman LaRose and Member Gavarone observed during the meeting of the Board at which the Ballot Language was adopted, “[t]he definition from the Oxford Dictionary . . . of gerrymander . . . is to manipulate the boundaries of an electoral constituency so as to favor one party over another.” Relators_074. *See also Compact Oxford English Dictionary* (3d Ed., Rev. 20-8) (“**gerrymander** verb, alter the boundaries of a constituency so as to favour one political party in an election”). That is exactly what the Amendment would compel.¹

Moreover, as discussed in the preceding section, the drawing of legislative districts under the Amendment would be accomplished by subordinating, if not entirely disregarding “traditional districting principles such as compactness, . . . respect for political subdivisions,” *Shaw*, 509 U.S. at 647, and the preservation of communities of interests. *Bush*, 517 U.S. at 977. The disregard of these traditional districting principles amounts to strong evidence of gerrymandering. *See Cooper v. Harris*, 581 U.S. 285, 301, fn. 3 (2017) (upholding the district court’s finding that a district was

¹ Amicus Curiae Campaign Legal Center (“CLC”) incorrectly cites the U.S. Supreme Court’s decision in *Gaffney v. Cummings*, 412 U.S. 735 (1973), for the proposition that “[t]he U.S. Supreme Court has expressly rejected the proposition that it involves ‘political gerrymander[ing]’ for map drawers to act ‘with the conscious intent to create a districting plan that would achieve a rough approximation of the statewide political strengths.’” CLC’s Brief at 4 (citation omitted). The Court in that case did not say that favoring one party over another was not “gerrymandering,” as the dictionary definition makes clear, but rather merely that a state does not violate the Fourteenth Amendment by attempting to create a “politically fair” redistricting plan. *Gaffney* at 753. Indeed, the Court cautioned that “[b]eyond this, we have not ventured far or attempted the impossible task of extirpating politics from what are the essentially political processes of the sovereign States.” *Id.*; *see also Rucho v. Common Cause*, 588 U.S. 684, 706-707 (2019) (rejecting the justiciability of partisan gerrymandering claims in federal court).

racially gerrymandered because “the evidence ... indicates that [the district’s] boundaries did conflict with traditional districting principles—for example, by splitting numerous counties and precincts”); *Rucho v. Common Cause*, 588 U.S. 684, 706-707 (2019) (in rejecting the justiciability of partisan gerrymandering claims, the Supreme Court noted that political “fairness” might “be measured by adherence to ‘traditional’ districting criteria, such as maintaining political subdivisions, keeping communities of interest together, and protecting incumbents”); *Vieth v. Jubelirer*, 541 U.S. 267 (2004) (Souter, J., dissenting) (concluding that partisan gerrymandering claims should be justiciable based, in part, upon a showing that mapdrawers “paid little or no heed to those traditional districting principles whose disregard can be shown straightforwardly: contiguity, compactness, respect for political subdivisions, and conformity with geographic features like rivers and mountains”). Thus, while the Amendment may purport “[t]o ban partisan gerrymandering,” it in fact requires that districts be drawn along partisan lines in disregard of traditional districting principles. That itself is a form of gerrymandering, as the Ballot Language truthfully states.

Further, as the Ballot Language truthfully informs, the Amendment would eliminate any requirement that General Assembly and congressional districts be compact. *See Relators_034*. Indeed, neither the word “compact” nor any form of that word appears in any part of the Amendment, *other than in the provisions of current Articles XI and XIX that would be repealed*. And, as also noted above, the Ballot Language accurately informs voters that “[c]ounties, townships and cities throughout Ohio can be split and divided across multiple districts,” because the current protections in Article XI and Article XIX for political subdivision boundaries would be subordinated to partisan proportionality. *Relators_034*. Under the Amendment, “[c]ounties, municipal corporations, townships, and school districts *may* constitute communities of interest,”

but only if “the record before the commission *clearly and convincingly* demonstrates such subdivision is a community of people who have broadly shared interests and representational needs that are greater than those of other overlapping communities of interest.” Relators_017 (emphasis added). The Amendment pushes even this limited consideration of protecting political subdivision boundaries beneath the criteria set forth in Section (6)(A) and (B), i.e., contiguity and partisan proportionality. *See* Relators_017 (“application of the criteria below does not permit adoption of a redistricting plan that violates paragraphs (A) or (B) of this section”).

Accordingly, the Ballot Language accurately advises voters that “counties, townships, and cities throughout Ohio can be split and divided across multiple districts” and that this objective is “secondary to the formula that is based on partisan political outcomes.” Relators_034. paragraph 2 of the Ballot Language conforms to constitutional standards, Relators’ arguments to the contrary must be rejected.

3. Paragraph 3 accurately describes the Amendment’s requirement that 10 of the 15 commissioners “affiliate with” or “belong to” one of the two major political parties.

Paragraph 3 of the Ballot Language states that the Amendment would “[r]equire that a majority of the partisan commissioners belong to the state’s two largest political parties.” Relators_034. That language accurately identifies the substance of the proposal and will not mislead, deceive, or defraud the voters. *See* Ohio Const., art. XVI, §1; art. II, §1g.

Relators claim that when “[p]aired with the baseless allegation that the Amendment’s prohibition on gerrymandering actually requires gerrymandering,” paragraph 3 “inaccurately and misleadingly” describes who may serve on the commission. Relators’ Br. at 20. First, as explained above, the Amendment requires gerrymandering under the dictionary definition of the term. Second, paragraph 3 is not inaccurate or misleading because it is undeniably true. Relators would just prefer ballot language that is more partial to their position on the Amendment.

Relators complain that paragraph 3 of the Ballot Language asserts that a majority of the “partisan” commissioners must “belong to” Ohio’s two largest political parties. Relators’ Br. at 20. Relators are correct, but there is nothing inaccurate about that statement. Specifically, Relators note that the Amendment does not employ the term “belong to” in relation to a commissioner’s political-party affiliation and argue that the Amendment “does not require any Ohio citizen serving on the Commission to ‘belong to’ a political party.” *Id.* Relators are correct that the Amendment does not use the term “belong to,” but their challenge still fails because the Amendment unequivocally requires a majority of the commissioners to “belong to” (or, in Relators’ parlance, “affiliate[] with”) either of Ohio’s two largest political parties.

Section 1(C) of the Amendment requires five members of the 15-member commission to be “affiliated with the First Major Party” and five members to be “affiliated with the Second Major Party.” Relators_007. Ten members of a 15-member group constitutes a two-thirds supermajority of that group. So, if the terms “affiliated with” and “belong to” are sufficiently synonymous, the Ballot Language cannot reasonably be deemed misleading. Indeed, the terms mean the same thing here.

Relators assert that “‘belongs to’ implies membership, and being a member of a political party is different from being affiliated with a political party.” Relators’ Br. at 21. And they say that “[i]t 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 ... Commission.” *Id.* Relators’ objection is semantic, not material.

First, the Revised Code evinces that the term “belong to” falls well within constitutional parameters. Relators cite R.C. 3513.19(A)(3) for the proposition that the terms “affiliated with”

and “membership” have different meanings. But R.C. 3513.19(A)(3) is easily read to mean that “affiliated with” and “membership” are the same under Ohio law. R.C. 3513.19(A)(3) states:

The right of a person to vote at a primary election may be challenged upon the ground[] . . . [t]hat 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 [R.C. 3513.05].

(Emphasis in original.) Within R.C. 3513.19(A)(3) itself, there is no meaningful distinction between the terms “affiliated with” or “affiliation” and “member.” Indeed, the provision uses the phrase “[s]uch party affiliation” immediately after introducing the terms “affiliated with” and “member.” And the “seventh paragraph” of R.C. 3513.05, to which R.C. 3513.19(A)(3) refers, states: “For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a *member* of a political party if the elector voted in that party’s primary election within the preceding two calendar years, or if the elector did not vote in any other party’s primary election within the preceding two calendar years.” (Emphasis added.)

So, R.C. 3513.19(A)(3) says that political party “affiliation” (or membership) is determined by a person’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 R.C. 3513.05. And paragraph seven of R.C. 3513.05 prescribes when a person must be deemed a “member” of (or affiliated with) a political party. Clearly, the terms “affiliated with” or “affiliation” and “member” are synonymous under the Revised Code. *See also* R.C. 3513.191(A) (“No person shall be a candidate for nomination or election at a party primary 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.”); Ohio Secretary of State Directive 2023-35 (citing R.C. 3513.05) (“DETERMINING PARTY AFFILIATION. An elector

is considered to be a member of a political party if they voted in that party’s primary election within the preceding two calendar years, or if they did not vote in any other party’s primary election within the preceding two calendar years” [capitalization in original]).

Second, the common meanings of “affiliate” and “affiliated” show that those terms mean the same thing as the terms “member” or “belong to” for purposes of the Amendment and the Ballot Language. *See Tera, L.L.C. v. Rice Drilling D, L.L.C.*, 2024-Ohio-1945, ¶ 41. “Affiliate” is defined as “to bring or receive into close connection as a *member* or branch” or “to associate as a *member*.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/affiliate> (accessed Aug. 29, 2024) (emphasis added.). “Affiliated” is defined as “closely related with another typically in a dependent or subordinate position.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/affiliated> (accessed Aug. 29, 2024). “Member” is defined as “one of the individuals composing a group” or “a part of a whole.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/member> (accessed Aug. 29, 2024). And “belong to” is defined as “to be a *member* of (a club, organization, etc.).” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/belong%20to> (accessed Aug. 29, 2024) (emphasis added.). Thus, the terms mean the same thing for our purposes here, and there is nothing wrong with the Ballot Board’s decision to employ the term “belong to” instead of “affiliated with.”

Relators state that the Amendment bars the following people from serving on the commission: “(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’ Br. at 20-21 (citing

Relators_012-013). And they say that the Amendment “sets out exactly what it means to be ‘affiliated’ with a party,” quoting a portion of the Amendment stating that “[p]arty 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’ Br. at 21; *see also* Relators_009. That is true as far as it goes, but that does not change the fact that any permutation of the term “affiliate with” relating to a commissioner’s involvement with a political party means the same thing as “belong to” the political party.

Relators’ remaining arguments concerning paragraph 3 of the Ballot Language consist of the following:

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. . . . The balanced, tripartite commission structure and minimum cross-affiliation and nonaffiliation 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.

Relators’ Br. at 21-22. Relators’ arguments are patently conclusory. Regardless, as explained above, the Ballot Language in no way “falsely describes” who may serve on the commission or fails to say how many commissioners “will be from each affiliation category.” The Amendment requires that a majority of the partisan commissioners belong to the state’s two largest political parties. Relators_007 (requiring five members of the 15-member commission to belong to each of Ohio’s two largest political parties). And the Ballot Language materially states the same.

Relators' other claims concern what they consider to be material omissions from the Ballot Language. However, an omission from ballot language is not misleading unless it is “material” and “affect[s] the fairness or accuracy of the text,” *State ex rel. Ohioans United for Reproductive Rights v. Ohio Ballot Bd.*, 2023-Ohio-3325, ¶ 20 (quoting *Voters First.*, 2012-Ohio-4149, at ¶ 30), or “omit[s] any “essential part” of the proposed amendment,” *id.* (quoting *State ex rel. Cincinnati for Pension Reform v. Hamilton Cty. Bd. of Elections*, 2013-Ohio-4489, ¶ 58). Here, there is no “material” omission from the Ballot Language that affects the accuracy of the text. Rather, the Ballot Language accurately describes new aspects of the commission that the average voter would likely find to be material. So, while Relators might wish the Ballot Language were more comprehensive (and partial to them), the language is not misleading. *See id.* at ¶ 20-21.²

4. Paragraph 4 accurately describes the Amendment’s removal process, which ensures commissioners may not be removed except for cause by the commission itself, even for delineated causes such as incapacity or gross misconduct.

Paragraph 4 of the Ballot Language states 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.” Relators_034. Like the rest of the Ballot Language, paragraph 4 properly identifies the substance of the proposal and will not mislead, deceive, or defraud the voters. *See Ohio Const.*, art. XVI, § 1; art. II, § 1g.

Relators claim that paragraph 4 “mischaracterizes the Amendment as generally preventing a commissioner from being removed, even in cases of incapacity or egregious misconduct” and “flips the Commission’s power to remove commissioners on its head.” Relators’ Br. at 27-28. They

² Of course, it bears reiterating that the proposed language favored by Relators provides *far less* detail than the language adopted by the Ballot Board and falls woefully short of identifying “the substance of the proposal to be voted upon.” R.C. 3505.062(B). It is high irony that Relators nonetheless complain to this Court that the much more detailed language adopted by the Board includes too little information.

deride the language in paragraph 4 as “elliptical” and say that it was designed to mislead voters into believing that the commissioners “will be generally insulated from scrutiny.” *Id.* Relators are wrong. It is a fact that Section 4(C) of the Amendment prevents the commissioners from being removed by anyone or anything except for the commission itself, no matter the reason for removal—and the amendment lists incapacity, willful neglect of duty, and gross misconduct among the reasons the commission might remove a commissioner. *See* Relators_013. It is the Amendment that restricts removal power of commissioners to the commission itself. The Ballot Language merely states that fact.

Section 4(C) of the Amendment states, in its entirety:

A commissioner shall be removed only by the commission and only for cause after notice, a public hearing, and an opportunity for members of the public to comment. Any of the following shall be cause for removal:

- (1) Knowing failure to disclose information pursuant to section 3 of this article;
- (2) Willful disregard for the provisions in section 5 of this article;
- (3) Wanton and *willful neglect of duty* or *gross misconduct* or malfeasance in office;
- (4) *Incapacity* or inability to perform his or her duties; or
- (5) Behavior involving moral turpitude or other acts that undermine the public’s trust in the commission and the redistricting process.

(Emphasis added.)

So, under Section 4(C)’s explicit language, a commissioner is insulated from removal by anyone except their fellow commissioners, even if the commissioner becomes incapacitated, willfully neglects his or her duty, or engages in gross misconduct. And to avoid any doubt, Section 12(B) of the proposed amendment purports to repeal any provision that conflicts with it: “If any provision of this article conflicts with other provisions of the constitution, conflicts shall be resolved in favor of this article.” Proposed Amendment, Section 12(B), Relators_023.

The Ballot Language tracks Section 4(C) of the Amendment, even providing some of the examples of for-cause misconduct listed in the section. And the ballot language correctly indicates that even the “for cause” reasons listed would not allow anyone else (other than the commission itself) to remove a commissioner. Quite literally, a commissioner could commit misconduct (or a crime) or be physically incapacitated, and under the Amendment’s plain language, there would be no recourse unless the commission itself voted to remove that commissioner. The Ballot Board was not required to provide the full text of the section, Ohio Const., art. XVI, § 1; *see also Voters First*, 2012-Ohio-4149, at ¶ 24. There is no material omission from the ballot language that affects the accuracy of the text. *See Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 20-21.

The bottom line is that the plain text of the Amendment purports to render any commissioner unremovable from the commission *for any reason, except upon the vote of the commission*. And that is exactly what paragraph 4 of the Ballot Language says. Accordingly, Relators have failed to show that the Ballot Language is inaccurate or misleading in any way.

5. Paragraph 5 accurately describes the Amendment’s jurisdiction-stripping provision, which states that “no other challenges to an adopted final redistricting plan ... may be brought in any court.”

Relators next claim that paragraph 5 of the Ballot Language, which describes this Court’s exclusive, original jurisdiction over challenges to redistricting plans under Sections 8 and 6(B) of the Amendment, is “false[]” and “outright wrong.” Relators’ Br. at 25. Not so. Contrary to Relators’ assertions, paragraph 5 of the Ballot Language tracks the language contained in Section 8(F) of the Amendment.

Section 8(A) of the Amendment provides “exclusive, original jurisdiction in all cases” that assert a redistricting plan “fails to comply with the requirements of section 6(B) of this article.”

Relators_019. In turn, Section 6(B) sets forth the statewide proportionality requirements for redistricting plans drawn under the Amendment. Relators_016. Section 8 further sets forth the procedure for challenging a redistricting plan under Section 6(B). Relators_019-020. Importantly, the Amendment provides that except for claims brought under Section 8, “no other challenges to an adopted final redistricting plan ... may be brought *in any court*.” Relators_021 (emphasis added).

Tracking this language, the Ballot Language states that the Amendment would “[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_034-035.

Relators claim paragraph 5 of the Ballot Language is inaccurate because the Amendment “does not preclude federal courts from hearing redistricting challenges otherwise falling within their jurisdiction.” Relators’ Br. at 25. But any suggestion that the Amendment would do so comes from its own text. That is, the Amendment itself includes no caveat or carveout for federal claims. Instead, it states that “[e]xcept for claims brought under” its Section 8, “*no other challenges* to an adopted final redistricting plan ... may be brought *in any court*.” Relators_021 (emphasis added). This jurisdictional limitation does not apply to any *state* court, but rather “*any court*.” *Id.* (emphasis added). And it purports to preclude jurisdiction over *all* other challenges except for claims under Section 8, which, in turn, is limited to claims that the new commission failed to “to comply with the requirements of Section 6(B) of this article.” Relators_019.

With this in mind, consider Section 6(A) of the Amendment: it requires districts to comply “with the United States Constitution and all applicable federal laws.” Relators_016. Taken together, the average voter reviewing the Amendment would read that this Court has exclusive,

original jurisdiction over challenges under Section 6(B) to the exclusion of “any other court” and that “no other challenges to an adopted final redistricting plan” may be brought except under Section 6(B)—including, ostensibly, a challenge under Section 6(A)’s requirement that a plan comply with federal law. Therefore, paragraph 5 of the Ballot Language is not inaccurate or misleading; it tracks the language used in the Amendment.

To be sure, to the extent the Amendment purports to strip federal courts of jurisdiction over federal claims, it is likely unconstitutional. Relators’ Br. at 25 (citing *Patchak v. Zinke*, 583 U.S. 244, 250-251 (2018), and *Cary v. Curtis*, 44 U.S. 236, 245 (1845)). But the approved ballot language accurately reflects the language of the Amendment, not how a federal court might adjudicate a claim of constitutionality (or abstention). Relators cannot claim that the Ballot Language misleads voters by accurately describing the Amendment’s language. It is neither required nor permissible for the Ballot Board to include a carveout that is not found within the Amendment itself.

Relators additionally claim that paragraph 5 is inaccurate because this Court’s exclusive jurisdiction over claims under Section 6(B) also includes challenges to redistricting plans that improperly “consider[] ‘the place of residence of any incumbent elected official or any candidate for state or congressional office’” or “account[] for ‘senators whose terms will not expire within two years of the plans effective date.’” Relators’ Br. at 26. According to Relators, the Ballot Language’s omission of these types of challenges from paragraph 5 renders it misleading. *Id.* However, a ballot language’s omission is not misleading unless it is “material” in that it “affects the fairness or accuracy of the text” or “omits any essential part of the proposed amendment.” *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 20. Paragraph 5 does neither.

Indeed, according to Relators, the Amendment’s goal (to “prohibit the use of redistricting plans that favor one political party and disfavor others”) is accomplished by ensuring that redistricting plans “seek to approximate the statewide partisan preferences of Ohioans while drawing geographically contiguous districts that reflect communities of interest” under Sections 6(A) and 6(B). Relators’ Br. at 18. After all, Section 6(B) devotes seven total subparts to proportionality requirements, Relators_016, and just two to its candidate-residency and unexpired-senate-term requirements. *Id.* Put simply, with respect to the propriety of redistricting plans, the crux of the Amendment is its requirement that the plans proportionally approximate “the statewide partisan preferences” of Ohio voters. *Id.* Thus, the central component of Section 8 that is likely most material to an average voter is its creation of a cause of action challenging a plan’s proportionality under Section 6(B).

Paragraph 5 of the Ballot Language accurately describes that central component. Accordingly, it does not “affect the fairness and accuracy of the text” of the proposed amendment by omitting the two relatively esoteric types of challenges that may be brought under Sections 6(B)(4) and (5). Nor are those additional types of challenges an “essential part” of the proposed amendment. For confirmation, this Court need look no further than Relators’ own proposed ballot language—which also omits any reference to a challenge brought under Section 6(B)(5). *Compare* Relators’ Br. at 26 (alleging that omission of Section 6(B)(5)’s prohibition on accounting for “senators whose terms will not expire within two years of the plan’s effective date” is misleading) *with* Relators_088 (omitting reference to Section 6(B)(5)’s prohibition). What is good for the goose is good for the gander—if Relators are correct about paragraph 5, then their own proposed ballot language is also misleading. For the foregoing reasons, however, Relators are not correct.

The ballot language in paragraph 5 accurately tracks the proposed amendment’s text and satisfies the requirements of the Ohio Constitution.

6. Paragraph 8 accurately describes the Amendment’s prohibitions on communication between the commission and its staff and the general public outside of designated public meetings or portals.

Paragraph 8 of the Ballot Language provides that the proposed amendment would “[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_035-036. This language accurately describes what the proposed amendment provides: that “[c]ommissioners and commission staff ... shall not communicate with any outside person about the redistricting process or redistricting plan outcomes other than through designated public meetings or official commission portals.” Relators_014. It further provides that “no person shall attempt to contact any member or members of the commission or commission staff ... with the intent to influence the redistricting process or redistricting plan outcomes other than through designated public meetings or official commission portals.” *Id.* This Court has long recognized that the phrases “shall” and “shall not ... should be construed as imposing imperative duties or prohibitions. ...” *State ex rel. Mitman v. Bd. of Commrs.*, 94 Ohio St. 296, 306 (1916). Further, the ordinary meaning of something that “limits” is something that “‘bounds, restrains, or confines.’” *Henry v. Kohl’s Dept. Stores, Inc.*, 2019-Ohio-2094, ¶ 36 (11th Dist.). This means that “shall not” and “shall” in the two respective limitations are legal prohibitions.

Relators are thus flatly incorrect that “[n]othing in the Amendment prohibits any Ohioan from exercising their right to express their opinions to the Commission.” Relators’ Br. at 22 (emphasis in original.). The Amendment does so on its face. No constitutional provision currently prohibits the public from contacting the Redistricting Commission about the redistricting process or redistricting-plan outcomes. Whether via letter, phone call or face-to-face, in an office, at a

baseball game or the grocery store, or anywhere they choose, Ohio voters are generally free to express their redistricting opinions to the current Redistricting Commission. The Amendment, on the other hand, would institute new legal prohibitions on redistricting-related communications (or attempted communications) between constituents and commissioners outside of designated public meetings or official commission portals. Relators_014-015. By its plain language, the Amendment would thus place “bounds, restraints, or confinements” on the places where the public can lawfully express redistricting opinions to the commission. *Kohl’s* at ¶ 36. In simpler terms, the Amendment facially “limit[s] the right of Ohio citizens to freely express” redistricting-related opinions to the commission by confining those communications to state-designated fora. Relators_035.

Of course, to the extent that the Amendment purports to limit citizens’ ability to contact commission members, their staff, and the like, such limitations may violate the First Amendment, which secures “the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const., Amend. I. The U.S. Supreme Court has “recognized this right to petition as one of ‘the most precious of the liberties safeguarded by the Bill of Rights,’” *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (quoting *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967)).

Relators’ claim that paragraph 8 of the Ballot Language is nonetheless misleading because it omits reference to the Amendment’s “public process requirements,” e.g., the requirements for public hearings and an online portal for submission of public comment. Relators’ Br. at 25. But the Ohio Constitution already requires the Redistricting Commission to conduct public hearings prior to adopting a proposed plan. Ohio Const., art. XI, § 1(C), 8(A)(2). And, as of 2021, the Redistricting Commission’s website “includes a portal the public can use to submit maps of their own.” Cleveland Plain Dealer, *Ohio launches redistricting website, offering chance for public*

input into high-stakes process (Aug. 20, 2021), <https://www.cleveland.com/open/2021/08/ohio-launches-redistricting-website-offering-chance-for-public-input-into-high-stakes-process.html> (accessed Aug. 26, 2024); *see also* Ohio Redistricting Commission, *Maps | Ohio Redistricting Commission*, <https://redistricting.ohio.gov/maps> (accessed Aug. 26, 2024).

Paragraph 8 therefore focuses on what is *new* with the Amendment (its new limitation on the ability of Ohio voters to communicate with commissioners outside of certain fora) rather than what is generally the status quo (that the commission is required to conduct public hearings and receive public comment at those hearings). Again, an omission is not material and therefore misleading unless it “affects the fairness or accuracy of the text” or “omits any essential part of the proposed amendment.” *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, at ¶ 20. Paragraph 8 fairly and accurately describes the new constitutional aspects of the Amendment because, as opposed to aspects that generally maintain the status quo, that is what an average voter is likely to find most material. Thus, while Relators argue that paragraph 8 might have been more comprehensive, its focus on the new constitutional aspects of constituent-commission communication does not render it misleading. *See Ohioans United for Reproductive Rights* at ¶ 20-21. But in any event, it cannot be seriously questioned that the Amendment does exactly what the ballot language says: it limits the right of Ohio citizens to freely express their opinions. Accordingly, paragraph 8 passes muster under the Ohio Constitution.

7. Paragraph 9 accurately characterizes Ohio’s current legislative and congressional district maps as being “adopted by the citizens of Ohio through their elected representatives.”

Relators next argue that Paragraph 9 of the Ballot Language is inaccurate and misleading to the extent that it suggests that the current district plans were adopted by Ohio’s voters. And to be sure, were that the *actual* language, then such language could be problematic. But Relators’

statement is misleading because it fails to consider the words that end that paragraph in the Ballot Language.

In its entirety, Paragraph 9 states, “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*.” Relators_036 (emphasis added). It is widely accepted that elected representatives exercise the will of their constituents. Indeed, the U.S. Supreme Court has long recognized that the “legitimate acts” of “legislative power reposed in representative bodies ... may be said to be those of the people themselves.” *Duncan v. McCall*, 139 U.S. 449, 461 (1891). As such, actions taken by a representative government are properly viewed as being taken by its citizens. *See, e.g., State ex rel. Milhoof v. Barberton Bd. of Edn.*, 76 Ohio St. 297, 307 (1907) (government in Ohio “is by the people, through their chosen representatives”). The principle is not just recognized in federal and state judicial precedent. It is enshrined in Ohio’s Constitution itself, in Article I, Section 2, which states, “All political power is inherent in the people.”

The current district plans were adopted by the Ohio Redistricting Commission. The makeup of the Redistricting Commission entirely consists of state officials elected by Ohio’s voters. Ohio Const., art. XI, § 1 (members are the governor, secretary of state, auditor of state, and four members of the General assembly). Accordingly, it is entirely accurate that Ohio’s voters adopted the current plans through their elected representatives.

The only authority relied upon by Relators on this point, *Ohioans United for Reproductive Rights*, 2023-Ohio-3325, is easily distinguishable. There, this Court found that “citizens of the State of Ohio” and “the State” were not synonymous and was misleading. *Id.* at ¶ 26-29. But that language omitted the key phrase: “through their elected representatives.” Relators_036. This

language provides average voters with context that allows them to know that the Redistricting Commission was the body that passed the maps, and that it was Ohio's voters that initially elected them to their positions, e.g., the Governor. This is nothing like the language in the only case Relators rely upon.

8. Paragraph 10 accurately describes categories of costs that will be paid by appropriations from tax revenue, including commission members, commission staff, special masters, legal counsel, and a private professional search firm that are delineated in the Amendment.

Finally, Relators attack Paragraph 10 of the Ballot Language, which states, "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." Relators_036. Relators argue that by stating that the Amendment will "impose new taxpayer-funded costs" on Ohioans, this mischaracterizes the Amendment because (1) the General Assembly is currently responsible for providing appropriations to the Ohio Redistricting Commission and (2) the Redistricting Commission incurred legal fees in defending litigation related to the 2021 redistricting process. *See* Relators' Br. at 29. As with all previous arguments, Relators' argument falters on the fact that the Ballot Language is accurate.

As laid out in the Amendment, there are numerous, new taxpayer-funded expenditures related to the new redistricting process. First, the Amendment creates numerous positions, most of which are paid a salary on top of reasonable expenses. The new commission would be made up of 15 members. Relators_007. Under Section 9 of the Amendment, members of the new commission would be entitled to \$125 per day, plus reimbursement for expenses "for each day attending commission meetings or otherwise carrying out the responsibilities of the commission." Relators_021. Moreover, if a litigant with standing were to challenge a plan adopted by the new

commission, then two special masters would have to be appointed. They would “be entitled to reasonable compensation set by the Supreme Court of Ohio commensurate with their skills, experience, and expertise and consistent with industry standards, plus reimbursement of reasonable, actual, and necessary expenses.” Relators_019.

But even that is not all. The Amendment also requires that the new commission hire an executive director and its own legal counsel. Relators_14. Salaried commissioners, experienced executive and legal staff, and special masters are not the only new additions that come with significant taxpayer-funded implications under the Amendment. Ohio’s taxpayers are also on the hook for the screening panel that is charged with overseeing the application process for potential commissioners, as well as the private, professional search firm that the screening panel is required to utilize under the proposed amendment. “Members of the bipartisan screening panel shall be paid a per diem equal to the per diem paid to a judge assigned to serve on a court of appeals in Ohio.” Relators_009. And there is no specified limit as to how much the professional search firm can charge.

Contrast this with the current system. The Redistricting Commission is made up of seven elected officials. *See* Ohio Const., art. XI, § 1. They are not paid an additional salary above the salary they command by virtue of their elected offices for serving on the Redistricting Commission. Moreover, this Court has exclusive jurisdiction to decide any challenge to a plan adopted by the Redistricting Commission and does not earn any extra compensation for presiding over the case. *See* Ohio Const., art. XI, § 9. Contrary to the proposed commission, the Redistricting Commission does not have an executive director or independent legal counsel. Rather, as a state entity, legal representation lies with Ohio Attorney General. *See* R.C. 109.02.

Simply put, these costs (screening panel, professional search firm, executive director, legal counsel, commissioners, and special masters) are new expenditures that are not included in the appropriations for the current Redistricting Commission. Explaining to voters that these are “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,” Relators_036, is accurate—not misleading.³

Finally, Relators are incorrect that the phrase “unlimited amount” for legal fees is prejudicial. Under the Amendment, none of the money required to defend a legal action is taken from the new commission’s budget. Rather, the General Assembly is required to “make separate and timely appropriations to cover all the commission’s expenses in any related litigation.” Relators_021. And as the clear, unambiguous language provides, there is no limit to this additional expenditure.

In sum, Relators have not established by clear and convincing evidence that they have any right to ballot language different from what the Ballot Board adopted or that the Ballot Board has any duty to change that language. The Ballot Board accurately identified the substance of the proposal, and the Ballot Language will not mislead, deceive, or defraud the voters. *See* Ohio Const., art. XVI, § 1; Ohio Const., art. II, § 1g; *see also* R.C. 3505.062(B) (stating that one of the Ballot Board’s duties is to “[p]rescribe the ballot language for constitutional amendments proposed by the general assembly to be printed on the questions and issues ballot, which language shall properly identify the substance of the proposal to be voted upon”). The Ballot Language states facts about the Amendment; it does not include any persuasive argument for or against it. *See State*

³ Notably, the ballot language for the failed redistricting initiatives in 2005 and 2012 each contained language informing voters that the General Assembly would be required to provide funding under the respective proposals. *See* Exhibits A and B.

ex rel. Bailey v. Celebrezze, 67 Ohio St.2d at 519. This Court should deny Relators’ request for a writ of mandamus.

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

The Ballot Title, “To create an appointed redistricting commission not elected by or subject to removal by the voters of the state,” also passes muster. The same three-part test used to examine the sufficiency of ballot language is employed by this Court to assess a challenged ballot title. *See Voters First*, 2012-Ohio-4149, at ¶ 26. Such title “shall give a true and impartial statement of the measures in such language that the ballot title shall not be likely to create prejudice for or against the measure.” R.C. 3519.21; *see also State ex rel. Responsible Ohio v. Ohio Ballot Bd.*, 2015-Ohio-3758, ¶ 12.

Relators contend that the Ballot Title prescribed by the Secretary is “inaccurate and written to create prejudice against the Amendment.” *See* Compl. at ¶ 94. Specifically, they argue that the statement that members of the new commission are “not elected by or subject to removal by the voters of the state” is false and misleading. But they are wrong because the Title is true.

Under the Amendment, membership on the commission will not be made up of officials elected by Ohio’s voters. Indeed, any elected or appointed officials or their family members are prohibited from serving on the commission. Relator_012-013. Instead, the four members of the Ballot Board who currently serve in the General Assembly would be required to select four retired judges from a pool of interested applicants to serve on a “bipartisan screening panel.” Relators_007-008. Once the panel has been appointed, the panel oversees a lengthy interview process and randomly selects the first six members of the commission. Relators_009-011. Then, those six randomly chosen commissioners select the remaining nine commissioners from the remaining pool of applicants. Relators_010-011. In other words, six of the 15 commissions are two steps removed from any voters by the retired judges selected by the four members of the

General Assembly, and nine of the 15 commissioners are three steps removed from any voters, as they are selected by the first six commissioners.

Contrast this with Ohio's current Redistricting Commission, which is made up of officials who were elected to their position by Ohio's voters. Ohio Const., art. XI, § 1 (members are governor, secretary of state, auditor of state, and four members appointed by the leaders of the General assembly). And, although the Constitution does not require that the four commissioners appointed by leaders of the General Assembly actually be current members of the General Assembly, they are nonetheless appointed by the President of the Senate, the Senator Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader, and thus leaders remain accountable to Ohio's voters based on their appointees' work. But this point is academic: the only members appointed have all been members of either the Senate or House of Representatives. Thus, the Ballot Title stating that the Amendment would create a commission "not elected by ... the voters of the state" is accurate, not misleading.

Similarly, the statement that the Amendment would create a commission that would not be "subject to removal by the voters of the state" is also accurate. Under the Amendment, members of the new commission "shall be removed only by the commission and only for cause after notice, a public hearing, and an opportunity for members of the public to comment." Relators_013. Based on the Amendment's language, this portion of the Ballot Title is completely accurate. Again, this is contrasted with the current system made up of elected officials. Thus, if Ohio's voters did not like the way that the Redistricting Commission conducted its business, they have the opportunity to remove them at the polls every two or four years.

Simply put, the Ballot Title is accurate. The two phrases at issue are taken directly from the Amendment's language and reflect how someone takes a seat on the new commission and how

any member can be removed. Relators' claim that this language is false or misleading is incorrect. Because it is accurate, the Ballot Title complies with all constitutional and statutory mandates. Accordingly, Relators have not established a clear legal right to the requested relief, and their writ of mandamus must be denied.

D. The Court cannot grant Relators' requested relief.

With the clock ticking on a multitude of election-related deadlines, Burnett Aff. at ¶ 5-11, Relators ask this Court to prescribe particular language that they wish to appear on the November 2024 General Election ballot. As explained throughout this brief, the Ballot Language is appropriate and should be left intact. But even if this Court disagrees, it cannot grant Relators' requested relief.

In essence, Relators seek to have the Court prescribe particular language to appear on the ballot. However, the Ohio Constitution vests the authority to craft ballot language exclusively with the Ballot Board. This Court's role in ballot-language challenges is limited to "a determination of whether the contested language is invalid." *Voters First*, 2012-Ohio-4149, at ¶ 62 (O'Connor, C.J., concurring). As former Chief Justice O'Connor stated in her concurrence in *Voters First*, once the Court makes this decision, "the judiciary's role in the matter is complete." *Id.* "Nothing in Article XVI, Section 1 or any other constitutional provision authorizes this court to sit as a super ballot board to prescribe ballot language for a proposed constitutional amendment after we have determined that the language prescribed by the board is invalid." *Id.*

Here, Relators' requested relief invites the Court to overstep its limited role. Yet, constitutionally speaking, the Ballot Board alone has the authority to carry out the admittedly difficult task of choosing ballot language. And while Relators deride the Ballot Board's actions, there is good reason why the Ballot Board, not the petition's proponents, have the constitutional duty to select ballot language. "The language an amendment's proponents may regard as a negative

description of the law’s consequence could seem to its opponents merely a necessary explanation of the law’s meaning.” *See Cincinnati for Pension Reform*, 2013-Ohio-4489, at ¶ 53. After all, ““there is no end to the difficulty in choosing language which will awaken in the reader the very same thought that was in the mind of the writer.”” *Sinking Fund*, 167 Ohio St. at 74. Relators want their preferred language printed on the ballots through a writ of mandamus, but nothing in the Constitution or the Revised Code gives Relators the right to demand particular language from the Ballot Board. Accordingly, the Court cannot grant Relators’ requested relief by prescribing certain language to appear on the ballot.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court dismiss the Complaint and enter judgment in their favor.

Respectfully submitted,

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I hereby certify that on September 3, 2024, the foregoing was filed electronically using the Court's e-filing system. I further certify that the foregoing was served via electronic mail upon the following:

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In the
Supreme Court of Ohio

STATE OF OHIO <i>ex rel.</i> CITIZENS	:	
NOT POLITICIANS, <i>et al.</i> ,	:	Case No. 2024-1200
	:	
<i>Relators,</i>	:	
	:	Original Action in Mandamus
v.	:	Expedited Elections Case
	:	
OHIO BALLOT BOARD, <i>et al.</i> ,	:	
	:	
<i>Respondents.</i>	:	

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Affidavit of Chris Burnett



Affidavit of Chris Burnett - CNP v. Ballot Board 005.pdf

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E-Signature 1: Christopher Burnett (CB)

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E-Signature Notary: MacKenzie S. Clayton (msc)

September 03, 2024 12:19:05 -8:00 [17373067304F] [64.128.48.50]
 MacKenzie.Clayton@OhioAGO.gov
 I, MacKenzie S. Clayton, did witness the participants named above electronically sign this document.



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In the
Supreme Court of Ohio

STATE OF OHIO *ex rel.* CITIZENS
NOT POLITICIANS, *et al.*,

Relators,

v.

OHIO BALLOT BOARD, *et al.*,

Respondents.

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:
:
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Case No. 2024-1200

Original Action in Mandamus
Expedited Elections Case

AFFIDAVIT OF CHRIS BURNETT

COUNTY OF PERRY)

STATE OF OHIO)ss.

Now comes Chris Burnett, having been first duly cautioned and sworn, and states and affirms as follows:

1. I have personal knowledge of the information set forth in this Affidavit, and I am competent to testify to the matters stated herein.
2. In June of 2023, I was appointed by Secretary of State Frank LaRose to the position of Deputy Assistant Secretary of State and State Elections Director in the Elections Division of the Ohio Secretary of State's Office, where I am responsible for developing and implementing policies, procedures, and guidelines for the administration of federal, state, and local elections to assist county boards of elections in the fulfillment of their statutory duties, as well as having oversight of the statewide voter registration database, the receipt, review, and distribution of statewide candidate and issue petition filings, and campaign finance regulations and related filings.
3. Through my position, I am familiar with the elections laws of the State of Ohio and with State of Ohio, *ex rel.* Citizens Not Politicians v. Ohio Ballot Board, *et al.*, which is currently pending before this Court. Relators seek a writ of mandamus requiring the Ohio Ballot Board to adopt revised ballot language for statewide Issue 1 for the November 5, 2024 general election.



4. In my role as Deputy Assistant Secretary of State and State Elections Director, I work closely with Ohio's 88 county boards of elections ("boards"). In that capacity, I advise boards as to the issuance and implementation of directives issued by the Secretary of State which govern the conduct of elections, answer general questions, and work with the boards to ensure that elections run smoothly, accurately, and in accordance with Ohio law.
5. Under Ohio law, constitutional amendments or statutes proposed by initiative petitions to be submitted directly to the voters are required to be filed with the Secretary of State 125 days prior to the election. Therefore, the filing deadline for the November 5, 2024 general election was July 3, 2024. Ordinarily, following receipt of those filings, the boards of election and Secretary of State are required to adhere to the following, but not limited to, statutory deadlines:
 - a. July 18, 2024 - Boards of elections must certify the validity of petitions for the proposed constitutional amendment (110 days before primary election).
 - b. July 23, 2024 – The Secretary of State must determine the sufficiency of the signatures (105 days before the general election) and promptly notify the chairperson of the committee in charge of the circulation about the sufficiency or insufficiency of the petition.
 - c. August 22, 2024 – Not later than this date (75 days before the general election), the Ohio Ballot Board must certify ballot language for the proposed constitutional amendment.
 - d. August 27, 2024 – Form of official ballots must be certified by the Secretary of State to boards of elections (70 days before the general election).
 - e. September 20 and 21, 2024 - Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") absentee ballots for the November 5 general election must be ready for use under Ohio law by September 20 (46 days before primary election) and under federal law must be mailed beginning September 21 (45 days before the primary election).
 - f. October 8, 2024 - Non-UOCAVA absentee ballots for the November 5 general election must be ready for use and for early-in person voting at the boards of election (first day after close of voter registration, 28 days before primary election).
6. These deadlines allow adequate time – 24 days – for the county boards of election to prepare and ensure that all necessary steps, proofing, and testing are complete prior to having UOCAVA ballots prepared and ready to send by the 46th day before the general election.



7. This year, due to the timing of the Democratic National Convention, the Ohio General Assembly passed H.B. 2 on May 31, 2024, in Special Session. This legislation moved the deadline for major political parties to certify presidential and vice-presidential candidates to the Secretary of State for the 2024 general election from 90 days (August 7) before the general election to 65 days (September 1) beforehand. The legislation also delayed the deadline for the Secretary of State to certify the forms of the official ballots from August 27 to September 6 (60 days before the general election).
8. On June 3, 2024, the Secretary issued Advisory 2024-02 to inform the county boards of elections of H.B. 2's changes.
9. As a result of the Ohio General Assembly's decision to delay certification of presidential candidates and the deadline for finalizing the form of the ballot, there are now *only* 14 days between the deadline for certification of the form of the ballot and the statutory deadline to begin mailing UOCAVA ballots. During this time, the boards must, among other things, complete the following:
 - a. Program and proof ballots, often with vendor support. This process generally takes 2-3 days.
 - b. Conduct logic and accuracy testing for scanners, tabulators, and election management systems used for UOCAVA voting, which is estimated to take another 3-4 days.
 - c. Issue final ballot printing orders to print vendors, which generally takes at least 3 days.
 - d. Prepare for the mailing of UOCAVA ballots, which I estimate to take at least 7 days.
10. During Ohio's 2022 primary election, redistricting litigation resulted in statutory deadlines being compressed to the point that the candidate protest deadline, which was the final necessary step before finalizing the form of the ballot, was just *one day* prior to the state deadline for mailing UOCAVA ballots. As a result, the Secretary executed an agreement with the U.S. Department of Justice ("DOJ") for the DOJ to forgo litigation against the state for some counties missing the March deadline if the counties began sending their UOCAVA ballots as soon as possible, but not later than 19 days before the start of early voting.
11. Based on my experience as a former Director of the Gallia County Board of Elections, and as the current State Elections Director, *any further delay* in certification of the form of the ballot will make it extremely difficult for the boards of elections to meet the September 20 deadline for preparing UOCAVA ballots and will result in litigation, diminished voter confidence, increased room for errors, and real hardship for Ohio's military and overseas voters as they attempt to cast their ballots in the upcoming election.
12. Based upon my review of the Secretary of State's records, attached hereto as Exhibit A is a true and correct copy of the official ballot language for the proposed amendment to Article XI of the Ohio Constitution presented to voters at the 2005 General Election.



13. Based upon my review of the Secretary of State's records, attached hereto as Exhibit B is a true and correct copy of the official ballot language for the proposed amendment to Article XI of the Ohio Constitution presented to voters at the 2012 General Election.

AFFIANT FURTHER SAYETH NAUGHT

Christopher Burnett

Signed on 2024/09/03 12:19:05 -0500

Chris Burnett

Subscribed and sworn to before me this 3rd day of September, 2024.



MacKenzie S. Clayton

Signed on 2024/09/03 12:19:05 -0500

Notary Public

Notarial act performed by audio-visual communication

1F04B03C-91F5-4437-A626-30771794ABC6 --- 2024/09/03 11:52:38 -0500 --- Remote Notary



Exhibit A

Language for 2005



J. Kenneth Blackwell
J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. BROAD STREET / 16TH FLOOR / COLUMBUS, OH 43215
614.466.2655 / TOLL FREE: 877.767.6446 / FAX: 614.644.0649
e mail: blackwell@sos.state.oh.us www.state.oh.us/sos/

RECEIVED

AUG 19 2005

SECRETARY OF STATE

August 19, 2005

The Honorable J. Kenneth Blackwell
Secretary of State of Ohio
180 E. Broad Street – 16th Floor
Columbus, OH 43215

Re: Ballot language and explanation certified by the Ballot Board on August 16, 2005

Dear Mr. Secretary:

Acting in my capacity as secretary for the Ohio Ballot Board, I hereby certify and provide to you, in your capacity as the Secretary of State of Ohio, the ballot language that the Ohio Ballot Board prescribed, in accordance with Article XVI, Section 1 and Article II, Section 1g of the Ohio Constitution and section 3505.062 of the Revised Code of Ohio, at a meeting held August 16, 2005, for the five constitutional amendments that have been proposed for submission to the Ohio electorate at the November 8, 2005 election.

I further certify and provide to you the explanation that the Ballot Board adopted in accordance with law at that meeting for the constitutional amendment proposed by the 126th General Assembly (HJR 2).

Sincerely,

A handwritten signature in cursive script, reading "Gretchen A. Quinn".

Gretchen A. Quinn
Secretary, Ohio Ballot Board
Assistant Elections Counsel, Office of the Ohio Secretary of State

Encls.

cc: Appointed Members of the Ohio Ballot Board: Senator Randy Gardner,
Senator Ray Miller, William N. Morgan, and Thomas R. Winters, Esq.
(w/ encls.)

ISSUE 4**PROPOSED CONSTITUTIONAL AMENDMENT**

(Proposed by Initiative Petition)

To amend Article XI of the Constitution of the State of Ohio.

To provide for the creation of a state redistricting commission with responsibility for creating legislative districts, this amendment would:

- Replace the current provisions of Article XI of the Ohio Constitution, including the two existing separate processes for creating legislative districts and for electing representatives to Congress and representatives and senators to the Ohio General Assembly with a new state commission.
- Provide that the new commission would be composed of five members, two of whom would be chosen by sitting judges, and the remaining members appointed by the first two or chosen by lot. The terms of the members of the commission shall be until the later of the adoption of the redistricting plans required to be adopted under the Article or the conclusion of all litigation in any court regarding such plans or the commission's responsibilities, actions or operations.
- Provide that a primary criterion to be utilized by the new commission in creating legislative districts would be to ensure that the districts are competitive, according to a mathematical formula contained in the Amendment.
- Provide that the commission must adopt a qualifying plan with the highest "competitiveness number," as defined in the proposed Amendment. The Amendment defines the "competitiveness number" of a plan by a mathematical formula, that is the product of the number of balanced districts multiplied by two, plus the total number of other remaining competitive districts, minus the total number of unbalanced uncompetitive districts multiplied by two. The competitiveness number for a general assembly plan is the sum of the competitiveness number for the house of representatives districts and the competitiveness number for the senate districts. Provide that the "measure of competition" of a legislative district be based on a calculation using the two average partisan indexes for the district, which are calculated on the basis of the percentage of votes received by each of the two partisan candidates who received the two highest vote totals statewide in each of the three closest general elections during the four previous even-numbered years prior to adopting a redistricting plan, keeping the index for one of the partisan affiliations always as the minuend and the index for the other partisan affiliation always as the subtrahend from district to district throughout a redistricting plan.
- Provide that the commission may consider whether to alter a plan to preserve communities of interest based on geography, economics, or race, so long as the reconfiguration does not result in a competitiveness number that is more than two points lower for a congressional plan and four points lower for a general assembly plan.

- Provide that the commission may design and adopt a redistricting plan if the plan meets the same criteria and has a competitive number equal to or greater than each submitted qualifying plan.
- Provide a method for the commission to assign state districts for senators whose term do not expire at the end of the first even-numbered year following adoption of the plan.
- Provide that legislative district boundaries shall change in 2007 and, thereafter, every year ending in one following a federal decennial census.
- Provide that the supreme court of Ohio has exclusive original jurisdiction involving redistricting plans adopted under the amendment, but limits such jurisdiction to ordering the commission to perform duties required under the amendment and prohibit the court from revising or adopting a plan.
- Provide for open meetings, public hearings, and certain public record requirements regarding the activities of the commission.
- Provide that the general assembly must appropriate sufficient funds for the commission to perform its duties. The commission may expend funds as it, in its discretion, deems necessary

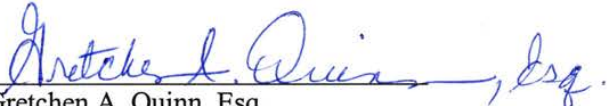
A majority yes vote is necessary for passage.

	YES	SHALL THE PROPOSED AMENDMENT BE ADOPTED?
	NO	

CERTIFICATION

I, Gretchen A. Quinn, Esq., acting in my capacity as the duly-designated secretary of the Ohio Ballot Board, do hereby certify to the Secretary of the State of Ohio that the foregoing text is the ballot language prescribed by the Ohio Ballot Board, acting pursuant to Article II, Section 1g of the Ohio Constitution, for this constitutional amendment proposed by initiative petition, and which the Secretary of State has ordered to be designated as Issue 4 on the "Official Questions and Issues Ballot" for the election to be held on November 8, 2005.

In testimony whereof, I have hereunto subscribed my name at Columbus, Ohio, this 19th day of August 2005.


 Gretchen A. Quinn, Esq.
 Secretary, Ohio Ballot Board

RECEIVED

AUG 19 2005

SECRETARY OF STATE

Exhibit B

Language for 2012

Issue 2

Proposed Constitutional Amendment

Proposed by Initiative Petition

To add and repeal language in Sections 1, 3, 4, 6, 7, 9 and 13 of Article XI, repeal Sections 8 and 14 of Article XI, and add a new Section 16 to 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:

1. Remove the authority of elected representatives and grant new authority to appointed officials to establish congressional and state legislative district lines.
2. Create a state funded commission of appointed officials from a limited pool of applicants to replace the aforementioned. The Commission will consist of 12 members affiliated with the largest political party (4 affiliated with the second largest political party, and 4 not affiliated with either of the two largest political parties) who will be chosen as follows:
 - A. On or before January 1 of the year that the decennial census is conducted, the Chief Justice of the Supreme Court of Ohio shall select by lot a panel consisting of eight judges of the courts of appeals of Ohio, no more than four of whom may be members of the same political party. This panel of judges shall be responsible for selecting potential members of the Commission. On or before April 1 of the year that the decennial census is conducted, this panel of judges shall appoint an independent auditor who shall assist the judges in determining the eligibility of potential members of the Commission.
 - B. Eligible persons may submit applications for membership on the Commission to the Secretary of State by May 1 of the year that the decennial census is conducted. The Secretary of State shall make available an appropriate application form designed to help determine the eligibility and qualifications of applicants and shall publicize the application process. The Secretary of State shall provide the panel of judges with the applications and any other records necessary to determine eligibility of the applicants.
 - C. On or before August 1 of the year that the decennial census is conducted, the panel of eight judges described in subparagraph A shall select from the applicants forty-two individuals to serve as potential members of the Commission. The judges, after adopting a selection procedure, shall select applicants who have the relevant skills and abilities, including a capacity for impartiality, and who reflect the diversity of Ohio. These shall include the fourteen most qualified applicants affiliated with each of the two largest political parties, and the fourteen most qualified applicants who have been unaffiliated with either of these political

parties during the prior five years. The selection of potential members shall require the affirmative vote of at least five of the eight judges. The two largest political parties shall be determined based on the votes received by the candidates for Governor in the most recent gubernatorial election.

- D. On or before August 15 of the year that the decennial census is conducted, the speaker of the Ohio House of Representatives and the highest ranking member of the House not of the same political party as the speaker may each respectively eliminate up to three of the fourteen potential members affiliated with the largest political party, up to three of the fourteen potential members affiliated with the second largest political party, and up to three of the fourteen potential members not affiliated with either of these parties. This shall result in a final pool of not less than twenty-four potential members of the Commission.
 - E. From the final pool of potential members, the panel of eight judges, or their designee, shall choose by lot, and in public, three individuals affiliated with each of the two largest political parties and three individuals not affiliated with either of these parties to serve as members of the Commission. On or before October 1 of the year that the decennial census is conducted, these nine members shall meet to select from the final pool of potential members three additional members, which shall include one member affiliated with the largest political party, one member affiliated with the second largest political party, and one member not affiliated with either of these parties. In selecting the final three members, the members of the Commission shall seek a total commission membership that reflects the diversity of Ohio and that has the relevant skills and abilities, including a capacity for impartiality, which will allow the Commission to fulfill its responsibilities. The nine members selected by lot and the three additional members selected by the original nine members shall comprise the full Commission.
 - F. No member of the Commission shall be subject to removal by the general assembly or any member of the executive branch.
- 3. Require new legislative and congressional districts be immediately established by the Commission to replace the most recent districts adopted by elected representatives, which districts shall not be challenged except by court order until the next federal decennial census and apportionment. Affirmative votes of 7 of 12 Commission members are needed to select a plan. In the event the Commission is not able to determine a plan by October 1, the Ohio Supreme Court would need to adopt a plan from all the plans submitted to the Commission.
 - 4. Repeals current constitutional requirements for drawing legislative districts that avoid splits to counties, townships, municipalities and city wards where possible, and when not possible, limiting such divisions to only one division per governmental unit, and also repeals requirements to form as many whole legislative districts solely within a county as possible. The foregoing would be replaced and require the Commission to adopt a plan that complies with all applicable federal and state constitutional provisions, federal statutory provisions,

and the contiguity requirement and that most closely meets the factors of community preservation, competitiveness, representational fairness, and compactness. The Commission would also be required not to draw or adopt a plan with an intent to favor or disfavor a political party, incumbent, or potential candidate.

5. Mandate the General Assembly to appropriate all funds necessary to adequately fund the activities of the Commission including, but not be limited to, compensating:

- A. Staff
- B. Consultants
- C. Legal counsel
- D. Commission members

If approved, the amendment will be effective thirty days after the election.

	YES	SHALL THE AMENDMENT BE APPROVED?
	NO	

CERTIFICATION

Acting in my capacity as the secretary of the Ohio Ballot Board, I hereby certify to the Secretary of the State of Ohio that the foregoing text is the ballot language prescribed by the Ohio Ballot Board, acting pursuant to Article II, Section 1g of the Ohio Constitution and section 3505.062 of the Revised Code of Ohio, for this constitutional amendment proposed by petition for submission to the Ohio electorate at the election to be held on November 6, 2012.

In testimony whereof, I have subscribed my name in Columbus, Ohio, this 13th day of September, 2012.



Elizabeth Luper Schuster
Secretary, Ohio Ballot Board

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General

/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)*

**Counsel of Record*

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Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, the foregoing was filed electronically using the Court's e-filing system. I further certify that the foregoing was served via electronic mail upon the following:

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/s/ Julie M. Pfeiffer

JULIE M. PFEIFFER (0069762)
Assistant Attorney General