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BEFORE THE STATE OF OHIO BALLOT BOARD

- - -

Monday Afternoon Session,
January 9, 2012.

- - -

In Re the Matter of :
Examination of Personhood :
Proposed Constitutional :
Amendment to Determine :
Whether it Contains Only :
One Constitutional :
Amendment. :

- - -

South 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 Monday Afternoon Session,
2 January 9, 2012.

3 - - -

4 SECRETARY HUSTED: I'd like to call the
5 meeting of the Ballot Board to order.

6 Good afternoon, my name is John Husted,
7 I'm the Ohio Secretary of State and Chairperson of
8 the Ballot Board.

9 And if there is no objection, I'd like to
10 ask that my Chief Elections Counsel, Betsy Schuster,
11 will serve as the secretary for the Ballot Board this
12 afternoon.

13 And also would note that a record of
14 these proceedings is being transcribed by a court
15 reporter from Armstrong & Okey, and the Ohio Channel
16 is streaming this meeting live on their website,
17 where it will be archived.

18 For the purposes of determining a quorum,
19 as the Ballot Board president, I ask Secretary
20 Schuster to call the role.

21 MS. SCHUSTER: Senator Faber.

22 SENATOR FABER: Yes.

23 MS. SCHUSTER: Mr. Griffin.

24 MR. GRIFFIN: Here.

25 MS. SCHUSTER: Mr. Morgan.

1 MR. MORGAN: Yes.

2 MS. SCHUSTER: Mr. Strahorn.

3 MR. STRAHORN: Here.

4 MS. SCHUSTER: Secretary Husted.

5 SECRETARY HUSTED: Here.

6 Let the record reflect that a quorum is
7 present.

8 The purpose today for this Ballot Board
9 meeting is to examine the personhood proposed
10 constitutional amendment to determine whether it
11 contains only one proposed constitutional amendment.

12 If the Board determines that it contains
13 more than one amendment, the Board must divide the
14 proposal for the proposed constitutional amendment
15 into individual constitutional amendments.

16 The proposed constitutional amendment
17 text and summary were provided by the Ballot Board
18 members in advance of the meeting and are in the
19 Ballot Board members' notebooks. Extra copies are
20 available at the front table for anybody who is
21 desirable.

22 I want to emphasize that we were not here
23 to debate the merits of the amendment, only to
24 determine whether it is one proposed constitutional
25 amendment or more.

1 At this time we will take public comment.
2 If anyone here wishes to address the Board regarding
3 the personhood proposed constitutional amendment as
4 one amendment, please sign in on the sign-in sheet in
5 front.

6 We will hear, let's see, at this point in
7 time then we will hear any public comment from
8 individuals who want to argue in favor of it being
9 one amendment. We have no one on the side of
10 arguing -- take that back, we have one person here
11 that would like to testify, and that is Don McTigue.
12 Don McTigue of the Healthy Families of Ohio
13 Organization. Mr. McTigue?

14 MR. MCTIGUE: Good afternoon,
15 Mr. Chairman and Members of the Board. I'm Don
16 McTigue on behalf of Healthy Families Ohio, which is
17 a 501c4 non-profit Ohio corporation whose mission is
18 pretty much stated in its name.

19 But we're here today to ask that the
20 Board find that this proposed amendment contains
21 actually two amendments to the Constitution.

22 This Board's responsibility is set forth
23 in 3519.01(A) where it provides that only one
24 proposal of law or constitutional amendment to be
25 proposed by initiative petition shall be contained in

1 initiative petition to enable the voters to vote on
2 that proposal separately.

3 That's sort of the key language there,
4 because the legislature in devising this requirement
5 that initiative petitions must only contain one
6 proposal is concerned about the ability of the voters
7 to be able to vote on different proposals separately.
8 That's the point. Voters might be in favor of one
9 part of a proposal but not in favor of the other part
10 of the proposal. So the question becomes whether or
11 not this is a proposal for two amendments to our
12 Constitution.

13 There's only been one case so far
14 involving this particular Board because this
15 responsibility that the Board has had is relatively
16 new; I think it was enacted in 2006. And there's
17 only been one case decided so far, and that was the
18 case of State ex rel Ohio Liberty Council versus
19 Brunner.

20 But in that case the Court noted that the
21 constitutional mandate that applies to the General
22 Assembly, the so-called single subject rule, is the
23 same standard that this Board should apply in
24 evaluating whether an initiative petition includes
25 more than one amendment or not.

1 And in setting out that standard for this
2 Board, the Court harkened back to what the purpose
3 for the single subject rule is that the voters put
4 into our Constitution in 1912. And the Court said
5 that the constitutional mandate that multifarious
6 amendments shall be submitted separately has two
7 great objectives.

8 The first is to prevent imposition upon
9 or deceit of the public by the presentation of a
10 proposal which is either misleading or the effect of
11 which is concealed and not readily understandable.

12 The second is to afford voters freedom of
13 choice and prevent log rolling or the combination of
14 unrelated proposals in order to secure approval by
15 appealing to different groups which will support the
16 entire proposal in order to secure some part of it
17 although perhaps disapproving of other parts.

18 So I believe that that standard fits very
19 squarely with what is before you. We have a proposed
20 amendment which states, at the outset states "Be it
21 resolved by the people of the State of Ohio that
22 Article I, Section 16, of the Constitution be adopted
23 and read as follows:" And then sets forth the text.

24 But in that text in paragraph A it says
25 "The words 'person' in Article I, Section 16, and

1 'men' in Article I, Section 1, apply to every human
2 being in every stage of biological development of
3 that human being or human organism including
4 fertilization."

5 Now, the problem here is that buried
6 within this amendment to Section 16 is an amendment
7 of Section 1 of the Constitution. They're attempting
8 to affect two different sections of the Constitution
9 but only setting forth one of those sections.
10 They're affecting the second section by a
11 cross-reference.

12 And that in and of itself might not be a
13 problem if those two sections dealt with the same
14 topic. But they don't.

15 When we talk about the single subject
16 rule, what we're talking about is whether or not the
17 subject matter is related to each other, to the parts
18 of the legislation or the parts of the amendment,
19 whether it is involving one common subject matter or
20 whether it involves different subject matters.

21 Clearly here different subject matters
22 are involved. Section 1 is the first section of our
23 Constitution -- Article I, Section 1, is the first
24 section of our Constitution that sets forth the
25 inalienable rights of Ohio citizens.

1 And Section 16 is a much narrower section
2 that deals with what you might call due process or
3 redress in the courts or access to the courts.

4 Section 1, the inalienable rights
5 provides that all men by nature are free and
6 independent and have certain inalienable rights among
7 which are those of enjoying and defending life and
8 liberty, protecting property, and seeking and
9 obtaining happiness and safety.

10 That on its face is much broader than
11 simply the issue of access to the courts or redress
12 in the courts. This has to do with many issues
13 beyond simply access to the courts. It is our
14 fundamental statement of our inalienable rights in
15 the state.

16 Now, I think the fact that this is
17 actually two amendments is fairly obvious from the
18 way that it's -- this, the amendment itself is
19 worded. Which is, it isn't defining, for example,
20 "men" or the word "person" for purposes of the entire
21 Constitution.

22 It is defining "men" as used in only one
23 section of our Constitution, Section 1. And it is
24 defining the word "person" as used in only one
25 section, Section 16. And as I said, those two

1 sections deal with very different subject matters.

2 Now, the voters should be able to have
3 the option, or the ability, I should say, to vote on
4 these two changes separately. Some voters may be in
5 favor of changing the definition with respect to
6 access to the courts but not in favor of expanding
7 the definition of "men" under the inalienable rights
8 section. We don't know what voters would do.

9 Some will vote No on both issues; some
10 will vote Yes on both issue; some will split their
11 vote. The point that you have to consider is are
12 these presented with two separate questions?

13 The reason -- another reason that this is
14 important is because the way that this is written and
15 being presented to the voters, it gives them the
16 context of only one section. They have put this
17 amendment into Section 16 dealing with due process or
18 access to the courts, and they've set forth the full
19 text of that section as it exists.

20 Their amendment is a definition of a word
21 used in that section. But their amendment is also a
22 definition of a different word used in a different
23 section but they don't give us any of the context of
24 that other section.

25 You don't have the full wording of that

1 section. In fact, you have no wording from Section 1
2 in this proposed amendment. That highlights the fact
3 that -- I believe that it highlights the fact that
4 this is two amendments affecting two different
5 subject matters.

6 It also goes against the requirement in
7 the same section 3519.01(A). The second half of that
8 section requires that when you're amending the
9 Constitution, you are to set forth the text that's
10 being amended. They haven't done that with respect
11 to Section 1.

12 So while they are adopting the same
13 definition for two different words, the fact of the
14 matter is they are affecting different subject
15 matters. The fact that the definition is common
16 doesn't make this one amendment. I think that that's
17 an important point.

18 Because on the surface -- on the surface
19 it might be easy to say, well, it's the same
20 definition. It's the same definition for two
21 different words but then those words have to be
22 looked at the context where they're used and what do
23 those words, what do they relate to?

24 They relate to the granting of very
25 different rights. And that's what makes it different

1 subject matter.

2 So for all these reasons I would
3 respectfully request that the Board split this into
4 two proposals and give the voters the opportunity to
5 consider them each on their own merits.

6 Thank you. I'll be happy to try to
7 answer questions.

8 SECRETARY HUSTED: Any questions?

9 Senator Faber?

10 SENATOR FABER: Mr. McTigue, what I hear
11 you arguing is essentially arguing this is not very
12 well drafted and could lead to confusion. But I
13 don't know that I can follow your next logical
14 conclusion somehow that because the drafting could
15 have been done differently in a more clear and
16 concise way that now we're dealing with two separate
17 and distinct issues.

18 Because what I see here is a single issue
19 whether or not the definition of "person" or "men,"
20 depending on how you're applying it, because I think
21 it's the same definition, includes at what stage a
22 person becomes a person. And that's the issue that's
23 presented in this amendment clearly and concisely.

24 Are you arguing that it is somehow in our
25 role to decide whether or not this is clear and

1 concise and says and does what it says it means to do
2 or otherwise complies with the statute?

3 Isn't that exclusively under the
4 prerogative of the Attorney General's Office and the
5 certified language?

6 MR. MCTIGUE: Mr. Chairman, Senator
7 Faber, I am not arguing that this is not well
8 drafted. That's not what I'm arguing. I think the
9 drafting of it is very clear. The language is very
10 clear. This is an expressed cross-reference to
11 another section of the Constitution.

12 So I'm arguing that this is very
13 clearly -- because it's clearly drafted, it is very
14 clearly an amendment of two different subject
15 matters: The subject matter of Section 1 dealing
16 with inalienable rights; and the subject matter of
17 Section 16, dealing with access to the courts.

18 SENATOR FABER: How does --

19 SECRETARY HUSTED: Senator Faber.

20 SENATOR FABER: How would that change
21 anything?

22 For example, what they're trying to do is
23 is essentially define the person that has either
24 access to the courts or I think under the entire
25 Constitution I think is the intent from my reading of

1 this, to define that to include a person at
2 essentially conception, fertilization, as opposed to
3 a person at live birth.

4 That seems to be applicable no matter
5 what section you're trying to apply it to and that
6 seems to be a single subject.

7 How does -- how do you get that we're
8 trying to have two different -- because the impact
9 will apply over many different areas I would view
10 that that may also impact in other areas that by
11 implication and/or subject and derivative case law in
12 other areas, like the homicide statute.

13 So I guess my question is how is that
14 simply read to the extreme that now we're dealing
15 with multiple subjects versus a single subject trying
16 to redefine what a "person" is that has application
17 of multiple subjects of the Constitution?

18 MR. McTIGUE: Mr. Chairman, Senator
19 Faber, while it is the same definition being applied
20 in two different terms, is being applied to two
21 different subject matters, one being inalienable
22 rights and the other being more limited.

23 That is I think the key factor here is
24 that these are -- that the subject matter is
25 different and it's the type of thing that voters,

1 some voters could decide that they're in favor of one
2 but not in favor of the other.

3 We can't -- I don't think we can
4 necessarily look at this from the standpoint of how
5 we as individuals might vote straight up or down on
6 both amendments, but the question is whether or not
7 voters should be given the opportunity to consider
8 changing the definition with respect to one section
9 that affects one subject matter and not changing the
10 definition in another section that affects different
11 subject matter.

12 So I understand what you're saying is
13 that if both of these were -- if both definitions
14 were to pass, it might, even through court decisions
15 it might have some affect in other parts of the
16 Constitution. But initially what voters are being
17 asked to do is to change a definition as it relates
18 to inalienable rights and change a definition as it
19 relates to access to the courts. And those are two
20 separate things and they should have the opportunity
21 to vote on those separately.

22 SENATOR FABER: Follow up, Mr. Chairman?

23 SECRETARY HUSTED: Senator Faber.

24 SENATOR FABER: Again, just to make sure
25 I'm clear on this, are you arguing that we have the

1 ability to second-guess or impose our personal
2 judgment on those of people who circulate and submit
3 stuff before us as to whether or not we think that
4 the voters might rather vote on this in bits and
5 pieces even though it seems to all address
6 consistently?

7 Is that your argument, that we have that
8 ability to do that and substitute our judgment?

9 MR. McTIGUE: Mr. Chairman, Senator
10 Faber, the legislature has said that this Board is to
11 decide if a proposal actually is more than one
12 amendment. So you do have some decision-making power
13 in terms of protecting the voters.

14 If you believe under guidelines
15 established by the Supreme Court for determining if
16 something is one subject or multiple subjects, and
17 that's the standard that's applied to determining if
18 it's one amendment or multiple amendments, those
19 standards you apply, and yes, there is some
20 responsibility for this Board to address that issue
21 in terms of the right of voters to be presented with
22 separate amendments to vote on separately. So that
23 the goals of the Supreme Court has mentioned, and I
24 read at the outset, are met.

25 It's not simply -- it's not simply saying

1 that you're second-guessing the drafters of a
2 proposal. I don't think it's second-guessing
3 actually at all. I think it's they've drafted it,
4 it's clear what they've said, you simply have to
5 decide if this is being -- should be presented as one
6 amendment or two amendments based on your judgment as
7 to the subject matter involved that's being affected
8 here by these definitions.

9 SENATOR FABER: Thank you.

10 SECRETARY HUSTED: Senator Strahorn?

11 MR. STRAHORN: Thank you, Mr. Chair, and
12 thank you, Mr. McTigue, for being here.

13 Let me go back to something you said in
14 your testimony, and you said that our responsibility
15 or a couple of our responsibilities are to be
16 concerned to protect the public from deceit, which I
17 don't think this is.

18 But also that -- I'm paraphrasing, I'm
19 not sure if you said this -- intentions that might
20 not easily be understood by the public. That's what
21 I want to explore.

22 Can you give us an example of something
23 that might be un-intending consequence of changing
24 the definition of "men" defined only in Section 1.

25 By changing that definition what is it

1 that you perceive might happen or certainly could
2 happen under that change that would not easily -- you
3 think would not easily be understood by the general
4 public?

5 MR. McTIGUE: Mr. Chairman, Mr. Strahorn,
6 the -- to show that these are separate subject
7 matters, and I think you're asking for an example to
8 kind of demonstrate that, Section 16 is access to the
9 courts, the ability to sue in court. That's
10 basically what that is.

11 Section 1 under inalienable rights
12 includes rights such as acquiring, possessing, and
13 protecting property. Okay? So under Section 1 from
14 the moment of fertilization, right?, this entity
15 would be entitled to hold and possess property.

16 That's separate from the issue of due
17 process, which is in Section 16. Gain access to the
18 courts.

19 So there is I think a very stark
20 difference between the two, the subject matter of the
21 two sections. And that isn't apparent to anybody who
22 reads the full text of this amendment. The full text
23 of the amendment only talks about redress in courts
24 and then the definition of the word "person" as used
25 in the redress in courts section.

1 Even those voters who decide to read the
2 full amendment are not going to get the text of
3 Section 1 that is also being affected, which is where
4 the rights are to possess property and also life and
5 liberty.

6 So that's why I think it's important that
7 these be presented as separate amendments because
8 they do have separate consequences. Even if you
9 have -- even if it's the same definition, there are
10 separate consequences.

11 MR. STRAHORN: Mr. Chair, just a
12 follow-up.

13 SECRETARY HUSTED: Senator Strahorn.

14 MR. STRAHORN: Just as a clarifying
15 question for me from a constitutional perspective,
16 would that make any difference if the definition
17 applied to every section of the Constitution?

18 Would that be okay, would that not create
19 the same issue or is that a factor in this?

20 MR. McTIGUE: Mr. Chairman, Mr. Strahorn,
21 it's a little hard to anticipate how the Ohio Supreme
22 Court might address that particular issue. If you,
23 say, adopted a definition for the word "person,"
24 definition for the word "men," and said "as used in
25 this Constitution."

1 I think at that -- at least from that
2 standpoint I think voters realize that everything
3 that Constitution touches this is now the definition
4 that applies. As opposed to here they're changing
5 the definition only as used in two sections and
6 they're being deprived of the context of at least one
7 of those sections.

8 MR. STRAHORN: Just one last question,
9 Mr. Chair?

10 SECRETARY HUSTED: Senator Strahorn.

11 MR. STRAHORN: This is more along the
12 lines of trying of helping me figure out if this does
13 rise to that standard for us to separate and I was
14 wondering if you can make an analogy between some
15 other instance where we separated an amendment into
16 two that you believe is similar to this and help me
17 sort of see where the similarities are so I can try
18 to tell whether it actually sort of meets that
19 standard.

20 MR. McTIGUE: Mr. Chairman, Mr. Strahorn,
21 one example which is mentioned in my memo to the
22 Board and I believe the Secretary has distributed the
23 transcript from the December 5, 2007, Ballot Board
24 meeting, this is a -- this was a casino, proposed
25 casino amendment to the Constitution to create a new

1 section of the Constitution authoring a single casino
2 in Clinton County, and there the amendment also
3 included a provision that provided for the casino to
4 essentially be exempt from the liquor control laws.
5 And also contain a provision for the Casino
6 Commission to enact rules and laws.

7 And an argument that was made, presented
8 by me to the Board at that time was that this was
9 actually three amendments. Even though it all dealt
10 only with the same casino and affected nothing else
11 but that casino, it was still in essence making
12 changes, three changes to the Constitution: One, to
13 authorize a casino; two, to basically cut back on
14 another part of the Constitution on the regulation of
15 liquor; and three, cut back on another section of the
16 Constitution involving the grant of legislative power
17 to the Ohio General Assembly.

18 And in that particular case of this
19 petition, it contained these provisions without even
20 a direct cross-reference to these other sections. It
21 just contained language which clearly affected other
22 parts of the Constitution. And this Board voted
23 unanimously to find in fact it was three amendments,
24 and it divided it.

25 Now, that actually brings up the fact

1 that what happens next when this Board divides an
2 amendment? It's not the end of the story.
3 Petitioners can come back, in fact they did on the
4 Clinton casino one, they actually came back with a
5 petition that just dealt only with the casino.

6 But they could have come back with
7 separate proposals on all three issues if they wanted
8 to. This doesn't knock someone off the ballot. This
9 is just early in the process, it's early in the
10 process, it's appropriately early in the process so
11 that petitioners can actually avoid a potential
12 problem later with the single subject requirements.

13 SECRETARY HUSTED: Mr. McTigue, you had
14 noted earlier that essentially the same standard that
15 you referred to when drafting legislation about
16 single subject came in, it reminded me as I was
17 trying to come up with something that would have been
18 similar in my past when I served in the legislature,
19 it reminded me of a piece of legislation that I think
20 was sponsored by Jimmy Stewart when he was in the
21 General Assembly.

22 And there was some outdated and harsh
23 terms to describe someone with developmental
24 disabilities that were along the lines of "mentally
25 retarded" and even more harsh than that.

1 Those outdated terms to describe a person
2 with those particular limitations was rolled into one
3 word and amended throughout the Revised Code under
4 the term "developmental disabilities."

5 That was one bill that amended a large
6 number of sections of a huge bill. I remember how
7 thick it was because of all of the sections that it
8 amended.

9 It seems to me that that's kind of the
10 same thing that we're talking about here really about
11 a single definition that affects two places in the
12 Constitution, and help me understand based on that
13 experience and that example how this is somehow
14 different than that.

15 MR. McTIGUE: Mr. Chairman, of course, I
16 haven't read -- actually I recall reading in the
17 newspaper about the legislation but never actually
18 read the exact language.

19 But I think that one difference is, and I
20 may be speculating partially here since I don't have
21 the exact language --

22 SECRETARY HUSTED: We're just trying to
23 help understand.

24 MR. McTIGUE: If I understand, they
25 basically took several different terms used

1 throughout the code and used one, gave it all one
2 common definition.

3 SECRETARY HUSTED: An updated, modernized
4 term they felt best and better and more appropriately
5 described.

6 MR. McTIGUE: And in doing so I don't
7 know that it actually changed anything other than
8 having a common term.

9 The question would be did it actually
10 change who was entitled to benefits, say, under
11 various programs or not? Or did it simply just
12 change it so that there was a common definition?

13 And from that standpoint other than
14 bringing back a common definition, there may not have
15 been any real substantive changes. So I think that
16 might be one difference that I would argue if I
17 actually had a chance to look at the language.

18 SECRETARY HUSTED: Mr. Griffin?

19 MR. GRIFFIN: Just a follow-up by
20 Secretary Husted's question. Is it your view then
21 that rather than just changing terms in this proposed
22 amendment that there are substantive rights that are
23 fundamental in the proposed amendment?

24 MR. McTIGUE: Mr. Chairman, Mr. Griffin,
25 absolutely. This is the amendment that changes

1 fundamental rights, inalienable rights, and access to
2 the courts by changing the definitions of the words
3 "men" and "person" in those sections. Or by giving
4 them definitions, I suppose, since there are no
5 definitions there right now.

6 But it gives them definitions and it
7 gives them definitions that go well beyond those
8 definitions that those two terms currently have in
9 case law by the courts.

10 And by going beyond what those
11 definitions are in case law it is affecting
12 fundamental rights and inalienable rights and access
13 to the courts.

14 MR. GRIFFIN: Mr. Secretary, if I may.

15 SECRETARY HUSTED: Mr. Griffin.

16 MR. GRIFFIN: Our legal obligation here
17 is to determine whether or not the proposal limit
18 deals with more than one subject.

19 In making that evaluation are we supposed
20 to look at the substance of what happens as a result
21 of that amendment?

22 MR. McTIGUE: Mr. Chairman, Mr. Griffin,
23 I believe, yes, that is a factor that the Board can
24 look at and the courts would look at in evaluating
25 whether or not the subject matter of the two sections

1 is related to each other.

2 You have to say, well, if we change the
3 definition in this section and change the definition
4 in this other section, even though we have the same
5 definition, how is that impacting what those sections
6 do?

7 And then, is there a common commonality
8 between those two sections in terms of what they do
9 as impacted by the definition of change.

10 MR. GRIFFIN: Just so I'm clear, it's
11 your view that the law would state that the substance
12 of an amendment changes fundamental very different
13 sections that that should be considered a multiple
14 subject amendment?

15 MR. McTIGUE: Right, exactly. Mr.
16 Chairman and Member Griffin, I mean it is possible
17 that there could be two sections of the Constitution
18 that deal with the same subject matter. And you
19 might change the definition of two terms in those two
20 sections to have the same meaning but because they
21 deal with the same subject matter, even though
22 they're in different sections, that I believe is that
23 single subject. But here we're dealing with
24 different subject matter.

25 MR. GRIFFIN: And if I can follow-up one

1 more time.

2 I think to some extent you and Senator
3 Faber are in agreement that the impact of this will
4 have affects on multiple different sections of the
5 Constitution. I think perhaps you disagree that on
6 whether that constitutes a single subject or not.
7 But I think you both recognize that there will be a
8 cascading affect throughout the Ohio Bill of Rights
9 and the rights of the Constitution.

10 I guess my question to you then is does
11 the form of this by simply changing a definition mean
12 that it becomes a one-subject rule as opposed to the
13 effect of impacting multiple sections? It's a
14 form-versus-substance issue?

15 MR. MCTIGUE: Chairman Husted,
16 Mr. Griffin, while it's a definitional change, but it
17 is that definition has to be looked at in the context
18 where the word, the defined word is located. And
19 that's where the substance comes in.

20 Changing a definition doesn't do anything
21 by itself until you put that defined term in its
22 context, and that's where we have two different
23 subjects here.

24 Because, I mean, even if the word "men"
25 was used in both sections and the word "person"

1 wasn't even around, we still have the same problem:
2 We are affecting two different subject matters that
3 are distinct.

4 SECRETARY HUSTED: Senator Strahorn.

5 MR. STRAHORN: Thank you.

6 As one of the two non-lawyers in here I
7 was trying to get maybe some of the abstract to just
8 sort of put it into some real world context, and this
9 may go terribly awry, but let me present a scenario,
10 and even if the scenario is somewhat off because of
11 me not being a lawyer and the law doesn't apply to
12 the way I'm trying to use it, maybe you can clean
13 that up with what the law really says.

14 But let's take a scenario there is a
15 woman, she is pregnant, she's either married or not
16 married to the man. He dies; he has no will. Based
17 on what the law is today, based on what this would
18 change it to, how are -- how is that estate impacted
19 if probate occurs before the birth of the child
20 versus once this change happens?

21 If probate were to take place how would
22 this change affect that, or would it affect that at
23 all?

24 MR. McTIGUE: Well, Mr. Chairman,
25 Mr. Strahorn, I believe that there would be a change

1 affected here to the extent that an estate is
2 property, and as I said before, my understanding
3 currently is under the law, probate law as
4 interpreted, as written by the General Assembly and
5 interpreted by the courts, doesn't give property
6 rights to an individual that hasn't been born.

7 I think that this amendment would affect
8 a substantive change in that regard in that it
9 defines "men" in terms of the ability to hold and
10 possess property as from the moment of fertilization.

11 So I think that that would be a very
12 far-reaching change in our current law. That is
13 separate from the issue of access to the courts.

14 MR. STRAHORN: Just a follow-up.

15 SECRETARY HUSTED: Senator Strahorn,
16 remember the question we're here for.

17 MR. STRAHORN: Let me explain why,
18 Mr. Chair.

19 SECRETARY HUSTED: It would be a
20 thoroughly interesting discussion but that's not what
21 we're here for.

22 MR. STRAHORN: I understand. What I'm
23 trying to figure out is is the actual change
24 impactful in a way that's separate and different and
25 distinct from just simply the notion of a person dead

1 or alive?

2 So the notion that this would change how
3 you may deal with property rights, how you may deal
4 with incarceration of pregnant women, how would you
5 deal with -- that to me for my own personal
6 distinction, that would make a difference to me.

7 And so if the answer was no, it doesn't
8 really impact those things, then I'm back to seeing
9 this more as one single amendment. And I was trying
10 to get away from the abstract notions because it
11 wasn't giving me a real world scenario that I could
12 wrap my arms around.

13 So that's what I'm trying to argue the
14 merits of whether it should be or shouldn't be. I'm
15 just trying to create in my mind whether there is a
16 significant distinction that again would not easily
17 be understood by the general public and I'm not so
18 sure that how this impacts property rights and family
19 in an estate during probate or how it affects tort
20 reforms of a business dealing with injury that might
21 happen to a pregnant woman or how it affects the
22 penal system in terms of incarcerating pregnant women
23 in rights of that fertilized egg not to be in prison
24 for -- so that's really the extent of what I was
25 trying to do.

1 And I think you've answered my question.

2 MR. McTIGUE: But, Mr. Chairman,
3 Mr. Strahorn, if I could just take that one step
4 further. In this particular context a person reading
5 the proposed amendment wouldn't know that it could
6 affect issues of liberty or issues of property,
7 because that isn't spelled out. That is Section 1
8 and that's not in here.

9 They're changing the definition but it's
10 they don't have the language of Section 1 here, which
11 they would be required to do if this was separate
12 amendments.

13 MR. STRAHORN: Thank you.

14 Thank you, Mr. Chair.

15 SECRETARY HUSTED: One of the things that
16 I want to instruct the Board, or at least provide the
17 Board the information on, I believe you have this but
18 the last time that we faced a court discussion in
19 this matter was related to the Ohio Liberty Council
20 versus Brunner, I think 2010.

21 And the Court at that time instructed
22 this Ballot Board, based on their ruling, that
23 essentially a proposed -- or, the test of whether
24 it's one amendment, a proposal consists of one
25 amendment to the Constitution only so long as each of

1 its subjects bears some reasonable relationship to
2 the single general object or purpose where an
3 amendment constitution relates to a single purpose or
4 object, and all else contained therein is incidental
5 and reasonably necessary to effectuate the purpose of
6 the amendment.

7 And the standard being that the Ballot
8 Board has a clear and legal duty to liberally
9 construe the right of the initiative, and as long as
10 the citizen initiative amendment bears some
11 reasonable relationship to a single subject object or
12 purpose, the Board must certify its approval of the
13 amendment as written without dividing into sections.

14 This was the case where the Ballot Board
15 divided the Health Care Freedom Act, I believe it was
16 described, into two separate initiatives, the Court
17 said it should be one. And whether one reason the
18 Court's decision in that case or not, that's what
19 they said it was to do.

20 Is there anybody else here to make public
21 comment regarding this issue?

22 Any comments from the Board members?

23 MR. STRAHORN: Mr. Chairman, if I may?

24 SECRETARY HUSTED: Senator Strahorn.

25 MR. STRAHORN: Having taken into account

1 that ruling on Liberty Council versus Brunner that
2 you just read back, I'm still inclined to believe,
3 based on Mr. McTigue's testimony and the notion that
4 these are significant changes that would not be
5 easily understood by the general public, I am
6 inclined to believe that these should be two separate
7 issues where it certainly deserves a little bit more
8 discussion on our part to make sure we get that
9 right.

10 I won't say that I'm 100 percent certain,
11 but it sure does give me pause the notion that this
12 could significantly change tort, the notion of
13 incarcerating a pregnant woman, or property rights,
14 and probably more things than that with there never
15 being anything stated with regard to that.

16 So I do see some distinctions between
17 some of the things that we've talked about and I
18 would see this as closer to what we did with the
19 casinos and with the Liberty Council.

20 So I don't know if that means if we had
21 more time to discuss this that we could take that
22 amongst ourselves --

23 SECRETARY HUSTED: Senator Strahorn,
24 today is the deadline. We don't have any more time
25 to discuss this. However, let me remind all that

1 this is to determine whether it is one initiative or
2 more.

3 At that point in time it would have to be
4 a signature-gathering process; at the point that a
5 sufficient number of signatures are submitted there
6 would be a validation process for the signatures, and
7 then a timeframe set for a discussion, further public
8 discussion before it would actually be presented for
9 voters for an amendment.

10 So I can agree with your conclusions of
11 discussion and awareness without necessarily coming
12 to the same conclusion that that would need to occur
13 today.

14 MR. STRAHORN: I believe my comments that
15 would be my concern then that we are inclined to
16 changing without having a stated purpose within this
17 amendment, and that would be my decision, I'd be
18 inclined to support that.

19 SECRETARY HUSTED: Thank you.

20 Senator Faber?

21 SENATOR FABER: Thank you, Mr. Chairman.

22 Before I would make a motion let's not
23 forget that a lot of this discussion also comes about
24 when we do the argument section. All of the
25 ratifications Mr. Strahorn identified are things that

1 come out of the argument sections and in the ballot
2 language discussion as to what this does or doesn't
3 do.

4 But in that perspective, Mr. Secretary, I
5 would move that we certify the personhood proposed
6 constitutional amendment as containing only one
7 constitutional amendment. Because I think it deals
8 with one subject, the definition to apply personhood
9 under the definition proposed by the drafters.

10 MR. MORGAN: Second.

11 SECRETARY HUSTED: Mr. Morgan seconds.
12 It's been moved and seconded. Is there any further
13 discussion?

14 MR. GRIFFIN: Yes. I have serious
15 questions as to whether an amendment which
16 substantively affects so many different rights could
17 fall within the requirement of the single subject
18 rule but certainly take that as an improvement of a
19 clear exchange between the open court amendment and
20 the Preamble of the Constitution.

21 I think this both explicitly and
22 implicitly affects more than one subject matter. I
23 think there are other alternatives and methods for
24 the proponents to pass this.

25 But I would be against certifying this as

1 a single issue and I would move to separate, to
2 provide those as two separate amendments.

3 SECRETARY HUSTED: That motion would not
4 be in order.

5 We have a motion currently considered
6 properly moved and seconded. Is there any further
7 discussion?

8 (No response.)

9 SECRETARY HUSTED: Hearing none, then I
10 ask the Secretary to take the role.

11 MS. SCHUSTER: Senator Faber?

12 SENATOR FABER: Yes.

13 MS. SCHUSTER: Mr. Griffin?

14 MR. GRIFFIN: No.

15 MS. SCHUSTER: Mr. Morgan.

16 MR. MORGAN: Yes.

17 MS. SCHUSTER: Mr. Strahorn?

18 MR. STRAHORN: No.

19 MS. SCHUSTER: Secretary Husted?

20 SECRETARY HUSTED: Yes.

21 MS. SCHUSTER: By a vote of 3 to 2 the
22 motion carries.

23 SECRETARY HUSTED: I do not believe that
24 there will be any other issues to come before the
25 Board.

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Any closing comments?

(No response.)

SECRETARY HUSTED: Hearing none, I thank you for your participation and attendance today, and the meeting is adjourned.

(Meeting adjourned at 2:30 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 Monday, January 9, 2012, 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-1814)

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