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BEFORE THE STATE OF OHIO BALLOT BOARD

- - -

Wednesday Afternoon Session,  
August 24, 2011.

- - -

In Re the Matter of :  
: State Issue 1 :  
: State Issue 2 :  
: State Issue 3 :

- - -

Senate Finance Hearing Room  
Senate Building  
One Capitol Square  
Columbus, Ohio

- - -

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IN ATTENDANCE:

- Jon Husted, Chair, Secretary of State
- Senator Keith Faber
- Mr. Mark Griffin
- Mr. William N. Morgan
- Mr. Fredrick W. Strahorn
- Ms. Betsy Luper Schuster, Secretary

- - -

1                                   Wednesday Afternoon Session,  
2                                   August 24, 2011.

3                                   - - -

4                                   SECRETARY HUSTED: Good afternoon,  
5 everyone. I'd like to call the meeting of the Ballot  
6 Board to order. I'm John Husted, I'm Secretary of  
7 State and the Chairperson of the Ohio Ballot Board.

8                                   If there is no objection from the Board  
9 members, my chief elections counsel, Betsy Schuster,  
10 will serve as the Secretary of the Ballot Board this  
11 afternoon.

12                                   A record of these proceedings will be  
13 transcribed by a court reporter from Armstrong &  
14 Okey, and the Ohio Channel is streaming this meeting  
15 live on their website where it will be archived.

16                                   Secretary Schuster, could you please call  
17 the roll.

18                                   MS. SCHUSTER: Senator Faber.

19                                   MR. FABER: Yes.

20                                   MS. SCHUSTER: Mr. Griffin.

21                                   MR. GRIFFIN: Yes.

22                                   MS. SCHUSTER: Mr. Morgan.

23                                   MR. MORGAN: Yes.

24                                   MS. SCHUSTER: Mr. Strahorn.

25                                   MR. STRAHORN: Here.

1 MS. SCHUSTER: And Secretary of State  
2 Husted.

3 SECRETARY HUSTED: Here.

4 A quorum of the Ballot Board being  
5 present. Let the record reflect that there's a  
6 quorum present.

7 The purpose of the Ballot Board was  
8 established to prescribe and certify ballot language,  
9 and in some instances explanations for statewide  
10 issues and to the means by which information about  
11 those issues is disseminated to the voters.

12 I'm going to ask the Secretary of the  
13 Board to discuss the Board's role today. So,  
14 Secretary Schuster, could you help us out with that?

15 MS. SCHUSTER: The purpose of today's  
16 meeting is -- there are two purposes of today's  
17 meeting:

18 First, to direct the means by which the  
19 Secretary shall disseminate information concerning  
20 the proposed constitutional amendments and referendum  
21 to the voters as required by Revised Code Section  
22 3505.062(F).

23 The second purpose is to direct the  
24 Secretary to contract for the publication in a  
25 newspaper of general circulation in each county in

1 the state of the ballot language, explanations, and  
2 arguments regarding the proposed constitutional  
3 amendments and the referendum as required by the  
4 Constitution and Revised Code Section 3505.062(G).

5 In addition, at the front table there are  
6 arguments that were prepared by the deadline on  
7 Monday, August 22nd.

8 Under Ohio Revised Code Section  
9 3505.063(A), when the General Assembly adopts a  
10 resolution proposing a constitutional amendment, here  
11 that's Issue 1, it may, by resolution, designate a  
12 group of members who voted in support of the  
13 resolution to prepare arguments for the proposed  
14 amendments and a group of members who voted against  
15 the resolution to prepare arguments against the  
16 proposed amendments.

17 The General Assembly designated  
18 Representative Matt Hoffman -- Huffman, excuse me,  
19 Senators Larry Obhof, Scott Oelslager, and Joseph  
20 Schiavoni to draft the arguments for Issue 1, and  
21 Representatives Tracy Heard and Mark Okey to draft  
22 arguments against Issue 1. Those arguments were  
23 submitted to the Secretary of State in a timely  
24 manner.

25 Under Ohio Revised Code Section

1 3519.03(A), the committee named in a referendum  
2 petition may prepare the argument and/or explanations  
3 against the law, and the General Assembly must name  
4 persons to prepare the arguments and/or explanation  
5 in favor of the law to be referred.

6 The General Assembly named  
7 Representatives Joe Uecker and Louis Blessing, and  
8 Senators Kevin Bacon and Shannon Jones. The  
9 committee named in the referendum and the persons  
10 named by the General Assembly submitted those  
11 arguments in a timely manner.

12 Finally under Revised Code Section  
13 3519.03(A), the committee named in an initiative  
14 petition, here that's Issue 3, may prepare the  
15 arguments and/or explanation in favor of the proposed  
16 constitutional amendment.

17 The General Assembly again names persons  
18 to prepare the arguments in opposition to the  
19 uninitiated constitutional amendment. The General  
20 Assembly named Representatives Armond Budish and Mike  
21 Foley, and Senator Capri Cafaro.

22 The committees, as I said, named in each  
23 of those -- each of those committees and the persons  
24 designated by the General Assembly filed arguments by  
25 Monday's deadline. Those arguments are available at

1 the front table and also available on the Secretary  
2 of State's website.

3           However, we will not be discussing those  
4 today. The Secretary wanted to make sure that the  
5 Board members and the public were provided with those  
6 arguments, but under the law the Board has no  
7 authority to accept, reject, or alter these  
8 arguments.

9           The role of the Secretary was to count  
10 the number of words. It had to be less than 300  
11 words, not including who it was submitted by. They  
12 all satisfied those requirements and, therefore, the  
13 Ballot Board has no duty as to those arguments and  
14 will only be addressing those two issues I discussed.

15           SECRETARY HUSTED: Thank you.

16           Let's move on to the issue of  
17 dissemination to the voters. Under Ohio Revised Code  
18 Section 3505.026(F), requiring this Board to direct  
19 the means by which Secretary of State will  
20 disseminate the information concerning the proposed  
21 state issues to voters.

22           I propose this Board authorize my office  
23 to provide a sufficient number of paper copies of the  
24 information regarding the 2011 state issues to the  
25 Boards of Elections, members of the state

1 legislature, public agencies, and other interested  
2 parties.

3           Additionally, this information will be  
4 published on the Secretary of State's website for  
5 easy access for Internet users.

6           Do I hear a motion? Senator Faber?

7           MR. FABER: Yes, Mr. Secretary, I would  
8 make that motion, but I'd like to ask some questions  
9 and make a comment.

10           SECRETARY HUSTED: Sure.

11           MR. FABER: Do that after the motion is  
12 on the table?

13           SECRETARY HUSTED: Let's actually, I ask  
14 you to rescind your motion, and let's have a  
15 discussion.

16           MR. FABER: Thank you.

17           Mr. Secretary, I just want to make sure  
18 with the Secretary's comments, so it is the Secretary  
19 of the Board's opinion that even if something in the  
20 arguments were clearly misleading and/or inaccurate,  
21 that we would have to publish that information merely  
22 as a ministerial function of the Ballot Board, and so  
23 we would have no ability to correct anything that  
24 would be materially false or misleading.

25           MS. SCHUSTER: I agree.

1           MR. FABER: Now, I do know in the past we  
2 have issued statements as part of that publication  
3 because we're doing this at taxpayer expense that the  
4 Ballot Board or the Secretary of State has not  
5 validated the accuracy of a claim or information and  
6 is required to do this ministerial duty.

7           Wouldn't that be something that we could  
8 do attaching to the statements so that the voters  
9 aren't misled that we are somehow giving the  
10 signature of imprimatur of government because we're  
11 paying for those arguments that we somehow have  
12 vetted them for accuracy when in fact we're not  
13 allowed to vet them for accuracy?

14          MS. SCHUSTER: Senator Faber, Secretary  
15 Husted, I don't see any legal prohibition.

16          MR. FABER: In that capacity then, I  
17 would, as part of my ultimate motion, make a motion  
18 that the Secretary issue a disclaimer on all of the  
19 arguments such that the Ballot Board and/or the  
20 Secretary of State has not validated the accuracy of  
21 the claims of information in the arguments and is  
22 required to publish the arguments without any  
23 modifications, without regard to the accuracy of the  
24 materials contained in the arguments, if that is in  
25 fact our legal duty.

1           That would eliminate the possibility of  
2 anybody being confused that somehow we have validated  
3 the claims which may be false or misleading in some  
4 of these arguments.

5           MS. SCHUSTER: I don't see any legal  
6 problem with that.

7           MR. FABER: With that, Mr. Chairman, and  
8 Mr. Secretary of State --

9           SECRETARY HUSTED: One moment. I think  
10 Mr. Griffin would like to be heard on this issue.

11           MR. GRIFFIN: Thank you, Mr. Secretary,  
12 and I concur with the Senator's general thoughts. I  
13 would just like to make sure that that sort of  
14 disclaimer could be produced without any additional  
15 cost to the taxpayer.

16           MS. SCHUSTER: The advertisement itself  
17 is going to be very lengthy due to the length of  
18 Senate Bill 5. So I would not anticipate an  
19 additional few sentences adding any cost to the  
20 publication.

21           MR. GRIFFIN: That's fine.

22           SECRETARY HUSTED: Senator Strahorn.

23           MR. STRAHORN: I just had a question for  
24 the Secretary, and you may have answered it when you  
25 responded to the Senator and I missed it.

1           With regard to have we done this before  
2 on issues issuing this disclaimer or have we just  
3 discussed it but not actually done it? I didn't  
4 catch the answer.

5           MS. SCHUSTER: I'm not aware of a  
6 disclaimer like that having been issued in the past,  
7 but I haven't been privy to all of the previous  
8 Ballot Board meetings. So my answer was I don't  
9 think there's any legal prohibition on the Ballot  
10 Board.

11           SECRETARY HUSTED: Senator Faber.

12           MR. FABER: Thank you, Mr. Secretary. We  
13 have in the past attached to other things that when  
14 we are drafting or proposing arguments that the  
15 Ballot Board is required by the Constitution or by  
16 statute to draft arguments when none are submitted  
17 and that we do not take a position for or against.  
18 We have made similar disclaimers on arguments in the  
19 past.

20           MR. STRAHORN: Thank you.

21           SECRETARY HUSTED: Thank you, Senator  
22 Faber.

23           I think it is clear when you get into  
24 these discussions that we call these "arguments,"  
25 we're not -- they're not necessarily based on

1 irrefutable facts.

2           They are a collection of ideas based on  
3 one's impression of the pro and con arguments for a  
4 particular issue, and so I think Senator Faber's  
5 addition to the discussion is appropriate.

6           Senator Faber, would you --

7           MR. STRAHORN: Mr. Secretary, I just have  
8 one other question.

9           SECRETARY HUSTED: Senator Faber --  
10 Senator Strahorn, excuse me.

11           MR. STRAHORN: With regard to what the  
12 language in the disclaimer will actually be, how will  
13 we decide that? Will that be solely at the  
14 discretion of the Secretary?

15           SECRETARY HUSTED: If it's okay with the  
16 Board, I will certainly consult with all the members  
17 of the Board in putting that together so that it's  
18 acceptable.

19           MR. STRAHORN: Thank you, Mr. Secretary.

20           SECRETARY HUSTED: Senator Faber.

21           MR. FABER: Secretary of State Husted, I  
22 would move the previous question as outlined in the  
23 Secretary's provision that the Secretary have -- be  
24 tasked by this Board, and so make that motion with  
25 the disclaimer addendum.

1 SECRETARY HUSTED: Do we have a second?

2 MR. MORGAN: Second.

3 SECRETARY HUSTED: Mr. Morgan.

4 Now, Secretary Schuster, would you call  
5 the roll.

6 MS. SCHUSTER: Senator Faber.

7 MR. FABER: Yes.

8 MS. SCHUSTER: Mr. Griffin.

9 MR. GRIFFIN: Yes.

10 MS. SCHUSTER: Mr. Morgan.

11 MR. MORGAN: Yes.

12 MS. SCHUSTER: Mr. Strahorn.

13 MR. STRAHORN: Yes.

14 MS. SCHUSTER: Secretary of State Husted.

15 SECRETARY HUSTED: Yes.

16 Motion carries.

17 We can move to the next portion of our  
18 discussion on advertising. The Ohio Revised Code in  
19 Section 3501.17(G)(1) requires the state to bear the  
20 entire cost of advertising in newspapers any state  
21 ballot issues, an explanation of the issues, and  
22 arguments for and against the issues, and to  
23 reimburse the Secretary of State out of the Statewide  
24 Ballot Advertising Fund for all expenses the  
25 Secretary of State incurs for the advertising.

1           Secretary of State may request such funds  
2 from the Statewide Ballot Advertising Fund either  
3 before or after placing the advertising.

4           The Ohio Constitution requires that the  
5 ballot language, explanations, arguments for and  
6 against, and full text of state issues be published  
7 once a week for three consecutive weeks before the  
8 election.

9           Ohio Revised Code 3505.062(G) requires  
10 the Ohio Ballot Board to direct the Secretary of  
11 State to contract for that advertising.

12           Accordingly, I propose that the Ballot  
13 Board authorize my office to contract for the  
14 required advertising for these state issues that will  
15 appear on the November 8, 2011, ballot, and to  
16 authorize me to request the Controlling Board to  
17 transfer sufficient funds for this purpose.

18           Is there any discussion in the matter?

19           Senator Faber?

20           MR. FABER: Thank you, Mr. Secretary of  
21 State, I would so move.

22           SECRETARY HUSTED: We have a motion and a  
23 second.

24           Secretary Schuster, would you please call  
25 the roll.

1 MS. SCHUSTER: Senator Faber.

2 MR. FABER: Yes.

3 MS. SCHUSTER: Mr. Griffin.

4 MR. GRIFFIN: Yes.

5 MS. SCHUSTER: Mr. Morgan.

6 MR. MORGAN: Yes.

7 MS. SCHUSTER: Mr. Strahorn.

8 MR. STRAHORN: Yes.

9 MS. SCHUSTER: And Secretary Husted.

10 SECRETARY HUSTED: Yes.

11 At this time is there any further  
12 business that needs to be brought before the Board?

13 MR. FABER: Just encourage the Secretary,  
14 you've been very vigilant in trying to enter those  
15 contracts, and horrible rate for taxpayers, but  
16 unfortunately you're kind of stuck with what you  
17 have.

18 SECRETARY HUSTED: We will definitely  
19 make sure that we drive a hard bargain with all of  
20 the newspapers that keep our friends in the press  
21 core employed.

22 Any other business?

23 Hearing none, then we stand adjourned.

24 (Deposition concluded at 1:24 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, August 24, 2011, and carefully compared with my original stenographic notes.

\_\_\_\_\_

Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1770)

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