

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel. ONE PERSON
ONE VOTE et al.,

Relators,

v.

OHIO BALLOT BOARD et al.,

Respondents.

Case No. 2023-672

Original Action in Mandamus

Expedited Elections Case

**BRIEF OF AMICUS CURIAE RESTORING INTEGRITY AND TRUST IN ELECTIONS
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I. STATEMENT OF INTEREST OF AMICUS CURIAE

Restoring Integrity and Trust in Elections (“RITE”) is a 501(c)(4) non-profit organization with the mission of protecting the rule of law in the qualifications for, process and administration of, and tabulation of voting in the United States. RITE is a non-partisan, public-interest organization dedicated to protecting elections as the democratic voice of the people.

As part of that mission, RITE seeks to defend the democratic process from tactics that risk sowing distrust in outcomes, such as Relators’ effort to deploy misleading language to obstruct and dismantle a ballot initiative they oppose. RITE respectfully submits this brief as Amicus Curiae in support of Respondents to place before the Court additional reasons for rejecting this attempt to undermine Ohio’s ballot-initiative process.

II. STATEMENT OF FACTS

RITE adopts Respondents’ statement of facts.

III. ARGUMENT

A. Ballot Language Should Be Clear, Understandable, and Accurate.

Ballot titles and summaries are often the only written information voters review when deciding the weighty issue of amending a state’s constitution. Therefore, these titles and summaries must be simple, straightforward, and accurate. Ballot text that is unnecessarily lengthy or complex, or that contains thinly veiled partisan advocacy, damages the democratic process and impinges upon the people’s right to self-government. It also gives voters the often accurate, and always unfortunate, impression that, even in the quintessentially democratic context of the ballot initiative, clever lawyering and marketing count for more than the will of the voters themselves. *See, e.g.,* The Journalist’s Resource, *Ballot Measures: Research Shows How Wording, Ballot Format and Local News Coverage Can Influence Voters*, <https://tinyurl.com/3kfwu3e4> (accessed

June 1, 2023) (“The way ballot measures are worded and framed can affect how voters respond to them. If ballots are lengthy . . . many voters will not bother to vote on ballot measures.”). That impression impairs self-government, which requires that the people control—and believe that they control—their own political destiny. Moreover, the problem is only exacerbated when outside groups, unaccountable to the electorate, seek to override the decisions of the people’s elected political representatives and manipulate ballot language through the Courts.

That is precisely what Relators are trying to do here. Not content with their separate lawsuit to bar Ohio’s voters from exercising their democratic right to determine the proper mechanism for amending their own constitution, Relators’ present lawsuit seeks to also add confusion, needless complexity, and position advocacy to the ballot language already approved by the elected officials statutorily assigned to that task. In other words, Relators seek to stop Ohio’s voters from having their say and, should that effort fail, now also want to override elected officials’ judgment and manipulate the ballot proposal’s language to tilt the playing field in favor of their preferred outcome. These are tactics antithetical to the democratic process Relators claim to protect.

The ballot-language Relators propose is ambiguous, misleading, confusing, and unprecedented. Their lawsuit is an undisguised attempt to wrest control of the process from the people’s democratically elected political representatives, while at the same time working to block Ohio’s voters from exercising their right to address a fundamental question of constitutional governance. The writ of mandamus should not be deployed in support of this anti-democratic agenda. This Court should reject Relators’ petition.

B. Relators Seek to Incorporate Ambiguous and Misleading Language into the Ballot Title Adopted by the Democratically Elected Secretary of State.

The alternative ballot-title language proffered by Relators puts the lie to the notion that their aim is to protect democracy. Rather, their alternative language is ambiguous and misleading,

revealing that they seek to undermine—not bolster—Ohio’s duly enacted, democratic system for proposing and voting upon constitutional amendments.

The proposed constitutional amendment at issue in this case would strengthen existing standards for future constitutional-amendment ballot initiatives in three ways. The amendment would (1) require that petitioners obtain signatures of electors from all of Ohio’s 88 counties rather than from only 44, (2) remove the 10-day cure period for initiative petitions not supported by an adequate number of signatures, and (3) raise the threshold for final passage of an amendment from a simple majority vote to 60%. *See* 2023 Am.Sub.S.J.R. No. 2. Accordingly, the Secretary of State has adopted the following title to describe the effects of the proposed amendment: “Elevating the Standards to Qualify for and Pass Any Constitutional Amendment.” (Compl. Ex. 3 at 1.) Relators take issue with this title, contending that the word “elevate” evinces a bias in favor of the amendment and assert that the Secretary of State should have used the word “chang[ing],” “modify[ing],” or “increas[ing]” instead. (Relators’ Br. at 6, 7, 16.) This contention does not withstand scrutiny.

Relators’ first two alternatives, “changing” and “modifying,” are each in fact *less* descriptive and *less* specific terms than “elevating.” Accordingly, use of either would be a net negative for voters and democracy. Both terms withhold factual information from voters *and* fail to produce any countervailing benefit in terms of brevity or clarity. After all, “modify” and “change” simply mean to “alter.” *E.g.*, *Random House Webster’s Dictionary* 464 (4th Ed.2001) (“modify” means “to change somewhat; alter partially”); *id.* at 117 (“change” means “to make different”). But “elevate,” as Relators inadvertently concede, means not only to alter but to alter in a *specific direction*—upward. (Relators’ Br. at 6, 16-17.) That is, “modify” and “change” tell the voter only that the amendment will alter the standards to qualify for and pass amendments.

The voter is left guessing whether the proposed changes will raise or strengthen these standards or, rather, will lower or weaken them. The word “elevate” eliminates this ambiguity, making clear, in neutral terms,¹ that the proposed amendment not only alters the standards to qualify for and pass amendments but alters them in a specific direction. Relators would have the ballot title deprive voters of this factual information.

As for the third alternative term—“increase”—it addresses the deficiency in their other proposed alternatives, but only at the expense of a different ambiguity that could readily mislead a reasonable voter. An “increase” in standards connotes not merely an “increase” in the robustness of existing standards but also an increase in the *number* of standards as well, that is, the addition of more standards to supplement those already in place. *See Random House Webster’s Dictionary* 366 (“increase” means “to make or become greater, as in *number*, size, or quality” (emphasis added)). But the proposed amendment does not add new standards; rather, it merely strengthens those already in place. Use of the word “increase,” then, would mislead voters. By contrast, the word “elevate” accurately connotes an (upward) change in strength of existing standards, rather than a change in their quantity.

C. Relators Similarly Seek to Hoodwink Voters by Adding Confusing, Extraneous, and Unprecedented Language to the Ballot Description of the Proposed Amendment.

Relators also ask the Court to jettison the amendment summary—that is, the substantive description of the proposed amendment adopted by the Ballot Board—and replace it with

¹ This is not to say that “elevate” is, in all contexts, a *perfectly* neutral term. But if there is any discernible space between “elevate” and the theoretical perfectly neutral (and accurate) term, Relators’ proffered alternatives do not fill it. Even more fundamentally, and as discussed in greater detail in part III.D, below, the law does not require perfect neutrality but instead forbids only language that “mislead[s], deceive[s], or defraud[s]” voters. Ohio Constitution, Article XVI, Section 1. “Elevate” certainly does not run afoul of that liberal standard.

alternatives that are variously confusing, extraneous, and unprecedented. The changes proposed by Relators are transparent position advocacy. Here too, Relators' proposals, rather than advancing democracy as Relators contend, in fact are an obvious attempt to defeat the proposed amendment via litigation instead of at the ballot box.

Relators contend that the Ballot Board must be forced to add language to the amendment summary stating that the standards the amendment seeks to elevate "have been part of the Constitution since 1912."² (Relators' Br. at 7.) The purpose of this language is plainly to alarm voters and thereby persuade them not to alter standards that have been in place for such an extended period of time. The language seeks to inject into the process a well-known psychological bias in favor of the status quo that has no basis in the law. *See Psychology Today, How Powerful Is Status Quo Bias?*, <https://tinyurl.com/2ubwj9wj> (accessed June 1, 2023). This sort of subtle effort to inject position advocacy into ballot language not only discounts the intelligence of the reasonable voter but also notably violates this Court's precedent. *E.g., Jurcisin v. Cuyahoga Cnty. Bd. of Elections*, 35 Ohio St.3d 137, 141, 519 N.E.2d 347 (1988) (ballot language must not be "persuasive in nature").

Moreover—and contrary to Relators' assertion that the amendment summary's "failure" to note the age of the to-be-amended constitutional provisions "breaks sharply with the Ballot Board's past practices" (Relator's Br. at 11-12)—adding this sort of historical commentary would be unprecedented. A review of all ballot initiatives proposing constitutional amendments over the past 30 years shows that language stating the age of the provision(s) to be amended has *never* been

² In fact, Relators assert that language emphasizing that the to-be-amended provisions have been in place since 1912 should be repeated in the amendment summary *three times*. (Relators' Br. at 7.)

included in any amendment summary.³ See Ballotpedia, *List of Ohio Ballot Measures*, <https://tinyurl.com/ttwm8tsx> (accessed May 31, 2023) (providing links to the language of Ohio ballot measures from 1859 forward). And were the Court to adopt Relators' argument that historical context must be provided, there is no clear limiting principle as to how much context would be enough. The context surrounding any particular proposal is effectively unlimited. Books can be and are written about how and why particular laws and constitutional provisions came to be proposed and ratified. The Court should decline the invitation to open up a new litigation front in the ballot-initiative space that would require courts to draw lines based on, at best, vague and unwieldy standards. Voters can assess the merits of a proposition without knowing extraneous details like how long a previous proposition has been in place, who proposed it, who supported it and opposed it, and by what kind of margin it was enacted.

Relators assert, in the alternative, that the Court should scrap the amendment summary altogether and place the complete text of the proposed amendment on the ballot. (Compl. at 1, 17; Relator's Br. at 18.) The textual changes proposed by the amendment are relatively modest, but because they span five extant sections of the Ohio Constitution, the full text of the amendment as approved by the General Assembly includes more than 3,000 words and spans over four double-spaced pages. See 2023 Am.Sub.S.J.R. No. 2. Relators' suggestion to print the complete text on the ballot is nothing more than a poison pill designed to doom the proposal to failure without proper democratic consideration.

³ This is not to suggest that older ballot measures did include such language. Relators' hurried litigation has prevented RITE from reviewing amendment summaries for constitutional measures put to the voters before 1993.

D. Relators Should Not Be Permitted to Enlist the Court in Their Effort to Sabotage the Constitutional Amendment Process.

Though Relators' complaint and brief are ostensibly aimed solely at the text of the amendment title and amendment summary selected by the Secretary of State and Ballot Board, respectively, Relators' underlying purpose is clear: They want this Court to intervene and thereby delay, or completely derail, a statewide vote on the proposed constitutional amendment. That is, rather than participating in the democratic process through grassroots campaigning or public-awareness events, Relators seek to force the democratic process to a halt. They should not be permitted to invoke the power of this Court to further that agenda.

In other words, the bar for interest groups like Relators to intervene and gum up the democratic process should be high. And, indeed, it is. The Ohio Constitution provides that the Court may not hold "ballot language . . . invalid unless it is such as to mislead, deceive, or defraud voters." Constitution, Article XVI, Section 1. The Constitution thus rightly vests significant confidence and discretion in those public officials—here, the politically accountable Secretary of State and Ballot Board—tasked with drafting ballot language in the first instance. In so doing, the Constitution—again rightly—presumes not only that these officials will act in good faith but that, even if proposed language is not perfectly neutral, it nevertheless should stand except in extreme circumstances. In so doing, the constitution guards against efforts by interest groups like Relators to thwart the amendment process and, unlike Relators, places measured and duly warranted confidence in the ability of Ohio voters to see through imperfections in ballot language and express their considered views on the state's weightiest legal matters.

IV. CONCLUSION

For all of these reasons, Amicus Curiae Restoring Integrity and Trust in Elections respectfully asks the Court to deny Relators' request for a writ of mandamus.

Dated: June 2, 2023

Respectfully Submitted,

/s Emmett E. Robinson

Emmett E. Robinson

COUNSEL FOR AMICUS CURIAE, RESTORING
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CERTIFICATE OF SERVICE

I hereby certify that, on June 2, 2023, a copy of the foregoing has been served upon relator's counsel, respondent's counsel, and counsel for amici curiae in support of relators, via email at the following addresses:

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