

MEETING OF THE OHIO BALLOT BOARD

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MEETING

of the Ohio Ballot Board, at the Ohio Statehouse,
Finan Finance Hearing Room, 1 Capitol Square,
Columbus, Ohio, called at 3:00 p.m. on Tuesday,
December 5, 2017.

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BALLOT BOARD:

Ohio Secretary of State Jon Husted, Chair
Senator Michael J. Skindell
Senator Jay Hottinger
Mr. William N. Morgan
Representative Kathleen Clyde

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ALSO PRESENT:

Ms. Carrie Kuruc, Elections Counsel

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Tuesday afternoon,
December 5, 2017.

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CHAIRMAN HUSTED: Good afternoon. I'm Jon Husted. I'm the Ohio Secretary of State and Chairperson of the Ballot Board. I'd like to call this meeting to order. I would ask Carrie Kuruc, Senior Elections Counsel, to serve as our secretary for the Ballot Board today.

These proceedings will be recorded and transcribed by a court reporter from Armstrong & Okey, and the Ohio Channel is streaming this meeting live on their website, where it will be archived.

At this time, we need to determine whether a quorum is present, so I'd ask the secretary to call the roll.

SECRETARY KURUC: Secretary Husted.

CHAIRMAN HUSTED: Here.

SECRETARY KURUC: Mr. Morgan.

MR. MORGAN: Here.

SECRETARY KURUC: Senator Hottinger.

SENATOR HOTTINGER: Here.

SECRETARY KURUC: Representative Clyde.

REPRESENTATIVE CLYDE: Here.

SECRETARY KURUC: Senator Skindell.

1 SENATOR SKINDELL: Here.

2 CHAIRMAN HUSTED: Okay. Let the record
3 reflect that the quorum is present today.

4 The Ballot Board must examine two
5 citizen-initiated constitutional amendments to
6 determine whether each contain only one proposed
7 constitutional amendment. If the Ballot Board
8 determines that the proposal contains more than one
9 proposed amendment, it must divide the proposal into
10 two separate amendments and certify them back to the
11 attorney general.

12 The petitioners then would need to submit
13 to the attorney general the summaries of each
14 separate Ballot Board initiative proposal. Should
15 the attorney general find those newly submitted
16 submissions to be fair and truthful, the petitioners
17 would then need to collect signatures for each
18 petition individually in an amount equal to
19 10 percent of the total vote cast in the
20 gubernatorial election of 2014.

21 The text, in summary, of the proposed
22 ballot amendments were provided to the Ballot Board
23 members in advance of today's meeting, and copies
24 are also available in your folders. Extra copies
25 are also available at the front table.

1 Today's proposed amendments concern
2 community rights and initiative and referendum for
3 counties and townships. If anyone wishes to address
4 the Ballot Board about these, whether it is a single
5 proposal or single issue or not, and that's what
6 we're here to discuss -- whether this proposal is a
7 single issue, not to debate the merits -- please
8 sign in on the sheet located at the front of the
9 room. When you are called to speak, please identify
10 yourself and any organization you represent at the
11 beginning of your comments. I remind you that we
12 are not here to deliberate the proposal, only to
13 determine whether it is a single issue or not.

14 So at this point in time, we have -- at
15 this point in time, we are here to -- we will take
16 public comment from anyone wishing to discuss the
17 issue regarding the proposal for community rights.
18 Is there anyone who wishes to come forward? We have
19 Tish O'Dell, Gwen Fischer, several others. Are you
20 going to all speak, or is just one person going to
21 represent those voices?

22 MS. O'DELL: We would like to make our
23 opinions known to the Ballot Board before you make a
24 decision.

25 CHAIRMAN HUSTED: Okay. Then I would

1 like to call Tish O'Dell.

2 MS. O'DELL: Thank you. Thank you for
3 the opportunity to speak here today. Six years ago,
4 I believed wholeheartedly in democracy in my
5 country, my state, and my local community. I'm from
6 Broadview Heights, Ohio. I believed that voting in
7 every election was enough and that our electeds
8 would represent the people's best interests.

9 However, I learned very quickly when my
10 community came under threat from the oil and gas
11 industry that this wasn't a reality. I learned that
12 the words in our constitution that all power is
13 inherent in the people and that the people have the
14 right to petition their government and to alter and
15 reform their government when it is no longer
16 protecting them is much more than just voting. It
17 means actually asserting these rights to make them
18 real and to not just be words on paper, and that's
19 how I came to be standing before you today.

20 The right to initiative is a right that the
21 people of Ohio have because, like Herbert Bigelow
22 and others who were part of the Charter Party --
23 they fought hard and sacrificed personally for.
24 They sacrificed because they knew they needed to
25 have a check and balance on a corrupt state

1 legislature at that time in our state's history, and
2 those of us working on community rights here in Ohio
3 are not about to just watch --

4 CHAIRMAN HUSTED: Excuse me.

5 MS. O'DELL: Yeah.

6 CHAIRMAN HUSTED: This hearing is about
7 whether or not this issue is a single issue or not.

8 MS. O'DELL: I'm getting to the single
9 subject. Yeah, I'm getting to that.

10 CHAIRMAN HUSTED: If -- you've got to
11 stay focused on that aspect of the conversation. I
12 just want to start this, make sure everybody knows
13 that, or we will have to change the process here.
14 But -- so stay focused, if you could --

15 MS. O'DELL: Well, I don't want you to
16 do that.

17 CHAIRMAN HUSTED: -- on the single
18 issue.

19 MS. O'DELL: I don't want you to take
20 away the people's little bit of voice that we have.
21 So I will get to that.

22 CHAIRMAN HUSTED: Thank you. I
23 appreciate that.

24 MS. O'DELL: I'm also -- you know,
25 there's two sets of rules which I'm -- you know, I

1 want to make sure the Ballot Board understands that
2 the people -- we don't like that there's one set of
3 rules -- and we hope that that won't be an issue --
4 here for the state legislature and another for the
5 people. And I know you're here to make the
6 determination on if our proposed amendment --
7 initiatives are only one subject. We worked really
8 hard on the language of both of these amendments
9 with that in mind, and it's actually why they're two
10 separate initiatives: because we didn't want to
11 combine them for that reason.

12 What we ask this Board is that you not
13 impose a higher standard than what our state
14 legislature is allowed to get away with on a regular
15 basis. The people in this room know that the state
16 legislature proposes and passes law that violate the
17 single subject rule quite a bit.

18 And the one that comes to mind is House
19 Bill 463 that the 131st General Assembly passed last
20 December. That actual bill published at the time of
21 passage listed as subjects the Ohio uniform
22 commercial code, real property foreclosure, escrow
23 transactions, local ballot initiatives, the coverage
24 of autism spectrum services, child abuse and child
25 neglect regional prevention, conflict of interest,

1 and to amend the statutory procedure for recalling
2 certain municipal officials. When I see things like
3 that, all I can say is good thing the legislature
4 doesn't have to get approval from an appointed board
5 like all of you to propose, debate, discuss, and
6 then vote on proposed laws.

7 So what we're asking is -- I'm asking
8 please don't hold the people to a higher standard
9 than the legislature is held to. Let these people's
10 initiatives go forward so that discussions, debates
11 and then a vote can take place. This is how a real,
12 functioning, healthy democracy should work. Thank
13 you.

14 CHAIRMAN HUSTED: Okay. Thank you.

15 We have Gwen Fischer.

16 MS. FISCHER: Thank you for the
17 opportunity to speak. My name is Gwen Fischer. I
18 come from Portage County, Ohio, and I also have come
19 down to testify before committees a number of times.

20 I believe that community rights are the
21 basis of a democracy because the people have to be
22 able to elect representatives who are able to
23 protect our health, welfare, and safety. And if
24 we -- if our representatives locally cannot do that,
25 then I believe that some part of our democracy has

1 been taken away. Of course we need levels of
2 government, and there are some things that the state
3 should enact. But primarily for health, safety, and
4 welfare, I've been told time and time again by our
5 local officials that we are not able to -- that they
6 are not able to enact laws that protect our health,
7 safety, and welfare.

8 So I believe that the community rights all
9 taken together as spelled out in that amendment are
10 essential for our democracy, and the initiative and
11 referendum certainly go together. And as a resident
12 of a rural community, I feel very keenly that I am
13 unable to put forward an initiative or referendum
14 that affects my immediate township or county and
15 have to do this totally on the state level. That
16 seems to me to make me a second-class citizen
17 compared to a rural resident. Thank you.

18 CHAIRMAN HUSTED: Thank you very much.

19 Let's call forward -- and please forgive
20 me. I cannot --

21 MS. BEIERSDORFER: It's okay.

22 CHAIRMAN HUSTED: I can't read the last
23 name. Susie?

24 MS. BEIERSDORFER: Susie Beiersdorfer.

25 CHAIRMAN HUSTED: Susie, please come

1 forward and share your --

2 MS. BEIERSDORFER: Yes.

3 CHAIRMAN HUSTED: -- testimony and your
4 comments.

5 MS. BEIERSDORFER: Hello, and thank you
6 very much for the time today.

7 I'm from Youngstown, Ohio. We are lucky
8 enough to have a charter -- to have an amendment,
9 have a charter. So we've been able to put a charter
10 amendment on the ballot until this last year when
11 HB 463 was passed in the legislature, again, as Tish
12 said, in a multi-issue bill. So we were kept off
13 the ballot, but we are going back again.

14 I think it's very important that we have --
15 that citizens have the right to initiative and
16 referendum and recall, in some cases, because that
17 is the "little d" democracy that we've all thought
18 that our government and nation was built upon. As
19 far as counties and townships being able to have the
20 right to initiative and referendum, it's disturbing
21 that 39 percent of Ohioans cannot, you know, go to
22 their government with laws, with amendments to their
23 charters or, you know, access their government.

24 So that is why we are here today and, as
25 Tish said, we made two different amendments because

1 of this single issue. So I hope you will take all
2 that into consideration. Thank you very much.

3 CHAIRMAN HUSTED: Thank you.

4 Again, I'm going to have a little trouble
5 with the writing here. Is this Terry or Tex?

6 MR. LODGE: Terry.

7 CHAIRMAN HUSTED: Terry? Terry Lodge.

8 MR. LODGE: Yes. Very good.

9 Good afternoon, members of the Board. My
10 name is Terry Lodge. I'm the attorney and legal
11 counsel today for the Ohio Community Rights Network,
12 and I would appreciate -- if you have follow-up
13 questions immediately when I'm done or during your
14 deliberations, if there's any need that you have for
15 information, I am more than happy to try to address
16 those requests for information.

17 I just want to talk about what the
18 standards that govern this Board's decision today
19 are. And helpfully, actually, the 2010 decision of
20 the State ex rel. Ohio Liberty Council versus
21 Brunner is rather much the state of the art of what
22 the Ballot Board has to consider and decide today.

23 There, of course, are two amendments
24 proposed. One of them is very short, one sentence;
25 the other is more complicated. And perhaps more

1 directing my comments to the longer proposed
2 amendment, I'd like you to take into consideration
3 what your responsibility is here. You only need to
4 decide whether the components, these proposals,
5 reasonably relate to a single, general purpose.

6 The longer of the two amendments is the one
7 that would establish rights of local
8 self-government. It discusses and basically
9 compiles a bundle of sticks, the rights that would
10 be expressly and specifically accorded to local
11 political jurisdictions. So don't be swayed by the
12 fact that there are multiple subtopics within that
13 proposed amendment. You only have to decide if the
14 terms are reasonably necessary to effectuate the
15 purpose of the amendment.

16 There is further consideration as to
17 whether there is any independent meaning that any
18 provisions you think perhaps should be addressed
19 separately as a third proposed amendment -- if they
20 have any separate meaning from the text in which
21 those terms and words and topics appear. The one
22 subject rule was designed to prevent imposition of
23 deceit or misleading concepts and terms on voters.
24 There -- it is difficult to imagine, given the very
25 straightforward wording of these particular

1 proposals, that there could be any misleading
2 effect. There may be political opinions people
3 would have as to whether they're misleading, but in
4 objective terms, we believe that there cannot
5 seriously, at this very preliminary stage, be that
6 kind of conclusion drawn.

7 The purpose also of the single subject rule
8 is to prevent logrolling where there's -- where you
9 effectively are trying to garner votes by having --
10 you want one agenda passed, and you have a
11 provision -- I'm sure that the legislatures
12 understand what "logrolling" is. You have a
13 provision trying to attract voters to your main
14 agenda.

15 We don't believe that there's anything of
16 that sort unless -- one of the amendments of the
17 proposal is to extend initiative and referendum
18 rights to townships and counties. I don't know that
19 anyone would be playing the township crowd off
20 against the county crowd. We don't believe that
21 there's any misleading or deceitful efforts to
22 basically pass on multiple subjects just to attract
23 votes for some sort of hidden agenda.

24 There is the further consideration that the
25 Supreme Court has set in the 2010 decision against

1 Secretary Brunner's vote, that you cannot impose a
2 tougher, more stringent standard in making your
3 single subject determination today than is imposed
4 by the courts on legislative omnibus bills such as
5 Ms. O'Dell just talked about, House Bill 463. It
6 was quite a -- quite a Christmas tree package last
7 year.

8 So we believe that, taking into
9 consideration the legal standards and the parameters
10 of your decision, this one is a no-brainer as to
11 both of these proposals. Thank you.

12 CHAIRMAN HUSTED: Thank you.

13 And lastly, I believe, we have Karen Hoard?

14 MS. HARDING: Carolyn Harding?

15 CHAIRMAN HUSTED: That's right.

16 MS. HARDING: I know. My son can't
17 read my writing either. Hi.

18 CHAIRMAN HUSTED: My apologies.

19 MS. HARDING: No problem.

20 CHAIRMAN HUSTED: Please.

21 MS. HARDING: Hello, Board. Good to
22 see you.

23 I'm Carolyn Harding. I am a Columbus
24 citizen -- well, a Bexley, Franklin County, citizen.
25 I just am here before you to support these two

1 constitutions and how important they are to us right
2 now in our state and that you -- the one is pretty
3 easy. It's very straightforward, giving townships
4 and counties initiative. The other one, you're
5 going to have to see that it is one concept of
6 community -- community, local government. And I
7 would like to tell you how glad I am that our Ohio
8 constitution is a living document and that -- that
9 it's up to us, the people, and you as our
10 representatives to make sure that it is serving the
11 Ohio people.

12 And as a resident, local person, I'm
13 working on issues of water, air, and soil. I just
14 want to protect my kids' water, their air, and their
15 soil. And that's how I got involved in community
16 rights because, a lot of times, local people have
17 not had the right to protect that because of state
18 preemption. And you know what that's like, having
19 federal preemption over states. You guys don't like
20 it. Cities don't like it when you have preemption.

21 So basically we, the people -- that's what
22 it's about. And we, the people, are here to alter
23 and edit and make our constitution stronger to
24 protect our local communities and -- just like Ohio
25 passed a medical marijuana; but, boy, the feds

1 haven't passed that, have they?

2 That's what we want to do. We want to do
 3 what's right for our communities. We want to be
 4 able to say, "Eh, maybe we don't want that in our
 5 community." And so this is what we're doing. This
 6 is what we want you to join us in supporting Ohio.
 7 And thank you for your time and consideration.

8 CHAIRMAN HUSTED: You're welcome.
 9 Thank you for your comments.

10 Are there any questions from the members of
 11 the Board?

12 Okay. Do I have a motion?

13 SENATOR SKINDELL: Mr. Chair.

14 CHAIRMAN HUSTED: Senator Skindell.

15 SENATOR SKINDELL: Sir, I move to
 16 certify the proposed constitutional amendment
 17 regarding community rights as containing only one
 18 proposed amendment.

19 CHAIRMAN HUSTED: Do I have a second?

20 SENATOR HOTTINGER: Second.

21 CHAIRMAN HUSTED: We have a motion and
 22 a second. Any discussion?

23 Hearing none, Secretary, would you please
 24 call the roll.

25 SECRETARY KURUC: Secretary Husted.

1 CHAIRMAN HUSTED: Yes.

2 SECRETARY KURUC: Mr. Morgan.

3 MR. MORGAN: Yes.

4 SECRETARY KURUC: Senator Hottinger.

5 SENATOR HOTTINGER: Yes.

6 SECRETARY KURUC: Representative Clyde.

7 REPRESENTATIVE CLYDE: Yes.

8 SECRETARY KURUC: Senator Skindell.

9 SENATOR SKINDELL: Yes.

10 CHAIRMAN HUSTED: The motion carries.

11 All right. We can now move to Item 2 on
12 the agenda, which is the referendum -- or the
13 initiative and referendum for counties and
14 townships. And the same discussion rules apply.
15 This is not a debate about the merits but just a
16 matter of whether it should remain or is one issue
17 or more.

18 And so we have some public comment, and I
19 would -- and there is no need for to you come back
20 up again, but if would you like to, you certainly
21 can. I don't think the debate changes. And if any
22 of you would like to come back up -- I know we have
23 Gwen Fischer again signed up.

24 If, Gwen, you would like to --

25 MS. FISCHER: I think I've given my --

1 CHAIRMAN HUSTED: Okay. And would
2 anyone else like to speak to this?

3 Okay. Thank you. Is there any discussion
4 among the board members?

5 Okay. Do we have a motion?

6 SENATOR SKINDELL: Mr. Chair.

7 CHAIRMAN HUSTED: Senator Skindell.

8 SENATOR SKINDELL: Thank you. Move to
9 certify the proposed constitutional amendment
10 regarding initiative and referendum for counties and
11 townships as containing only one proposed amendment.

12 CHAIRMAN HUSTED: Do we have a second?

13 SENATOR HOTTINGER: Second.

14 CHAIRMAN HUSTED: Second from Senator
15 Hottinger. We have a motion and a second. Is there
16 any discussion?

17 Hearing none, Secretary, would you please
18 call the role.

19 SECRETARY KURUC: Secretary Husted.

20 CHAIRMAN HUSTED: Yes.

21 SECRETARY KURUC: Mr. Morgan.

22 MR. MORGAN: Yes.

23 SECRETARY KURUC: Senator Hottinger.

24 SENATOR HOTTINGER: Yes.

25 SECRETARY KURUC: Representative Clyde.

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REPRESENTATIVE CLYDE: Yes.

SECRETARY KURUC: Senator Skindell.

SENATOR SKINDELL: Yes.

CHAIRMAN HUSTED: The motion carries.

Is there any other business to be brought before the Ballot Board today? Hearing none, we stand adjourned.

(Thereupon, the hearing was concluded at 3:30 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 Tuesday, December 5, 2017, and carefully compared with my original stenographic notes.

Heather A. Piper

Heather A. Piper, Registered Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires October 29, 2020.

