Ohio Constitutional Form Overview

Joe McDaniels
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Joe McDaniels has served as an attorney for the Legislative Service Commission since 2012. His work in the Taxation group of LSC’s research and drafting services division covers a broad scope of topics related to state and local taxes and economic development initiatives. He also assists LSC with troubleshooting and development of its drafting software, wellness programing, and other endeavors related to staff retention and appreciation. He earned a J.D. from The Ohio State University Moritz College of Law, and a B.A., summa cum laude with honors, in political science and psychology from Otterbein University.
The Ohio Constitution is the fundamental law of Ohio. Deriving its authority straight from the people it governs, the Constitution is subject only to the restrictions of the United States Constitution, acts of Congress, and international treaties to which the United States is a party.

- “The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.” Arnold v. Cleveland, 67 Ohio St.3d 35 (1993).

Overview

- The Ohio Constitution serves different purposes than the United States Constitution and, accordingly, it looks different in many respects. Addressing the Ohio Constitution of 1912, President William Howard Taft noted “the constitution of the United States is the great model of fundamental instruments for complicated, free and popular government.” However, he continued, “it is not to be expected that a state constitution should be as short an instrument as that, because the details of state, county and municipal government are so many more than that required in defining the relations between the state and the general government.”
- The Ohio Constitution is over 36,000 words; four times the size of the United States Constitution and a little larger than average as compared to other state constitutions (the average is 26,000 words). The largest state constitution belongs to Alabama – checking in at 772,000 words.
The history of the Ohio Constitution can be traced back to the Northwest Ordinance of 1787. Congress enacted the Northwest Ordinance to establish a government for the "Northwest Territory" and eventually to divide that area into "not less than three nor more than five states." In addition, the Ordinance contained six "articles of compact" that guaranteed certain individual liberties.

- The first Ohio Constitution was adopted in 1802 and approved on February 19, 1803. After adoption, Ohio was admitted to the Union as a state.

Ohio faced issues in the late 1840s that were not adequately addressed by the Constitution of 1802. The state had incurred debt in the then-significant amount of almost $20 million – much of it under the Ohio Loan Law of 1837 (often called the "Plunder Law"), which required the state to give financial aid to canal, railroad, and turnpike companies. There was also widespread dissatisfaction with the judicial system and with special legislation for the benefit of banking and other corporations.
THE OHIO CONSTITUTION

History

• Consequently, in 1849, the people called a constitutional convention by approving an issue that had been placed on the ballot by the General Assembly. Following that convention, which was held in Columbus and Cincinnati in 1850 and 1851, the voters adopted a new constitution on June 17, 1851.

• Since then, the Constitution has been amended numerous times on a broad range of subjects. All of the adopted amendments were approved by the voters, but were proposed by different methods in different historical periods. Some resulted from initiatives of the people; some resulted from resolutions adopted by the General Assembly; and some resulted from proposals adopted by the Constitutional Convention of 1912. The 1873 Constitutional Convention proposed an entirely new document that was rejected by voters.

REFERENDUM AND EFFECTIVE DATES

“No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided.”

– Ohio Constitution Article II, Section 1c

REFERENDUM AND EFFECTIVE DATES

• Laws generally go into effect on the 91st day after they are filed with the Secretary of State. This 90-day period allows time for the preparation, circulation, and filing of a referendum petition on the law.

• If a valid referendum petition is filed with the Secretary of State, the law, section, or item is submitted to the voters at an election for their approval or disapproval. (A number of voters equal to six per cent of the total number of votes cast for Governor in the most recent gubernatorial election must sign a referendum petition.) A law, section, or item thus submitted to the electorate does not go into effect until the voters have approved it.
**REFERENDUM AND EFFECTIVE DATES**

*Exceptions to the 90-day rule – bills that levy a tax*

<table>
<thead>
<tr>
<th>Effective immediately:</th>
<th>Referendum applies:</th>
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<tbody>
<tr>
<td>• Creates a new tax</td>
<td>• Eliminates a tax</td>
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<td>• Requires a new set</td>
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<td>of payers to pay the</td>
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<td>tax</td>
<td>• Removes parties to whom a tax applies</td>
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Exceptions to the 90-day rule – bills that levy a tax

<table>
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<tr>
<th>REFERENDUM AND EFFECTIVE DATES</th>
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<tr>
<td><em>An appropriation is an authorization to spend money for a specific purpose.</em></td>
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<td><em>A current expense is an expense belonging to current time and used for ordinary, regular, recurring, and continued expenditures.</em></td>
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- **Current expenses**: Rent, electricity, wages, etc.
- **Capital expenses**: Roads, buildings, permanent improvements, etc.

**REFERENDUM AND EFFECTIVE DATES**

*Exceptions to the 90-day rule – appropriations for current expenses*

1.471 Effective date of act containing appropriation for current expenses.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if any of the following apply:

(A) The section is an appropriation for current expenses;

(B) The section is an earmarking of the whole or part of an appropriation for current expenses; or

(C) Implementation of the section depends upon an appropriation for current expenses that is contained in the act.

The general assembly shall determine which sections go into immediate effect.

*Portions of this statute have been omitted for the purposes of brevity. The constitutionality of R.C. 1.471 has been questioned by the Ohio Supreme Court.*
REFERENDUM AND EFFECTIVE DATES

Exceptions to the 90 day rule – emergencies

The Emergency Clause

- Indicates that a law is necessary for the immediate preservation of the public peace, health, or safety.
- General assembly must attach an emergency clause to the bill.
- The emergency clause is voted on separately from other portions of the bill.
- Both the bill and the emergency clause must be approved by a 2/3 majority.

SINGLE SUBJECT RULE

"No bill shall contain more than one subject, which shall be clearly expressed in its title." – Ohio Constitution Article II, Section 15(D)

SINGLE SUBJECT RULE

- The one-subject rule was added to our Constitution in 1851. The genesis of support for this rule had its roots in the same concerns over the General Assembly’s dominance of state government that formed the most significant theme of the Constitution of 1851.
- The lack of enforcement of the one subject rule is oft-derided, particularly by columnist Thomas Suddes who seems to write on the topic annually. In those columns he has referred to the "one subject rule" as:
  - More elastic than silly putty;
  - Less rigid than a slinky;
  - As flexible as a trampoline.
SINGLE SUBJECT RULE

• "The one-subject provision attacks logrolling by disallowing unnatural combinations of provisions in acts, i.e., those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one – logrolling. By limiting each bill to a single subject, the bill will have unity and thus the purpose of the provision will be satisfied." (State ex rel. Dix v. Celeste (11 Ohio St. 3d 141 (1984)).)

• The Ohio Supreme Court has noted "the necessity of giving the General Assembly great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject."

SINGLE SUBJECT RULE

• The Ohio Supreme Court has refrained from invalidating an act based on the one-subject requirement unless a "manifestly gross and fraudulent violation" has occurred.

• Analysis of legislation is directed at disunity of the subject matter rather than the plurality of the topics. The mere fact that a bill addresses more than one topic is not fatal.

• When there is an absence of a common purpose or relationship between specific topics in an act and when there are not discernible, practical, rational, or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling. (State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451 (1999)).

SPECIAL LEGISLATION

"All laws, of a general nature, shall have a uniform operation throughout the state..." – Ohio Constitution Article II, Section 26
SPECIAL LEGISLATION

Before 1851

AN ACT

To incorporate the town of Bolar in the county of Marshall—

Be it enacted, by the General Assembly of the State of Ohio, That the town of Bolar be, and the same is hereby, incorporated with the town of Bolar, under the provisions of the third section of the act of the General Assembly, intituled, "An act to provide for the incorporation of towns," passed in the third year of the third session of the second legislature of this state, and all and singular the provisions and sections of the said act relating to the said town shall be and the same are hereby made and declared to be a part of this act and are incorporated herein, and in all and every respect and manner so made and declared.

By virtue of the authority vested in me by the General Assembly of the State of Ohio, I do hereby order and direct that the said town of Bolar be and the same is hereby, incorporated with the town of Bolar, under the provisions of the third section of the act of the General Assembly, intituled, "An act to provide for the incorporation of towns," passed in the third year of the third session of the second legislature of this state, and all and singular the provisions and sections of the said act relating to the said town shall be and the same are hereby made and declared to be a part of this act and are incorporated herein, and in all and every respect and manner so made and declared.

AN ACT

To incorporate the town of Newton in the county of Tuscarawas—

Be it enacted, by the General Assembly of the State of Ohio, That the town of Newton be, and the same is hereby, incorporated with the town of Newton, under the provisions of the third section of the act of the General Assembly, intituled, "An act to provide for the incorporation of towns," passed in the third year of the third session of the second legislature of this state, and all and singular the provisions and sections of the said act relating to the said town shall be and the same are hereby made and declared to be a part of this act and are incorporated herein, and in all and every respect and manner so made and declared.

By virtue of the authority vested in me by the General Assembly of the State of Ohio, I do hereby order and direct that the said town of Newton be and the same is hereby, incorporated with the town of Newton, under the provisions of the third section of the act of the General Assembly, intituled, "An act to provide for the incorporation of towns," passed in the third year of the third session of the second legislature of this state, and all and singular the provisions and sections of the said act relating to the said town shall be and the same are hereby made and declared to be a part of this act and are incorporated herein, and in all and every respect and manner so made and declared.

SPECIAL LEGISLATION

GEOGRAPHIC DISTINCTIONS

- Must be reasonable (not arbitrary)
- No restrictions that prevent other geographic areas from qualifying in the future

CLASSIFYING PERSONS AND THINGS

- Must have a compelling reason to make a classification

Please stick around for Bill Rowland's presentation which will address special legislation in more detail.
RETROACTIVITY

“The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.” – Ohio Constitution Article II, Section 28

RETROACTIVITY


(1) Does the statute expressly specify that it is to apply retroactively?

1.48 Presumption that statute is prospective.

A statute is presumed to be prospective in its operation unless expressly made retrospective.

RETROACTIVITY


(2) Is the effect of the statute substantive or remedial?

Substantive laws impair or take away a vested right; affect an accrued substantive right; impose new or additional burdens, duties, obligations, or liabilities as to a past transaction; create a new right out of an act which gave no right and imposed no obligation when it occurred; or give rise to or take away the right to sue or defend actions at law.

Remedial laws affect only the remedy provided and generally relate to procedures.
• Courts have repeatedly and unequivocally held that Section 28 serves to protect the vested and substantive rights of private parties.

• In Toledo City School District Board of Education v. State Board of Education (2016) the Ohio Supreme Court definitive held that political subdivisions could not invoke Section 28 to challenge retroactive laws.
Some Suggestions on How to Approach the Ohio Constitution

PREPARED BY: DON GOLDBAUM, LSC DIVISION CHIEF
REVIEWED BY: DAVID M. GOLD, LSC ATTORNEY
MICHAEL BURNS, CHIEF OF LEGAL REVIEW

The Ohio Constitution is a large document using over 36,000 words (compared to 9,200 in the United States Constitution) to provide the fundamental law on matters relating to the organization and operation of Ohio state government. This brief presents a quick guide to this important and complex document and offers some suggestions to help newer members of the General Assembly and legislative staff understand and use it.

Fundamental law; starting point for bill drafting and research

As the fundamental law of the state, the Ohio Constitution sets forth the framework and powers of state government and provides Ohioans with the protections of a Bill of Rights. It is especially important to refer to the Constitution for matters relating to the exercise of legislative powers, such as the powers to tax, spend, and borrow money, and to the home rule powers of municipal corporations.

While the Ohio Constitution may be an appropriate starting point for researching a wide variety of issues, it rarely will be the last stop. It likely will lead to other documents, including the United States Constitution, the Ohio Revised Code, the Ohio Administrative Code, the rules and joint rules of the House and Senate, Mason’s Manual of Legislative Procedure, the rules of the Ohio Supreme Court, and the charters and ordinances of municipal corporations. And the Ohio Constitution usually leads to judicial decisions, as well as to opinions of the Attorney General, for interpretation of its provisions.
The Ohio Constitution, as a document, stands on its own. Even when the United States Constitution affects a proposal, the ultimate resolution may depend upon the Ohio Constitution. As the Ohio Supreme Court has explained, “The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.” Arnold v. Cleveland, 67 Ohio St.3d 35 (1993).

Do not expect the Ohio Constitution to look like the United States Constitution. It is not to be expected that a state constitution should be as short an instrument as that, because the details of state, county and municipal government are so many more than that required in defining the relations between the state and the general government.” Accordingly, the Ohio Constitution is longer and more detailed than the United States Constitution and has its own unique structure.

A working document

The Ohio Constitution is a source of information and guidance of practical importance to members and legislative staff. The Ohio Constitution is:

A catalog of legislative powers. It is the primary source of the substantive powers of the General Assembly and the many limitations on the exercise of these powers.

A legislative guide. The Ohio Constitution contains provisions on how the General Assembly organizes itself and conducts its business.

A parliamentary guide. The Ohio Constitution instructs the General Assembly on how to proceed in carrying out its powers. It specifically addresses items such as separate roll call votes, votes requiring special majorities, and the appropriate legislative instrument required in certain circumstances.

A drafting manual. The Ohio Constitution contains specific instructions for preparing a bill. For example, it declares that a bill must be styled in a certain manner; that a bill is to contain only one subject and that the subject is to be clearly expressed in the title; that when a bill amends an existing section of law, that section must be set forth in the bill in full; that
a tax measure must state distinctly its object to which only it must be applied; and that an emergency clause must, in addition to declaring an emergency, state the reasons for the emergency.

**Organization of the Ohio Constitution**

It is helpful to understand the organization of the Ohio Constitution. The Ohio Constitution begins with a Preamble and then sets forth a Bill of Rights in Article I; provides for the framework of government in Articles II, III, and IV; and contains provisions on the operation and powers of state government in Articles V through XVIII. It ends with a Schedule containing provisions for its implementation. The organization of the Ohio Constitution, article by article, is:

1. Bill of Rights
2. Legislative Branch
3. Executive Branch
4. Judicial Branch
5. Elective Franchise
6. Education
7. Public Institutions
8. Public Debt and Public Works
9. Militia
10. County and Township Organization
11. Apportionment
12. Finance and Taxation
13. Corporations
14. Jurisprudence (repealed)
15. Miscellaneous
16. Amendments
17. Elections

Note that several of the articles contain related subject matter and can be grouped into the following broad categories that highlight the basic features of the Ohio Constitution: (1) Bill of Rights, (2) framework of government, (3) suffrage and the conduct of elections, (4) state functions, (5) taxing, borrowing, and spending, (6) local government, and (7) amendments.

**Styles**

Some provisions of the Constitution are broadly philosophical, while others are narrowly drawn. Some are short, manageable sections with the characteristics of fundamental law, while others are long and detailed with the characteristics of statutory law. Older sections may have long, unlettered paragraphs and language that reflects a long-past historical context; more recently adopted sections generally conform to LSC drafting standards and use modern terminology. Some provisions are limited to one principle or rule of law; others contain several principles or rules of law.

**Legislative power**

**Types of legislative power**

The legislative power of the State of Ohio is vested in the General Assembly and in the people, who have reserved to themselves the right to enact laws (initiative) and the right
to approve and disapprove laws enacted by the General Assembly (referendum). The general legislative power may be subdivided into three broad categories: (1) political power, which is the power to enact laws providing for the establishment, organization, and operation of government in Ohio; (2) police power, which is the power to enact all manner of laws that promote the public peace, health, safety, and welfare; and (3) taxing power, which is the duty to levy and collect taxes that will raise revenue in an amount sufficient to defray the expenses of state government facilities and operations and pay principal and interest on the state debt.

**Limitations on legislative power**

The Ohio Constitution imposes many limitations on the legislative power of the General Assembly. Some are procedural in nature. Every bill must deal with only one subject, which must be clearly expressed in the bill’s title (Art. II, § 15(D)). No bill may become a law unless it has been considered on three different days in each House (Art. II, § 15(C)). The reserved powers of initiative and referendum (Art. II, § 1) and other provisions providing for referendums (see Arts. II, X, XII, XVI, and XVIII) give the voters a direct role in the legislative process.

Other sections of the Ohio Constitution limit the General Assembly’s ability to interfere with the other branches of government. They prohibit the General Assembly from exercising executive and judicial powers (Art. III, § 5 and Art. IV, § 1); severely restrict its power to appoint state officials (Art. II, § 27); give it a distinctly secondary role in establishing rules of practice and procedure in the courts (Art. IV, § 5(B)); and protect the independence of constitutionally established entities (the Apportionment Board, Art. XI, § 1 and the Ohio Ballot Board, Art. XVI, § 1). The Ohio Constitution also protects the legislative power by prohibiting the General Assembly from delegating its authority to any other branch of state government, to the federal government, or to any other public or private individual or body (Art. II, § 26).

Many of the Ohio Constitution’s limitations on legislative power are substantive in nature. The Ohio Constitution expresses a preference for laws of a general nature having uniform operation throughout the state (Art. II, § 26); prohibits retroactive laws and laws impairing contracts (Art. II, § 28); forbids special acts conferring corporate powers (Art. XIII, §§ 1, 2, and 6); and limits the taxing power (Art. XII) and the power to lend governmental credit (Art. VIII). The Bill of Rights (Art. I) protects a long list of individual rights from legislative interference.

There was a time when the General Assembly closely controlled municipal government through its power to grant and amend municipal charters. The Home Rule Amendment of 1912 (Art. XVIII) limits the General Assembly’s...
power by authorizing municipal corporations to exercise powers of local self-government and to adopt local police regulations not in conflict with general laws.

**Historical development of the Ohio Constitution**

The state adopted the Ohio Constitution in 1851, and has followed the approach of amending the document periodically throughout the years. Ohio has never completely revised the Ohio Constitution of 1851. All of the adopted amendments were approved by the voters, but were proposed by different methods in different historical periods. Some resulted from initiatives of the people; some resulted from resolutions adopted by the General Assembly; and some resulted from proposals adopted by the Constitutional Convention of 1912. The age of the basic constitutional document, the diverse sources of the proposals, and the frequency of its amendment over the years are key factors in understanding its contrasts in structure and style.

This historical development also has shaped the provisions of the Ohio Constitution on legislative power. Many of the restrictions on legislative power reflect concerns in the mid-1800s resulting from the rapid growth in population and the development of agriculture, industry, and transportation following the adoption of Ohio’s first constitution in 1802. According to one Ohio history, “Much of the dissatisfaction with the . . . [first] constitution arose from the wholly inadequate judicial system, which placed upon the shoulders of four judges the task of holding court each year in all of the counties, which in 1849 numbered eighty-five. The [first] constitution . . . had concentrated authority in the hands of the legislature, which was empowered to choose all state officials of importance except the governor. This situation had led to considerable logrolling and to the control of the body by special political and economic interests. As a result, a demand had arisen for the popular election of all public officials, for a prohibition of charters that granted exclusive privileges, and for the limitation of the power of the legislature to create a state debt (which at that time, through canal appropriations, aid to railroads, and other grants, amounted to almost twenty million dollars, largely held outside the state).”

The Constitutional Convention of 1912 also had an impact on legislative power. That Convention, influenced by the ideas of the Progressive Era, proposed the reservation of legislative power to the people through the initiative and referendum and the establishment of home rule powers for municipal corporations. “The changes made in the organic law effected at that time,” according to one writer, “represented new and basic concepts of government both as to the methods of democratic control over the processes of government and as to the role of government in our social and economic life.”
Another important historical development was the creation by the 108th General Assembly (1969-1970) of the Ohio Constitutional Revision Commission “to study the Constitution and advise the General Assembly with respect to needed changes.” From 1970 to 1977, the Commission recommended several amendments to the Ohio Constitution, many of which were adopted by the General Assembly and then approved by the voters. Some of these amendments modified the organization, administration, and procedures of the General Assembly.

Study of the Ohio Constitution presents an opportunity, for example, to learn about the Northwest Ordinance, which established the foundation for Ohio statehood and the Ohio Constitution of 1802. The Ordinance contained provisions that prohibited slavery, promoted education, and extended basic rights. Bruce Catton said of the Ordinance: “Once and for all, it determined what kind of country this was going to be; the concept of complete equality, so nobly voiced in the Declaration, was written into the basic document that would determine how the nation grew.” Much of the subsequent history of Ohio, and of the United States, is reflected in the text of the Ohio Constitution and its numerous amendments.

An educational document

The Ohio Constitution is an educational document that says a lot about the history, politics, and values of the state. It has been written that state constitutions “summarize the collected experiences of the American people and apply them to a single commonwealth’s circumstances. Most of all, they are a people’s basic notions about who they are, how they choose to rule themselves, and what values they wish to hand down to the next generation.” Theodore Roosevelt, in addressing the Constitutional Convention of 1912, noted that “[e]ach of our commonwealths has its own local needs, local customs, and habits of thought, different from those of other commonwealths; and each must therefore apply in its own fashion the great principles of our political life.”

Availability of research on provisions of the Ohio Constitution

Some LSC-prepared materials can assist in understanding the Ohio Constitution. These materials include A Guidebook for Ohio Legislators, outlines for various LSC-sponsored continuing legal education presentations, Members Only Briefs, and the LSC Drafting Manual. The LSC Library has other materials, such as records of the constitutional conventions and the proceedings and reports of the Ohio Constitutional Revision Commission, that can be helpful.

Supreme Court of Ohio

December 2, 2015, Submitted; May 4, 2016, Decided
No. 2014-1769

Reporter
146 Ohio St. 3d 356 *; 2016-Ohio-2806 **; 56 N.E.3d 950 ***; 2016 Ohio LEXIS 1162 ****; 2016 WL 2341959

TOLEDO CITY SCHOOL DISTRICT BOARD OF EDUCATION ET AL., APPELLEES, v. STATE BOARD OF EDUCATION OF OHIO ET AL., APPELLANTS.

Prior History: APPEAL from the Court of Appeals for Franklin County, Nos. 14AP-93, 14AP-94, and 14AP-95, 2014-Ohio-3741, 18 N.E.3d 505[****1].

Disposition: Judgment reversed and cause remanded.

Counsel: Michael DeWine, Attorney General, Eric E. Murphy, State Solicitor, Michael J. Hendershot, Chief Deputy Solicitor, Hannah C. Wilson, Deputy Solicitor, and Todd R. Marti, Assistant Attorney General, for appellants.


Marshall & Marshall, L.L.C., and Amy M. Natyshak, for appellee Toledo City School District Board of Education. [****2]

Jyllian R. Guerriero, for appellee Dayton City School District Board of Education.

Wayne J. Belock, for appellee Cleveland Metropolitan School District Board of Education.

Scott, Scriven & Wahoff, L.L.P., Patrick J. Schmitz, and

Derek J. Towster, urging affirmance for amici curiae Ohio School Boards Association, Buckeye Association of School Administrators, Ohio Association of School Business Officials, Ohio Education Association, and Ohio Federation of Teachers.

Peck, Shaffer & Williams, Thomas A. Luebbers, and Michael T. Dean, urging affirmance for amicus curiae County Commissioners Association of Ohio.


Opinion by: KENNEDY

[***951] [*356] KENNEDY, J.

[**P1] In this discretionary appeal from the Tenth District Court of Appeals, we consider whether the General Assembly [***952] has the constitutional authority to retroactively reduce the amount of state funding allocated to local school districts and to immunize appellant State Board of Education of Ohio ("the department") against legal claims by school districts [****3] seeking reimbursement for retroactive reductions in school-foundation funding. The department advances the following proposition of law: "The General Assembly has constitutional authority to adjust local school funding retrospectively." We agree.

[**P2] For the reasons that follow, we conclude that the Retroactivity Clause, Article II, Section 28 of the Ohio Constitution, does not protect political subdivisions like appellees Toledo City School District Board of Education, Dayton City School District Board of Education, and Cleveland Metropolitan School District
Board of Education ("the boards") that are created by the state to carry out the state's governmental functions. Therefore, we hold that the General Assembly has constitutional authority to adjust local school funding retrospectively. We reverse the judgment of the court of appeals and remand this matter to the trial court for further proceedings.

I. Facts and Procedural History

A. Public School District Funding for Fiscal Years 2005 through 2007

[**P3**] A school district's revenue is derived primarily from state and local funds, with federal funds playing a lesser role. State funding is determined and distributed through the School Foundation Program, R.C. Chapter 3317, which is administered by the department. R.C. 3317.01. One component used in the formula for calculating a school district's funding is the district's average daily membership ("formula ADM").

[**P4**] For fiscal year 2005, a school district's formula ADM consisted of the total number of students actually receiving the district's educational services plus the total number of students who were entitled to attend school in the district but who received educational services elsewhere, including at community schools. Former R.C. 3317.03(A)(1) and (2), Am.Sub.H.B. No. 106, 150 Ohio Laws, Part III, 4254-4255. Each school district certified its formula ADM to the department based on a one-time student count conducted in early October (the "October count"). Former R.C. 3317.03(A), Am.Sub.H.B. No. 106, 150 Ohio Laws, Part III, 4254.

[**P5**] Enrollment changes that occurred outside of the October count did not increase or decrease a school district's funding, with one exception: students who attended community schools but who were not included in their district's October count were added to the formula ADM. Former R.C. 3317.03(F)(3), Am.Sub.H.B. No. 106, 150 Ohio Laws, Part III, 4254.

[**P6**] While community-school students were included in school districts' October counts under former R.C. 3317.03(A)(2)(a), 150 Ohio Laws, Part III, 4255, the community schools' [****5] funding was not determined based upon those counts. Instead, that funding was based on the number of students in attendance at the community schools, which was submitted monthly to the department in an enrollment report known as the Community School Average Daily Membership ("CSADM"). Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn., 176 Ohio App.3d 157, 2008-Ohio-1434, 891 N.E.2d 352, P 7 (1st Dist.). Based upon the CSADM report, the funds attributable to a student enrolled at a community school were deducted from the student's school district's school-foundation funds and paid to the community school that reported the student in its CSADM. Former R.C. 3314.08(C), Am.Sub.H.B. No. 95, 150 Ohio Laws, Part I, 1117-1118.

B. Department Adjusts Funding for Fiscal Years 2005 through 2007

[**P7**] During fiscal year 2005, the department noticed that the number of community-school *[*953] students reported in some districts' October counts was greater than the number reported in the CSADMs. Believing the CSADMs to be more accurate, the department recalculated those school districts' school-foundation funding for that fiscal year. The boards respectively allege that the department determined the October counts were too high by the following numbers of students: Toledo, 561 students; Dayton, 688 students; and Cleveland, 575 students.

[**P8**] This [*****6] recalculation resulted in the department's determination that the boards had been overpaid for fiscal year 2005. The department recouped the [*358] overpayment by deducting the overpaid amounts from the boards' school-foundation funding during fiscal years 2005, 2006, and 2007. The boards allege that the department reduced funding during these years by the following amounts: Toledo, $3,576,948; Dayton, $2,548,120; and Cleveland, $1,857,311.

C. Cincinnati Board of Education Litigation

[**P9**] In 2007, the Cincinnati School District sued the department over its fiscal-year-2005 adjustment of Cincinnati's school-foundation funding. Cincinnati City School Dist. Bd. of Edn., 176 Ohio App.3d 157, 2008-Ohio-1434, 891 N.E.2d 352. The trial court determined that Ohio law mandated that the formula ADM from the October count be used to calculate school-foundation funding—not the monthly CSADM data from the community schools. Id. at P 2. The First District Court of Appeals affirmed. Id.

[**P10**] The department appealed to this court and we accepted review. 119 Ohio St. 3d 1443, 2008-Ohio-
The action, however, was dismissed before briefing because the parties reached a settlement. 119 Ohio St. 3d 1498, 2008-Ohio-5500, 895 N.E.2d 562.

D. General Assembly Amends Statute

During the pendency of the Cincinnati litigation, the General Assembly amended R.C. 3317.03 to authorize the department to adjust formula ADM if an error was discovered. Former R.C. 3317.03(K), 2007 Am.Sub.H.B. No. 119. Additionally, in the 2009 biennial budget bill, the General Assembly immunized the department from liability for any legal claim for reimbursement brought by a school district for the reduction of school-foundation funding for fiscal years 2005, 2006, or 2007 ("budget provision"). See 2009 Am.Sub.H.B. No. 1, Section 265.60.70.

E. Toledo, Cleveland, and Dayton Litigation

In 2011, four years after the last reduction in funding resulting from the 2005 adjustment of their formula ADMs, the boards filed complaints seeking an order that the department had to pay their respective funds for fiscal years 2005 through 2007 using only the formula ADMs from the October counts and not from the CSADMs. The boards also sought equitable restitution for funds they claimed that the department had wrongfully withheld. Parents of some children in the school districts joined the suits but did not allege separate claims. The three cases were transferred to the Franklin County Court of Common Pleas and consolidated.

The department moved for judgment on the pleadings, arguing in part that the budget provision barred the boards' claims and insulated the department from liability. The trial court held that the budget provision's elimination of potential state liability was unconstitutionally retroactive. The Tenth District Court of Appeals affirmed. 2014-Ohio-3741, 18 N.E.3d 505. It held that the budget provision was unconstitutionally retroactive because it impaired the boards' “substantive right to School Foundation funds that accrued under the statutory law in place for FY 2005 through FY 2007.” Id. at P 42.

II. Law and Analysis

A. Positions of the Parties

The department argues that the Retroactivity Clause applies only to acts of the state, not the boards, and therefore, the boards' claims that the budget provisions are unconstitutionally retroactive fail. The department sets forth numerous bases for its position. First, when the 1851 Constitution was adopted, the settled meaning of "retroactive laws" did not include laws affecting government entities, and debate during the 1850-1851 constitutional convention reveals the intention to incorporate the settled meaning into the Constitution. Second, the Ohio Constitution's structure reinforces the conclusion that the phrase "retroactive laws" does not apply to laws affecting the state's political arms. Third, decisions of this court after the Constitution's ratification hold that the Retroactivity Clause does not prohibit retroactive laws negatively affecting state subdivisions. Lastly, the department argues that the Tenth District relied upon cases that did not squarely address this issue.

In response, the boards argue that the Retroactivity Clause is absolute in its prohibition and, as such, there is no reason to engage in historical analysis. Nevertheless, if historical context is considered, they argue, the intention of the framers was for the clause to protect all parties, not just private ones. The boards posit that the framers' discussion regarding the prohibition of retroactive laws was discussed as an all-or-nothing proposition. They also contend that this court has afforded political subdivisions the protections of the Retroactivity Clause.

B. Constitutionality; General Considerations

Generally speaking, in construing the Constitution, we apply the same rules of construction that we apply in construing statutes. Miami Cty. v. Dayton, 92 Ohio St. 215, 223, 110 N.E. 726 (1915). Therefore, the intent of the framers is controlling. State v. Jackson, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, P 14. To determine intent, we must begin by looking at the language of the provision itself. State ex rel. Maurer v. Sheward, 71 Ohio St.3d 513, 520, 1994 Ohio 496, 644 N.E.2d 369 (1994), "Where the meaning of a provision is clear on its face, we will not look beyond the provision in an attempt to divine what the drafters intended" it to mean.” Id. at 520-521.

Words used in the Constitution that are not defined therein must be taken in their usual, normal, or
customary meaning. *State ex rel. Herman v. Klopfleisch, 72 Ohio St.3d 581, 584, 651 N.E.2d 995 (1995)*; see also *R.C. 1.42*. If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning. *See Castleberry v. Evatt*, 147 Ohio St. 30, 67 N.E.2d 861 (1946), paragraph one of the syllabus.

C. Retroactivity Clause

[**P17**] The *Retroactively Clause of the Ohio Constitution, Article II, Section 28*, remains unchanged from its adoption in 1851:

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general [**955**] laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

[**P18**] The literal meaning of the clause is that the legislature is absolutely prohibited from passing any law that is "made to affect acts or facts occurring, or rights accruing, before it come into force." *Bielat v. Bielat, 87 Ohio St.3d 350, 353, 2000 Ohio 451, 721 N.E.2d 28 (2000)*, quoting *Black's Law Dictionary* 1317 (6th Ed.1990). This court, however, has recognized that "retroactivity itself is not always forbidden by Ohio law." *Id*. Instead, "there is a crucial distinction [****11] between statutes that merely apply retroactively * * * and those that do so in a manner that offends our Constitution." *Id.*, citing  *Rairden v. Holden, 15 Ohio St. 207, 210-211 (1864)*, and *State v. Cook, 83 Ohio St.3d 404, 410, 1998 Ohio 291, 700 N.E.2d 570 (1998)*. Accordingly, we must look to the purpose of the Retroactivity Clause to determine whether the statute at issue offends it.

D. Meaning of Retroactivity in 1851

[**P19**] We begin by examining whether "retroactive laws" was a term of art with an established meaning at the time of the ratification of the 1851 Constitution. Compare *Collins v. Youngblood, 497 U.S. 37, 41, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990)* ("ex post facto law" was a term of art with an established meaning at the time of the framing of the United States Constitution). If so, the meaning may have been incorporated from common law, see *Richardson v. Doe, 176 Ohio St. 370, 372-373, 199 N.E.2d 878 (1964)* (discussing the origin of the term "malpractice" and noting that "where a statute uses a word which has a definite meaning at common law, it will be presumed to be used in that sense"), [*361] or from other state constitutions or laws at the time, see *State ex rel. Durbin v. Smith, 102 Ohio St. 591, 599, 133 N.E. 457, 19 Ohio L. Rep. 154 (1921)* (noting that the debates at the Ohio constitutional convention show that Ohio's referendum provision was copied from the Oregon Constitution and that a decision of the Oregon Supreme Court regarding that provision was considered at the convention).

1. Other States' Constitutions

[**P20**] Prior to 1851, New Hampshire, Missouri, Tennessee, [****12] and Texas had adopted constitutional provisions prohibiting retroactive laws. *See New Hampshire Constitution, Part 1, Article 23 (1784); Missouri Constitution, Article XIII, Section 17 (1820); Tennessee Constitution, Article 1, Section 20 (1834); Texas Constitution, Article 1, Section 14 (1845)*. By 1851, the supreme courts of both New Hampshire and Texas had had the opportunity to construe the meaning of their respective provisions. *See Merrill v. Sherburne, 1 N.H. 199, 212-213 (1818); De Cordova v. Galveston, 4 Tex. 470, 479 (1849)*. The Merrill court, in concluding that an act was unconstitutionally retroactive, stressed that only those retrospective acts that "operate on the interests of individuals or of private corporations" violate the constitution, explaining that "all public[] officers impliedly consent to alterations of the institutions in which they officiate, provided the public[] deem it expedient to introduce a change." (Emphasis sic.) *Merrill at 213, 217*. The *DeCordova* court noted Merrill's statement about individuals and private corporations and found that Merrill "illustrate[d] the intention of the [***956] [Texas] convention in imposing the restriction." *De Cordova at 479*.

2. Established Common-Law Principles

[**P21**] At the time of the Ohio constitutional convention, it was an established principle that an act was not unconstitutionally retroactive "unless [it] impair[ed] rights which are vested: because most civil rights are derived from public[] laws; and if, before [****13] the rights become vested in particular individuals, the convenience of the state produces
amendments or repeals of those law, those individual have no cause of complaint." (Emphasis sic.) Merrill at 213-214; see also De Cordova at 470, 479-80 (law was unconstitutionally retrospective if it "destroy[ed] or impair[ed] vested rights or rights to do certain actions or possess certain things"); Proprietors of Kennebec Purchase v. Laboree, 2 Me. 275, 295 (1823) (finding a law unconstitutionally retroactive "because such operation would impair and destroy vested rights" [emphasis sic]).

By 1851, it was understood that both individuals and private corporations could acquire vested rights. The Supreme Court of the United States had held that the charter founding a college that was a private corporation was a contract between the government and the corporation and that the legislature could not repeal, impair, or alter the rights and privileges conferred by the [*362] charter. Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 643-644, 650-654, 4 L.Ed. 629 (1819).

This court had, however, concluded that public corporations did not enjoy vested rights:

[A] public corporation, created for the purposes of government, can not be considered as a contract. * * * "In respect to public corporations, which exist only for public purposes, as counties, cities, and towns, the legislature, under proper limitations, have a right [****14] to change, modify, enlarge, or restrain them, securing, however, the property, for the uses of those for whom it was purchased."

Marietta v. Fearing, 4 Ohio 427, 432 (1831), quoting 2 Kent's Commentaries on American Law (1st Ed.1827) 245.

The supreme courts of Louisiana and Indiana had espoused the same principle. The Louisiana court had stated:

The questions as to the violation of contracts or vested rights under the Constitution of the United States, or of the State, does not arise. Those questions grow entirely out of the violation of contracts with, or the vested rights of individuals or private corporations established for individual profit. The corporation of a town is established for public purposes alone, and to administer a part of the sovereign power of the State over a small portion of its territory. It is created by the Legislature and is entirely subject to Legislative will.

The special powers conferred upon [public or municipal corporations] are not vested rights as against the State, but being wholly political exist only during the will of the general Legislature * * *. Such powers [***957] may at any time be repealed or abrogated by the Legislature, either by a general law operating upon the [****15] whole State, or by a special act altering the powers of the corporation.

Sloan v. State, 8 Blackf. 361, 364 (Ind.1847).

Around this time, the Supreme Court of the United States also recognized that public corporations did not enjoy the same protections as individuals and private corporations:

[the legislature] had unquestionably the power to change its policy, and allow the company to pursue a different course, and to release it from its obligations both as to the direction of the road and the payment of the money. For, in doing this, it was dealing altogether with matters of public concern, and interfered with no private right; for neither the commissioners, nor the county, nor any one of its citizens, had acquired any separate or private interests which could be maintained in a court of justice.

Maryland v. Baltimore & Ohio RR. Co., 44 U.S. 534, 549-50, 11 L.Ed. 714 (1845) (upholding a state legislature's ability to revoke a previous grant of funds to a county, because it had been made for public, not private, purposes and to a public body).

Accordingly, at the time of the 1850-1851 constitutional convention, two key principles were established. First, unconstitutional retroactive acts were those that operated on the vested rights of individuals or of private corporations. Second, political subdivisions [****16] as creatures of the state did not have vested rights.

E. Debates of the 1850-1851 Constitutional Convention of Ohio

We have previously noted the function of the proceedings of the constitutional convention in revealing the intent of a provision in the Constitution. "[D]ebates of the convention * * * may fortify [the court] in following the natural import of [the provision's] language, and
legitimately aid in removing doubts." Steele, Hopkins & Meredith Co. v. Miller, 92 Ohio St. 115, 122, 110 N.E. 648, 13 Ohio L. Rep. 62 (1915), quoting Cass v. Dillon, 2 Ohio St. 607, 621 (1853). An examination of the debates from the 1850-1851 constitutional convention confirms that the intent of the framers was to incorporate the aforementioned principles regarding "retroactive laws" into Article II, Section 28.

**[P28]** The debate regarding the retroactivity provision reveals that delegates to the convention saw a need to provide private individuals with certainty in the law. One delegate expressed his approval of the provision as it "settles forever and conclusively one or two questions of controversy, which exist in this State and leave the law in a most distressing uncertainty. It matters not whether it is right or wrong—it has left the law in uncertainty and the rights of individuals dependent upon the opinions of the Supreme Court." 1 Report of the Debates [*364] and Proceedings [*****17] of the Convention for the Revision of the Constitution of the State of Ohio, 1850-1851 ("Debates") 268. The delegate also expressed his belief "in the principle that men's rights are to be settled by the law in force at the time they accrued." Id. at 270.

**[P29]** Similarly, another delegate expressed that

**[***958]** it is indispensably necessary that the exercise of [the] power [to prescribe the rules of civil action] should only look ahead, that it should be only prospective in its operation, for the idea of making a rule to punish the action of men, or to affect their rights and interests, already past and accrued, would be as bad as the practice of the Roman despot, and stuck them up so high that the people could not read them.

2 Debates 591.

**[P30]** The debate concerning the legislature's ability to enact "curative" laws was also centered on individuals. One delegate "intended merely to call attention to the difficulty that might arise out of the adoption of this section; and which might go far to affect the rights of a citizen." 1 Debates 265. Other delegates stressed the desire to protect the legislature's ability to pass curative laws as "they are laws of peace and affording [*****18] security to the rights of the citizen," id. at 274, and they "may be used for the protection of private rights—for the purpose of curing those evils which sometimes arise in society, and which, if not cured, would work immense mischief and wrong," 2 Debates 240.

**[P31]** The delegation was also cognizant of the New Hampshire Constitution's retroactivity provision and its interpretation by the Merrill court. A delegate in favor of adopting the retroactivity provision stated:

the New Hampshire constitution contains a prohibition against retrospective, or, as called here, retro-active laws[.] The[s]e two are equiv[a]lent terms. It * * * precludes [the legislature] from interfering [sic] with any right already vested; from making any law which, instead of looking to the future, interferes with the rights of persons and property which are already vested. If gentlemen will look [at Merrill] they will find an opinion * * * which * * * discusses the whole subject of retro-active legislation, and the effect of this term retrospective.

1 Debates 269.

**[P32]** There was also an acknowledgment of the distinction that had developed in case law between private and public corporations. Referencing Trustees of [*365] Dartmouth College, 17 U.S. 518, 4 L.Ed. 629, and this court's decision in Fearing, 4 Ohio 427, one delegate [*****19] stated that unlike private corporations, municipal corporations "were always liable to repeal." 2 Debates 270.

**[P33]** Accordingly, when Article II, Section 28 was adopted in 1851, the delegates knew that similar provisions in other state constitutions had been interpreted to "operate on the interests of individuals or of private corporations." Merrill, 1 N.H. at 212-213. They also comprehended that a legislative enactment had to impair the vested rights of individuals or private corporations to be unconstitutionally retroactive.

F. Decisions after Adoption of Retroactively Provision

**[P34]** This court's precedent in the years following the enactment of Article II, Section 28 provides further support for finding that the Retroactivity Clause applies to private citizens and corporations but not to political subdivisions. We have rejected retroactivity challenges to legislation that sought to impose a new duty [****959] and/or create a new obligation upon political subdivisions, consistently finding that the state is able to injuriously affect its own rights.

**[P35]** A retroactivity challenge was asserted to legislation that imposed a new obligation upon cities to pay bounties to Civil War veterans who had reenlisted and to whom, at the time of reenlistment, the city had
not made any promise or pledge to pay [****20] a bounty. State ex rel. Bates v. Richland Twp. Trustees, 20 Ohio St. 362 (1870). We found that the legislature had not "transcended their constitutional authority" because "counties, townships, and cities are public agencies in the system of the State government; and, in the class of laws now under consideration, they are employed by the legislature as mere instrumentalities to raise a tax for a public object, and to effect its equitable distribution among those for whom it was intended." Id. at 371.

[**P36] In examining the effect that a legislative amendment had on the payment of unused vacation time upon a state employee's retirement, we noted that a "statute which impairs only the rights of the state may constitutionally be given retroactive effect." State ex rel. Sweeney v. Donahue, 12 Ohio St.2d 84, 87, 232 N.E.2d 398 (1967), citing State ex rel. Dept. of Mental Hygiene & Correction v. Eichenberg, 2 Ohio App. 2d 274, 207 N.E.2d 790 (9th Dist.1965) ("This law cannot be deemed to be a retroactive law for it does not injuriously affect a citizen or interfere with a citizen's vested right"). Similarly, a challenge to a statute that retroactively relieved a public official and his sureties of liability for lost or stolen funds was without merit because "the legislature undoubtedly has authority to release obligations which could only be * * * prosecuted [in the name of the state]." Bd. of Edn. v. McLandsborough, 36 Ohio St. 227, 232 (1880).

[**P37] [*366] This court also examined a retroactivity challenge to legislation that validated [****21] previously ratified municipal ordinances authorizing contractors to lay pipes to supply the public with steam heat and power. The legislation was found to be valid because Article II, Section 28 "does not apply to legislation recognizing or affirming the binding obligation of the state, or any of its subordinate agencies, with respect to past transactions," but instead "is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion." Kumler v. Silsbee, 38 Ohio St. 445 (1882), quoting New Orleans v. Clark, 95 U.S. 644, 655, 24 L.Ed. 521 (1877).

[**P38] In contrast to the foregoing, there is a body of cases that appears to support a finding that political subdivisions are entitled to the protection granted under Article II, Section 28. This court has found legislative acts that have imposed new obligations on state subdivisions to be unconstitutionally retroactive. See Hamilton Cty. Commrs. v. Rosche, 50 Ohio St. 103, 33 N.E. 408 (1893), paragraph one of the syllabus (law requiring county to refund taxes that had already been paid); State ex rel. Crotty v. Zangerle, 133 Ohio St. 532, 534-535, 14 N.E.2d 932 (1938) (law requiring county to refund tax penalties that had already been paid); Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 91 Ohio St.3d 308, 316-317, 2001 Ohio 46, 744 N.E.2d 751 (2001) (law allowing parties to correct errors in valuation complaints, which would impose new burdens on county officials to defend previously dismissed claims).

[**P39] Upon close examination, however, these cases are all silent on the threshold [****22] issue; that is, whether political subdivisions have rights under Article II, Section 28. [**960] Instead, in each case, there is an assumption that the protection afforded by the Retroactivity Clause is available to political subdivisions and the analysis is solely devoted to whether the law in question is retroactive. Accordingly, these cases lack precedential value and we are not bound by them. See State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bur. of Workers' Comp., 108 Ohio St.3d 432, 2006-Ohio-1327, 844 N.E.2d 335, P 46 ("when questions of jurisdiction have been passed on in prior decisions sub silentio, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us"), quoting Grendell v. Ohio Supreme Court, 252 F.3d 828, 837 (6th Cir.2001), quoting Hagans v. Lavine, 415 U.S. 528, 535, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974), fn. 5.

[**P40] Our decision in Avon Lake City School Dist. v. Limbach, 35 Ohio St.3d 118, 518 N.E.2d 1190 (1988), provides strong support for determining that political subdivisions do not have rights under Article II, Section 28. In that case, two school districts challenged the tax commissioner's valuation of personal property of public utility companies. The Board of Tax Appeals dismissed the appeals, ruling that the school districts did not have standing to file an appeal. [*367] We were presented with the issue whether the dismissals by the Board of Tax Appeals deprived the school districts of their right to due process of law. We reviewed cases that "conclude[d] that a political subdivision may not invoke the protection provided by the [****23] Constitution against its own state and is prevented from attacking the constitutionality of state legislation on the grounds that its own rights had been impaired." Id. at 121-122.

"[P]ersuaded that a school district is a political subdivision created by the General Assembly and that it may not assert any constitutional protections regarding due course of law or due process of law against the
state, its creator," we concluded that the school districts could not "assert these protections against the state by asking [us] to declare the statute unconstitutional for these reasons." Id. at 122.

[**P41]** Accordingly, we have recognized that political subdivisions are not entitled to all protections afforded by the Constitution. Additionally, our precedent in the years following the enactment of Article II, Section 28 provides strong support for concluding that the Retroactivity Clause does not apply to political subdivisions.

G. Decisions by Sister Supreme Courts

[**P42**] A number of our sister supreme courts have examined whether the prohibition on retroactive laws extends to political subdivisions; their opinions provide additional guidance. The supreme courts of New Hampshire and Texas have both reaffirmed their previous holdings. See Nottingham v. Harvey, 120 N.H. 888, 898, 424 A.2d 1125 (1980) (a town "is a mere political subdivision of [****24] the State over which the legislature may exercise complete control"); Deacon v. Euless, 405 S.W.2d 59, 62 (Tex.1966) ("Municipal Corporations do not acquire vested rights against the State"). The supreme courts of Massachusetts, Idaho, and Tennessee have concluded similarly. See Greenaway's Case, 319 Mass. 121, 123, 65 N.E.2d 16 (1946) (no constitutional challenge can succeed where a state enacts retroactive legislation impairing its own rights); Garden City v. Boise, 104 Idaho 512, 515, 660 P.2d 1355 (1983) (legislature has absolute power to change, modify, or destroy at its discretion the powers granted to a municipal corporation); State ex rel. Meyer v. Cobb, 467 S.W.2d 854, 856 (Mo.1971) (retroactivity provision is for the protection of the citizen and not the state, [***961] and the state may retroactively impose new liabilities on itself or its governmental subdivisions).

The United State Supreme Court has also reached the same conclusion with respect to Louisiana's constitution. New Orleans v. Clark, 95 U.S. at 655, 24 L.Ed. 521 (prohibition against retroactivity is to prevent injuriously affecting individuals; it does not apply to recognizing or affirming a binding obligation of the state or its subordinate agencies with respect to past transactions).

[**P43**] [***368] A Missouri case is particularly instructive due to its similarities to the case now before us. See Savannah R-III School Dist. v. Pub. School Retirement Sys. of Missouri, 950 S.W.2d 854 (Mo.1997). In that case, the Missouri Public Employees Retirement System had notified school districts that the [*25] value of health-insurance premiums provided to teachers was to be included as salary for the purpose of calculating the teachers' contribution amount. Years later, some districts filed a class-action lawsuit seeking a refund of the overpayment, as the legislative definition of salary did not include health-insurance premiums. While the action was pending, the Missouri legislature amended the statute so that the definition of salary included health-insurance premiums. The legislation also stated that any contributions made before the effective date of the amendment were deemed to have been in compliance with the statute.

[**P44**] The school districts argued that the amendment was unconstitutionally retroactive. The court rejected the challenge, noting that the prohibition's purpose was to protect citizens, not the state. The court's statement regarding school districts is particularly germane:

"School districts are bodies corporate, instrumentalities of the state established by statute to facilitate effectual discharge of the General Assembly's constitutional mandate to establish and maintain free public schools * * *.” State ex rel. Independence Sch. Dist. v. Jones, 653 S.W.2d 178, 185 (Mo. banc 1983) (quotation omitted). As "creatures of the legislature," the rights and responsibilities [****26] of school districts are created and governed by the legislature. Id. Hence, the legislature may waive or impair the vested rights of school districts without violating the retrospective law prohibition. Dye v. School Dist. No. 32, 355 Mo. 231, 195 S.W.2d 874, 879 (banc 1946).

Savannah R-III School Dist., 950 S.W.2d at 858.

III. Conclusion

[**P45**] The avenues examined all converge at the conclusion that political subdivisions are not entitled to the protection of Article II, Section 28. Prior to the 1850-1851 constitutional convention, the law that had developed in the country was that retroactivity provisions protected the vested rights of individuals and private corporations and that public corporations did not have vested rights. The debates from the convention reveal that the delegates understood this to be the scope of the protection provided by the retroactivity
provision. Our early cases reflect this understanding. Finally, the weight of the authority from our sister supreme courts points toward the same conclusion.

Accordingly, we hold that the Retroactivity Clause, Article II, Section 28 of the Ohio Constitution, does not protect political subdivisions, like school districts, that are created by the state to carry out its governmental functions. Therefore, the legislature was able to authorize the department to adjust local school funding calculations and to retroactively immunize the department from liability for any legal claim of reimbursement by a school district for a reduction of school-foundation funding, without violating the Retroactivity Clause. We reverse the judgment of the Tenth District and remand the matter to the trial court for consideration of the issues not addressed in its decision on the department's motion for judgment on the pleadings.

Judgment reversed and cause remanded.

O'CONNOR, C.J., and O'DONNELL and FRENCH, JJ., concur.

PFEIFER, J., concurs in judgment with an opinion.

O'NEILL, J., dissents with an opinion that LANZINGER, J., joins.

Concur by: PFEIFER

Concur

PFEIFER, J., concurring.

I concur in the judgment of the majority but not in the reasoning behind that judgment. As Justice O'Neil states in his dissent, Article II, Section 28 of the Ohio Constitution provides "a restraint on the power of the General Assembly." Dissenting opinion at P 56. That restraint is a clearly stated, absolute prohibition without limitation. We need not go outside the text of the Ohio Constitution to search for meaning. "Where there is no doubt, no ambiguity, no uncertainty as to the meaning of the language employed by the Constitution makers, there is clearly neither right nor authority for the court to assume to interpret that which needs no interpretation and to construe that which needs no construction." State v. Rose, 89 Ohio St. 383, 387, 106 N.E. 50, 11 Ohio L. Rep. 395 (1914).

Political subdivisions may successfully sue the state based on violations of the Retroactivity Clause. See, e.g., Hamilton Cty. Commsrs. v. Rosche, 50 Ohio St. 103, 112-113, 33 N.E. 408 (1893); see also State ex rel. Crotty v. Zangerle, 133 Ohio St. 532, 534-535, 14 N.E.2d 932 (1938).

In a recent case, Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 91 Ohio St. 3d 308, 2001 Ohio 46, 744 N.E.2d 751, this court held that an amendment to R.C. 5715.19 that allowed taxpayers to refile previously dismissed challenges to real-property-valuation assessments before county boards of revision "violate[d] Section 28, Article II of the Ohio Constitution, which prohibits the enactment of retroactive legislation." Id. at paragraph two if the syllabus. This court had held in Sharon Village Ltd. v. Licking Cty. Bd. of Revision, 78 Ohio St. 3d 479, 678 N.E.2d 932 (1997), that a valuation complaint filed on behalf of a corporation by a nonattorney was invalid, affirming the board of revision's dismissal of the corporation's valuation complaint for lack of jurisdiction. Cincinnati at 310. The General Assembly, through passage of Sub.H.B. No. 694, set out to ease the effect of that decision. Among other things, that bill created an exception to the general statutory rule that a real-property taxpayer is, in the absence of a showing of a change in circumstances, prohibited from filing successive valuation complaints in the same three-year period. Id. The amendment essentially allowed taxpayers adversely affected by the Sharon Village decision a "do-over" to refile their complaint, exempting them from the three-year rule.

This court held that the General Assembly could relax the three-year rule but could not do so retroactively because of the effect of a retroactive application on political subdivisions:

The county officials who opposed reduction in assessed valuations when the first complaints were dismissed could have concluded that those dismissals, followed by exhaustion of judicial review, ended the valuation proceedings and established the value of the property for the triennium period, thereby creating a "reasonable expectation of finality." Cf. State ex rel. Matz v. Brown (1988), 37 Ohio St. 3d 279, 281, 525 N.E.2d 805, 808. But Sub.H.B. No. 694 imposes on those officials a burden to again defend the value determined by the auditor and, potentially, to refund taxes if the complainant is successful. Under Bielat v. Bielat, 87 Ohio St. 3d 350, 2000 Ohio 451, 721
This court—not our Constitution—has given the clear green light to the General Assembly to assert a power it had no reason to believe it had until today.

Dissent by: O'NEILL

Dissent

O'NEILL, J., dissenting.

[**P54] Respectfully, I must dissent. I would hold that the uncodified language in the 2009 budget bill that extinguished the [**P55] retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

[**P55] The Retroactivity Clause, Article II, Section 28 of the Ohio Constitution, provides:

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

[**P54] Respectfully, I must dissent. I would hold that the uncodified language in the 2009 budget bill that extinguished the [**P55] retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

[**P55] The Retroactivity Clause, Article II, Section 28 of the Ohio Constitution, provides:

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon [**P56] such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.
whole power of the government would at once become absorbed and taken into itself by the Legislature." 73 Ohio St. 54, 58, 75 N.E. 939, 3 Ohio L. Rep. 412 (1905).

[**P58] As the Tenth District pointed out, this court has established the analysis required to determine whether the retroactive application of a statute violates the Retroactivity Clause. 2014-Ohio-3741, 18 N.E.3d 505, P 26, citing State v. White, 132 Ohio St.3d 344, 2012-Ohio-2583, 972 N.E.2d 534, P 27. The first step is to determine whether the law was intended to apply retroactively. White at P 27. The second step is to determine whether the statute is remedial or substantive. Id. And if the statute is substantive, retroactive application of the statute is forbidden. Id.

[**P59] In White, this court reiterated that if a statute affects an accrued substantive right, the statute is substantive. Id. at P 34. Again, we need look no further than one of this court's own decisions. In State ex rel. Kenton City School Dist. Bd. of Edn. v. State Bd. of Edn., 174 Ohio St. 257, 260-262, 189 N.E.2d 72 (1963), this court determined that the school-funding statute at issue in that case, R.C. 3317.02, created a right that was not affected by the subsequent amendment of the statute. Accordingly, the district was entitled to the school-funding formula guaranteed by the statute. And most importantly, the district was entitled to enforce the statutory formula by a writ of mandamus. Id. at 262-263.

[**P60] As this court thoroughly and eloquently explained in State v. Bodyke, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, protecting the borders separating the three branches of government preserves the integrity and harmony of the government as a whole. Id. at P 42-49. Despite the challenge of navigating the boundaries between interdependence and independence of the three branches, we must be vigilant against provisions of law that impermissibly threaten the integrity of the judiciary. Id. at P 50-53.

[**P61] The simple fact is that for fiscal years 2005 through 2007, the validly enacted ADM formula provided the sole means for ODE to distribute funds to public schools. Unlike current law, the law in effect for fiscal years 2005 through 2007 provided no departmental discretion to modify the statutory formula, yet that is what the department did. There is nothing any of the three branches of government can do to change what the law was at the time these funds were wrongfully withheld from public schools. It is the role of the judiciary to interpret the law and to order the state to comply with the law. The uncodified language at issue here works to legislatively extinguish the public schools' causes of action under the validly enacted statutory school-funding formula. In so doing, the General Assembly has retroactively eliminated a substantive right and impermissibly encroached upon the role of the judiciary.

[**P62] This is not an action for punitive damages or an action to otherwise feather the nests of the districts. This action seeking a writ of mandamus and equitable restitution is a means for the public school districts to recover public dollars. Mandamus is one of the means by which courts force governmental actors to comply with the law.

[**P63] The framers of the Ohio Constitution were absolutely clear about who the Retroactivity Clause applies to. It applies to the legislature. Clearly, the Ohio legislature has the constitutional authority to adjust school-funding statutes prospectively. However, it is the province of the courts to interpret and apply the law as enacted. It is beyond dispute that the legislature is without the constitutional authority to retroactively "adjust" the school-funding statutes in order to extinguish a public school district's substantive ability to enforce a validly enacted statute. I dissent.

LANZINGER, J., concurs in the foregoing opinion.
Home Rule

Julie Rishel
Legislative Service Commission

Julie Rishel is the Division Chief of Labor and Retirement for the Ohio Legislative Service Commission staff. She has worked on the Commission staff since 2003. She works primarily in the area of labor, pension, and commerce laws, working on topics such as collective bargaining, workers’ compensation, unemployment compensation, minimum wage, employment law, and public pension law. She received her Bachelor of Science degree from The Ohio State University in 2000, and her juris doctorate from the University of Cincinnati in 2003.
What is home rule?

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Ohio Constitution, Article XVIII, Section 3

What is home rule?

- Municipality = city and villages (see Ohio Constitution, Article XVIII, Section 1 and R.C. 703.01 for the difference between the two).

- The Constitution does not distinguish with regard to type or size of municipality for home rule purposes (see, e.g., Village of West Jefferson v. Robinson, 1 Ohio St.2d 113, 115 (1965)).
What is home rule?

Municipal Home Rule

Americans became interested in reform of the political system in the United States in the late nineteenth and early twentieth centuries. There were two contributions to the growth of Progressivism, a major reform movement of this era. In 1912, many Ohio cities debated the need for a new state constitution, establishing the Constitutional Convention of 1912. In the end, delegates designed a more powerful state constitution, including home rule provision for municipalities. This amendment, approved by the voters, gave home rule to all municipalities with at least 4,000 residents. The municipalities were then allowed to modify their charters and the state constitution through amendments to the state constitution.

What is home rule?

• Two powers granted:
  • Exercise all power of local self-government.
  • Adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

  State ex rel. Canada v. Phillips, 168 Ohio St. 191 (1956) syllabus

What is home rule?

• It is self-executing
  • A municipality does not need the General Assembly to give the municipality the power to act.
  • Courts determine the parameters of home rule.

  See, e.g., Village of West Jefferson v. Robinson, 1 Ohio St. 2d 113 (1965)
What is home rule?

Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws.

Struthers v. Sokol, 108 Ohio St. 263 (1923), syllabus

Why do we have it?

- Pre-1912, municipalities were like all other political subdivisions and were creatures of statute (see, e.g., Village of Ravenna v. Pennsylvania Co., 45 Ohio St. 118 (1887)).

- According to the Ohio Supreme Court, the municipalities were largely a “political football” and the law wasn’t stable. Also, it wasn’t elastic enough to meet municipality needs. (Village of Perrysburg v. Ridgway, 108 Ohio St. 246, 255 (1923)).

What is home rule?

- Thus:

  - A county is presumed not to have authority to regulate in a particular area, unless a statute affirmatively authorizes the regulation. For a municipality, however, the presumption is in favor of the authority to regulate. No specific grant of authority from the General Assembly is necessary.

Home rule misconceptions - preemption

- By enacting section 4113.85 of the Revised Code, it is the intent of the General Assembly to exclusively regulate the hours of labor and fringe benefits arising from the employer-employee relationship (Section 5 of S.B. 331, 131st General Assembly).

- It is the intent of the general assembly to preempt any local ordinance, resolution, or other law adopted or enacted after December 18, 1997, that is limited to the registration of persons engaged in business as motor vehicle repair operators in a manner corresponding to the provisions of this chapter (R.C. 4775.11).

Home rule misconceptions - preemption

“[t]he power of any Ohio municipality to enact local police regulations is derived directly from Section 3 of Article XVIII of the Ohio Constitution and is no longer dependent upon any legislative grant thereof,” the same police power cannot be extinguished by a legislative provision.

Fondessy Enterprise, Inc. v. Oregon, 23 Ohio St.3d 213 (1986)

Home rule misconceptions - preemption

A statement of intent to preempt the field may be considered when determining whether a matter is of statewide concern, but “it does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.”

Am. Fin. Services Ass’n. v. Cleveland, 112 Ohio St.3d 170 (2006)
The home rule analysis

- A three-step framework:
  - Step one: Is the ordinance an exercise of local self-government or of local police power?

Mendenhall v. Akron, 117 Ohio St.3d 33 (2008)

The home rule analysis – step one

*Any serious student of Ohio jurisprudence must conclude that the contention created in the process of defining “local self-government” and the authority to adopt local police, sanitary and other similar regulations that are not in conflict with general laws is a contention that is matched by few other areas of the law.*

City of Rocky River v. State Emp. Relations Bd., 39 Ohio St.3d 196 (1989)

(Rocky River)

The home rule analysis – step one

If it is a matter local self-government, home rule analysis stops, “because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction” (Ohioans for Concealed Carry, Inc. v. Clyde, 120 Ohio St.3d 96 (2008), citations omitted).
**The home rule analysis – step one**

To the sovereign people of Ohio the municipalities appealed in the constitutional convention of 1912, and the Eighteenth Amendment, then known as the ‘Home Rule’ Amendment, was for the first time adopted as a part of the Constitution of Ohio, wherein the sovereign people of the state expressly delegated to the sovereign people of the municipalities of the state full and complete political power in all matters of local self-government.

\[\text{Village of Perrysburg v. Ridgway, 108 Ohio St. 245, 255, (1923), emphasis added}\]

**The home rule analysis**

- A three-step framework:
  - Step 1: Is the ordinance an exercise of local self-government or of local police power?
  - Step 2: Is the state statute a “general law”?
  - Step 3: Does the ordinance conflict with the statute?

\[\text{Mendenhall v. Akron, 117 Ohio St.3d 33 (2008)}\]

**The home rule analysis – step three**

- Test for conflict: Does the ordinance prohibit what the state permits or vice versa \((\text{Struthers v. Sokol, 108 Ohio St. 263 (1925)})\).

- Municipalities can complement state schemes; a general law cannot preempt all local ordinances \((\text{Cleveland v. State, 138 Ohio St.3d 232 (2014)})\).
The home rule analysis – step three

Q: When does a municipality’s use of home rule go too far?

A: There are some limits on what a municipality can do when it enacts and adopts ordinances that conflict with state law. If the state law is explicit and unambiguous, the state statute takes precedence over a local ordinance. For example, if you are charged with a first-degree felony (e.g. murder, rape, robbery), and the sentence is life in prison, in the state code, however, murder is a first-degree felony. If you are charged with a first-degree felony, you will be sentenced to imprisonment for life under the state code. If you have a first-degree felony and you are charged under the state code, you will receive a sentence of life in prison. If you are charged under the state code, you will receive a sentence of life in prison.

Matters of local self-government

The power of local self-government granted to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area.

Village of Beachwood v. Bd. of Elections of Cuyahoga County, 167 Ohio St. 369 (1958)

Matters of local self-government

- Topics courts have held to be matters of local self-government:
  - Compensation
  - Disposition of certain municipal property
  - Competitive bidding
  - Internal organization
  - Recall of elected officials (charter required)
Matters of local self-government

- Topics courts have held not to be matters of local self-government:
  - Detachment proceedings
  - Annexation
  - Prevailing wage
  - Collective bargaining

Home rule misconceptions - charter

- A municipality does not have to have a charter to exercise home rule authority.
- But, if there’s no charter, the municipality must follow state law regarding procedural matters.
- Examples: civil service, referendum

Village of Perrysburg v. Ridgeway, 108 Ohio St. 245 (1923); Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma, 61 Ohio St.2d 375 (1980)

Home rule misconceptions - charter

- Article XVIII, section 7, states:
  - Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.
- Article XVIII, section 2, states:
  - General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.
Police power

- What is the police power?
  - The power to protect the public health, safety, and morals and the general welfare of the public (Ohioans for Concealed Carry, Inc. v. Clyde, 120 Ohio St. 3d 96 (2008), citations omitted).

Police power – Canton v. State

- Is it a general law?
  - Is it a part of a statewide and comprehensive legislative enactment?
  - Does it apply to all parts of the state alike and operate uniformly throughout the state?

  Canton v. State, 95 Ohio St. 3d 149 (2002)

Home rule misconceptions – law of general nature

Based on these constitutional allowances, cities can legally establish laws on matters of local self-government that may conflict with state laws as long as the state laws in question are not "general laws" or "laws of a general nature." There is no hard and fast rule in Ohio to establish what is a "matter of local self-government" or what is a "general law."
### Home rule misconceptions – law of general nature

- Law of general nature ≠ general law
  - "Law of general nature" is found in Article II, Section 26
  - This is only one aspect of whether a law is a general law for purposes of a home rule general law analysis. You still have to satisfy the other 3 prongs.

### Police power – Canton v. State

- Is it a general law?
  - Is it a part of a statewide and comprehensive legislative enactment?
  - Does it apply to all parts of the state alike and operate uniformly throughout the state?
  - Does it set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations?
  - Does it prescribe a rule of conduct on citizens generally?

  *Canton v. State, 95 Ohio St.3d 149 (2002)*

### Provisions affecting home rule

- Federal law
- Restrictions similar to General Assembly restrictions
- Levying taxes
- Public utilities
- Statewide concern doctrine
- Article II, Section 34
Provisions affecting home rule

Statewide concern doctrine:

Municipalities may enact police and similar regulations under their powers of local self-government, but such regulations must yield to general laws of statewide scope and application, and statutory enactments representing the general exercise of police power by the state prevail over police and similar regulations in the exercise by a municipality of the powers of local self-government.


Provisions affecting home rule

Article II, Section 34 of the Ohio Constitution states:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power.

Provisions affecting home rule

- Article II, Section 34:

- The Rocky River cases – the Court ultimately held that Article II, Section 34 controls the case and home rule provisions do not apply. Section 34, according to the Court, contains clear, certain, and unambiguous language that the General Assembly has this power and no other provision of the Constitution limits it.

City of Rocky River v. SERB 43 Ohio St.3d 1 (1989) (Rocky River A)
Ohio Constitutional Debt Provisions

Jonathan Azoff
Ohio Treasurer's Office

Jonathan Azoff is the Director of the Office of Debt Management and Senior Counsel with the Ohio Treasurer's office. In that capacity, he manages the debt issuance process for the various general obligation, revenue, and special obligations for which the Treasurer serves as the issuing authority. He also oversees the servicing of Ohio's approximately $10.5 billion debt portfolio. Jonathan is a Certified Treasury Professional. He is also an advisory board member of the National Association of State Treasurers—State Debt Management Network. Prior to joining the State, he was an attorney with the law firm of Arnall Golden Gregory LLP in Atlanta, Georgia. Jonathan earned his J.D. from the Emory University School of Law and his B.A. from Tulane University.
Debt and the Ohio Constitution

Jonathan Azoff, Director of Debt Management & Senior Counsel, Ohio Treasurer Josh Mandel

Why Governments Borrow

- Deliver capital projects when needed
  - Do not need to save up years of tax receipts to pay for expensive infrastructure projects
- Spreads cost over useful life of asset
  - "Pay as you use" approach allows actual users to pay for the asset as they use it
  - Current residents don't fund the needs of future generations

Ohio Does Not Borrow for Operating Purposes

"There must be some solvent — where it is paid. Repeal the tax just before you have to pay one ever after."
History of the State Debt of Ohio

- Ohio first incurred debt in 1825 to construct the Ohio and Miami canals
  - The Constitution of 1802 contained no restrictions on the debt-creating power of the legislature
- In 1837, the General Assembly passed the Ohio Loan Law
  - Subsidized private railroad, canal, and turnpike companies in the construction of additional canals
- The State's debt grew from $400,000 in 1825 to $16 million in 1850

Constitutional Convention of 1850-51

- Due to poor fiscal management and an inefficient tax collection system, the State did not make a principal payment between 1825 and 1845
- Nine states defaulted on their debts from the economic collapse of 1837
- Debt and the State's ability to afford repayment were of great concern to the Constitutional Convention of 1850-51

Article VIII of the Ohio Constitution

- Section 1: State may contract debts in the aggregate amount of up to $750,000
- Section 2: Notwithstanding Section 1, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war
- Section 3: No debts, other than those permitted in Sections 1 and 2, may be created by or on behalf of the State
Article VIII of the Ohio Constitution

- Section 4: Credit of the State cannot be given or loaned to corporations, nor can the State become a stockholder in any corporation or company
- Section 5: The State shall not assume the debts of any local government
- Section 6: Local governments cannot loan their credit to, or become a stockholder in, any corporation or company

Post-1851 Amendments to Article VIII

- The State currently has debt in excess of $750,000. How?

- By 18 constitutional amendments to Section 2 approved from 1921 to the present, Ohio voters expressly authorized the incurrence of State general obligation debt for specific purposes
  - Highways, local infrastructure, natural resources and parks, higher education, K-12 education, conservation
  - Non-capital facility purposes: bonuses for veterans (WWII, Korea, Vietnam, Persian Gulf) and to support research and development for high-tech businesses and to enhance business site development
  - Section 15 of Article VIII was also approved in 1985, to fund research and development of technology for use of Ohio coal
In 1999, voters approved Article VIII, Section 17, creating an annual debt service "cap"

State cannot issue new obligations if debt service in any future fiscal year would exceed 5% of the total estimated GRF revenues and net State lottery proceeds

Each time the State issues debt, the Director of OBM certifies that the issuance will not cause the State to become out of compliance with the 5% cap

<table>
<thead>
<tr>
<th>Debt Authorization and Issuance Today</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio Constitution (enacted/amended by popular vote)</td>
</tr>
<tr>
<td>• Authorizes purpose</td>
</tr>
<tr>
<td>• Sets limitations on amount</td>
</tr>
<tr>
<td>• Establishes pledged security</td>
</tr>
<tr>
<td>• Provides tax exemption, if applicable</td>
</tr>
<tr>
<td>• Authorizes General Assembly to pass laws providing for issuance</td>
</tr>
<tr>
<td>State Law (enacted/amended by General Assembly)</td>
</tr>
<tr>
<td>• Implemenets debt issuance authority in accordance with Constitutional authorizations</td>
</tr>
<tr>
<td>• Establishes programmatic requirements</td>
</tr>
<tr>
<td>• Identifies issuer</td>
</tr>
<tr>
<td>• Establishes bond improvement and bond service funds</td>
</tr>
<tr>
<td>Capital appropriations (enacted/amended by General Assembly)</td>
</tr>
<tr>
<td>• In accordance with Constitution and State laws, makes general appropriation for capital projects and programs</td>
</tr>
<tr>
<td>• Provides the needed authority to issue for particular bond programs</td>
</tr>
<tr>
<td>Bond issue</td>
</tr>
<tr>
<td>• Approves the issuance of a specific series of bonds to fund enacted capital project appropriations</td>
</tr>
<tr>
<td>• Establishes issuance terms and conditions, including method of sale, issuance amount, term, and financing team participants</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Snapshot of Ohio’s Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio does, in fact, have more than $750,000 in outstanding debt</td>
</tr>
<tr>
<td>State of Ohio’s debt is very highly rated</td>
</tr>
<tr>
<td>• Moody’s: Aa1</td>
</tr>
<tr>
<td>• Standard &amp; Poor’s: AA+</td>
</tr>
<tr>
<td>• Fitch: AA+</td>
</tr>
<tr>
<td>State’s cost of borrowing is low</td>
</tr>
<tr>
<td>• E.g., In April, OPFC borrowed $350 million on a twenty-year term at 3.31%</td>
</tr>
</tbody>
</table>
Snapshot of Ohio's Debt

- Annual debt service has increased; however, it has remained relatively constant as percentage of GRF revenue and annual personal income
- Annual debt service is well below 5% constitutional cap

### Total GRF Revenue Debt Service Debt Service

<table>
<thead>
<tr>
<th>Year</th>
<th>Total GRF Revenue</th>
<th>Total GRF Revenue as % of GRF Revenue</th>
<th>Total GRF Revenue as % of Annual Personal Income</th>
<th>Debt Service as % of GRF Revenue</th>
<th>Debt Service as % of Annual Personal Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>$187,478,382</td>
<td>3.88%</td>
<td>0.18%</td>
<td>1.0%</td>
<td>0.1%</td>
</tr>
<tr>
<td>1990</td>
<td>488,676,826</td>
<td>4.00%</td>
<td>0.24%</td>
<td>1.8%</td>
<td>0.2%</td>
</tr>
<tr>
<td>2000</td>
<td>871,313,814</td>
<td>4.21%</td>
<td>0.27%</td>
<td>2.1%</td>
<td>0.2%</td>
</tr>
<tr>
<td>2010</td>
<td>710,284,236</td>
<td>2.95%</td>
<td>0.17%</td>
<td>2.6%</td>
<td>0.17%</td>
</tr>
<tr>
<td>2011</td>
<td>755,023,015</td>
<td>2.82%</td>
<td>0.17%</td>
<td>2.8%</td>
<td>0.17%</td>
</tr>
<tr>
<td>2012</td>
<td>692,776,090</td>
<td>2.48%</td>
<td>0.15%</td>
<td>2.4%</td>
<td>0.15%</td>
</tr>
<tr>
<td>2013</td>
<td>1,204,775,861</td>
<td>3.97%</td>
<td>0.26%</td>
<td>4.0%</td>
<td>0.26%</td>
</tr>
<tr>
<td>2014</td>
<td>1,237,701,225</td>
<td>4.11%</td>
<td>0.25%</td>
<td>4.1%</td>
<td>0.25%</td>
</tr>
<tr>
<td>2015</td>
<td>1,278,258,664</td>
<td>3.94%</td>
<td>0.25%</td>
<td>4.0%</td>
<td>0.25%</td>
</tr>
<tr>
<td>2016</td>
<td>1,314,513,346</td>
<td>3.76%</td>
<td>0.25%</td>
<td>3.8%</td>
<td>0.25%</td>
</tr>
<tr>
<td>2017</td>
<td>1,328,277,201</td>
<td>3.77%</td>
<td>0.26%</td>
<td>3.9%</td>
<td>0.26%</td>
</tr>
</tbody>
</table>

(a) Based on July 2016 population estimate.

(b) Based on 2016 personal income data.

Additional Information

For more information on the State's debt:

- www.ohiotreasurerbonds.com
- www.obm.ohio.gov/Bondsinvestors

Questions

Jonathan Azoff, Director of Debt Management & Senior Counsel
Ohio Treasurer Josh Mandel
jonathan.azoff@tos.ohio.gov
Obscure Provisions in the Ohio Constitution

Bill Rowland
Legislative Service Commission

Bill Rowland is the Division Chief of the Transportation, Public Safety, Agriculture, Environment, Natural Resources, and Liquor Division at the Legislative Service Commission. In that role, he is part of a small team that is responsible for drafting and coordinating legislation addressing a myriad of topics, including the biennial multi-billion dollar transportation budget. Prior to his current role, he worked as a staff attorney in various subject areas with the Commission and was involved in crafting many major pieces of legislation, including the Great Lakes Compact and Ohio’s constitutional amendment governing water rights. He obtained his undergraduate degree from The Ohio State University in economics and political science and his Juris Doctor from The Ohio State University College of Law.
The Ohio Constitution and the Obscure Provision 1:

Individual Rights

Article I, Section 1

“All [people] are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”
Article I, Section 1: Judicial Review

- Art I, Sec 1 was part of the original 1802 Constitution
- Mirrors the aspirational words in the Declaration of Independence (life, liberty, and the pursuit of happiness)
- Ohio Supreme Court has found that it:
  1. Is a statement of fundamental ideals;
  2. Is not self-executing;
  3. Lacks the completeness required to offer guidance for judicial enforcement; and
  4. Requires legislative definition to give it practical effect.  
  — State v. Williams, 88 Ohio St.3d 513 (2000).

In reviewing legislation that impacts Article I, Sec 1 rights, the legislation will be upheld if:

1. It bears a real and substantial relationship to the public health, safety, morals, or general welfare; and
2. It is not arbitrary or unreasonable.

Provision 2: Appointing Powers
Article II, Section 27

“The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly except as prescribed in this Constitution.”

Article II, Section 27

Why?

• Under the 1802 Constitution, the General Assembly was vested with nearly all governmental power, including the authority to appoint local and state officers.

• The General Assembly’s exercise of this appointment power contributed to its unpopularity among the citizenry and to the calling of the (1850-1851) Constitutional Convention.

Article II, Section 27

The purpose of the 1851 Constitution, the Jacksonian Constitution, was to reform state government and rein in the power of the General Assembly.
“With or without foundation, it was generally believed that a practice had grown up, among members of the legislative bodies, to barter votes for offices in exchange for votes for laws, and votes for laws in exchange for votes for offices; thus corrupting the streams of legislation at the fountain head.”

— Supreme Court Justice Jacob Brinkerhoff in State ex rel. Attorney General v. Kennon, 7 Ohio St. 546, 566 (1857).

During the debates, Mr. J. Milton Williams, the delegate from Warren County, offered the following regarding a resolution calling for the election of local officials:

“There is a deep and just dissatisfaction amongst the people in regard to appointments to office - especially by the legislative department of government; converting that body, as they do to some extent, into a mere political arena, embittering the feelings of the party spirit, and corrupting the pure fountain of legislation.”

What is a “public office?”

A position is a public office when:

- It is created by law;
- The duties required of the chief officer involve the exercise of some portion of sovereign power;
- The performance of duties associated with the office involve the public; and
- Duties of the office are continuing in nature and not intermittent.

— State ex. rel. Herbert v. Ferguson, 142 Ohio St. 496 (1944).
Article II, Section 27

Does Article II, Section 27 apply to the General Assembly as a whole only or also to individual legislative officers (i.e. the Speaker of the House or the President of the Senate)?

- No definitive case, but it seems logical that if the General Assembly cannot appoint, then the leaders of the General Assembly may be barred as well.
- In creating any new public office, it is important to keep the restrictions of Article II, Section 27 in mind.

Provision 3: Removal of Officers

Article II, Section 38

Article II, Section 38 provides that laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all state officers for any misconduct involving moral turpitude or for other cause provided by law.
Article II, Section 38

• Ohio Supreme Court has found that this provision of the Constitution requires due process for the removal of officers – a notice and hearing is required.

• So the answer depends on whether the members of the Commission are officers.

Who is an “officer” for purposes of Article II, Section 38?

Factors to consider:

1. Whether the individual has been appointed or elected in a manner prescribed by law;
2. Whether the individual has a designation or title prescribed by law;
3. Whether the individual exercises functions concerning the public assigned by law (which are a sovereign function of an executive, legislative, or judicial character); and
4. Whether the individual holds a position that has some tenure, duration, and continuance.


Article II, Section 38
Recall Elections

• Recall elections for state officers are not authorized by the Ohio Constitution.

• A recall election does not comply with the notice and hearing requirements of Article II, Section 38.

• A municipal charter adopted under Article XVIII, Section 7 may provide for a recall of municipal officials.
Provision 4: Uniform Operation

Article II, Section 26: Uniform Operation
• Provides that all laws, of a general nature, shall have a uniform operation throughout the state.
• This provision of the Constitution requires statewide uniformity in statutes.

In general, the legislature may enact special laws that affect a particular person, place, or thing—only if:
1. It would not be possible to enact a general, uniform law on the subject; and
2. The law has a public purpose.
Uniform Operation

Prior to the 1851 Constitution, the General Assembly had developed the practice of passing special laws, including:
• Incorporating private toll roads, bridges, and ferries;
• Allowing monopolies over local service; and
• Loaning the state’s credit to purchase stock in many of these corporations.

The raids on the state treasury furnished the most important issue leading to the 1850-1851 Constitutional Convention.

Uniform Operation

At the 1850-1851 Constitutional Convention, Delegate Samson Mason pointed out that in the absence of a uniform operation requirement:

“We shall have one code of criminal law as applied to this county; another perhaps to Franklin, and a third to Cuyahoga. We have only to multiply the class, and we shall have wheels within wheels, until no one can tell what the law is, in any one particular place.”

Uniform Operation

The uniform operation requirement of Art. II, Sec. 26 intends “to restrict local and special legislation to such subjects as are in their nature not general, so as to compel as near as possible, uniformity of laws throughout the state.”

– Hixson v. Burson, 54 Ohio St. 470, 482 (1896).
Uniform Operation

• The constitutionality of an act is determined by the nature of its subject matter, its operation and effect, and not by its form only.
• "If the subject does or may exist in, and affect the people of every county, in the state, it is of a general nature. On the contrary, if the subject cannot exist in or affect the people of every county, it is local or special."
• If the subject matter of a law is general, laws on that subject must have a uniform operation.
  – Hixson v. Burson, 54 Ohio St. 470, 482 (1896).

Uniform Operation

The Court recognized that the essential elements to make a general law operate uniformly are:
• The law must operate equally upon the members of the class to be affected;
• It must embrace all persons who are or may be in like situations and circumstances;
• The designation of the class must be reasonable and not unjust or capricious; and
• The designation must be based upon a real distinction.

Uniform Operation

• The Court in this case found that this statute is a general law, but is not uniform according to this standard.
• The Court recognized a certain absurdity in the statute as it relates to similarly situated counties.
However, the Court has also recognized that a statute is uniform despite its application to only one circumstance as long as:

1. Its terms are uniform; and
2. It may apply to circumstances similarly situated in the future.


Provision 5:
Unlawful Delegation

Article II, Sections 1 and 26:
Unlawful Delegation

• Article II, Section 1 states that the ‘legislative power of the state [is] vested in a general assembly consisting of a senate and house of representatives.’
• Article II, Section 26 states that ‘except if it relates to public schools, [no act shall] be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.’
Unlawful Delegation: Administrative Agencies

- In order to confer power to make rules and regulations on an administrative agency, the General Assembly must establish the policy of the law by adopting standards.
- The discretion conferred must not be unconfined.
- If a clear and sufficient determination of policy has been legislatively made and adequate standards of guidance are provided, a statute will not be held unconstitutional.


Unlawful Delegation: Administrative Agencies

General rule distinguishing unlawful v. lawful delegation:

- The General Assembly cannot delegate to an agency the power to decide what the law is.
- The General Assembly may delegate the authority or discretion as to the execution of a law.

Unlawful Delegation: Administrative Agencies

- The Court found that this was a lawful delegation of authority.
- The General Assembly may establish a policy and fix standards for the guidance of administrative agencies of government while leaving to the agencies the power to make subordinate rules.
- The Court found that the standard of "uniformity" in real estate assessment was sufficient in setting forth a precise goal of the legislation.

- In re Adoption of Uniform Rules & Regulations, etc., 169 Ohio St. 445 (1959).
Unlawful Delegation: Federal Government

• Ordinarily, a statute cannot delegate legislative power to a federal agency because the General Assembly has no control over it.
• In referencing federal law, the General Assembly may adopt provisions of federal statutes that are in effect at the time the state legislation is enacted.
• The Ohio Supreme Court has indicated that the General Assembly may not incorporate future updates of federal law into state legislation.


Unlawful Delegation

• This was not an unlawful delegation.
• The Court found that the General Assembly intended to prohibit activities that are unlawful under the federal law on the date the state law was enacted.
• In order to incorporate future amended versions of the federal law, the General Assembly must update and revise state law.


Provision 6: Elected Official’s Salary
Article III, Section 19

"The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected."

Who are the "officers" mentioned in Article III?

- The Governor;
- Lieutenant Governor;
- Secretary of State;
- Auditor of State;
- Treasurer of State; and
- Attorney General

The answer is likely yes.

- Though the Governor will experience multiple increases in salary during his/her term, the vote to increase the salary did not take place during the Governor’s term.
- Thus, the increase is likely constitutional.
- Similar to the scheme set forth in R.C. 141.011.

State Legislators’ Salaries

There are corresponding sections that apply to:

- Members of the General Assembly.
  - Article II, Section 31
- Certain public officers
  - Article II, Section 20
Provision 7: Militia

Article IX, Section 1

“All citizens, residents of this state, being seventeen years of age, and under the age of sixty-seven years, shall be subject to enrollment in the militia and the performance of military duty, in such manner, not incompatible with the Constitution and laws of the United States, as may be prescribed by law.”

Article IX, Section 1

- Not in the original 1802 Constitution.
- Added in the 1851 Constitution.
- The debates included discussions of women’s rights, civil rights, and the proper age for military service.
- Several members of the Constitutional Convention objected to compulsory military service on religious grounds.
- Amended in 1961 to expand the age range and apply the provision to all citizens in that age range.
Referendum, Vetoes, and Veto Overrides

Carrie Kuruc
Ohio Secretary of State

Carrie Kuruc is an elections counsel in the office of Ohio Secretary of State Jon Husted, a position she has held since 2011. She coordinates a staff of elections attorneys who serve as legal counsel to the Secretary of State. Prior to working as an elections counsel, she was a rules analyst with the Joint Committee on Agency Rule Review (JCARR) in the Ohio General Assembly. For JCARR, she reviewed regulations for state agencies such as the Environmental Protection Agency and Medicaid. She earned her undergraduate degree in Spanish from Duquesne University in Pittsburgh and her Juris Doctor from The Ohio State University Moritz College of Law.
Statewide Initiative and Referendum

Carrie Kuruc, Senior Elections Counsel
Office of Ohio Secretary of State Jon Husted

Direct and Indirect Access

The Ohio Constitution provides for both direct and indirect access to the statewide issues ballot.

Direct Access by Ohio Citizens

Referendum
(Article II, Section 1c)

Initiated Constitutional Amendment
(Article II, Section 1a)
Direct Access by the Ohio General Assembly

Initiated Constitutional Amendment
(Article XVI, Section 1)

Indirect Access by Ohio Citizens

Initiated Statute
(Article II, Section 1b)

Requirements for Ballot Access

A mix of constitutional and statutory provisions compose the petitioning guidelines for placement of an issue on the ballot.
Referendum

A referendum presents a recently passed law to voters for their approval or rejection.

Referendum Restrictions

Article II, Section 1d

1. Tax levies
2. Appropriations for the current expenses of the state government and state institutions
3. Emergency laws necessary for the immediate preservation of the public peace, health, or safety that require 2/3 majority vote in each chamber

Procedures for Referendum

1. An initial petition, signed by at least 1,000 qualified Ohio electors, along with the full text and a summary of the law to be referred must be filed with Attorney General and Secretary of State. [R.C. 3519.01(B)]

Within 10 business days:
- SOS verifies the number of valid signatures and compares the full text of the law with the law as filed by the General Assembly.
- AG verifies that the summary submitted by petitioners is a fair and truthful statement of the law to be referred.
Procedures for Referendum

2. Petitioners must collect signatures of qualified Ohio electors equal to 6% of total vote cast for governor in the last gubernatorial election. The petition is filed with the SOS. (Article II, Section 1c)

Signature Distribution Requirement:

Signatures from at least 44 of Ohio's 88 counties, and in each of those counties, signatures equal to at least 3% of total vote cast for governor in the last gubernatorial election.

Procedures for Referendum

All petitions must be filed within 90 days of the law's passage.

If a petition purporting to contain the requisite number of signatures is filed with the SOS, the law is immediately stayed.

The law does not go into effect unless it is approved by a majority of voters.

Citizen-Initiated Constitutional Amendment

An initiated constitutional amendment places citizen-drafted language on the ballot for the voter's consideration.
**Procedures for Citizen-Initiated Constitutional Amendment**

1. An initial petition, signed by at least 1,000 qualified Ohio electors, along with a full text and summary of the proposed law, must be filed with AG. [R.C. 3519.01(A)]

   Within 10 business days:
   - AG verifies the number of valid signatures AND that the summary submitted by petitioners is a fair and truthful statement of the law to be referred.

2. Within 10 business days from the AG's certification of the summary as fair and truthful, the Ohio Ballot Board must determine whether the proposed amendment contains only one constitutional amendment so that voters can vote on each proposal separately. [R.C. 3505.062 (A)]

3. Petitioners must collect signatures from qualified Ohio electors equal to 10% of votes for governor in the last gubernatorial election. (Article I, Section 1A)

   **Signature Distribution Requirement:**
   Petitioners must collect signatures from at least 44 of Ohio’s 88 counties, and in each of those counties, signatures equal to at least 5% of the vote cast in the last gubernatorial election.
Procedures for Citizen-Initiated Constitutional Amendment

If approved by a majority of voters, the amendment becomes effective 30 days after the election.

General Assembly-Initiated Constitutional Amendment

The General Assembly proposes language for the voter’s consideration.

Procedures for General Assembly-Initiated Constitutional Amendment

Either chamber may propose an amendment to the Ohio Constitution, but customarily it happens by joint resolution.
Procedures for General Assembly-Initiated Constitutional Amendment

3/5 majority vote required for passage.

Must be filed 90 days before the election at which the GA wishes to submit the amendment to voters for their approval or rejection.

Procedures for General Assembly-Initiated Constitutional Amendment

If a majority of voters approves the amendment, it becomes effective immediately.

Initiated Statute

An initiated statute places citizen-drafted statutory language before the legislature—and then possibly the voters—for consideration.
Process for Initiated Statute

1. An initial petition, signed by at least 1,000 qualified Ohio electors, along with a full text and summary of the proposed law, must be filed with AG. [R.C. 3519.01(A)]

   Within 10 business days:
   • AG verifies the number of valid signatures AND that the summary submitted by petitioners is a fair and truthful statement of the law to be referred.

Process for Initiated Statute

   Within 10 business days from the AG’s certification of the summary as fair and truthful, the Ohio Ballot Board must determine whether the proposed amendment contains only one constitutional amendment so that voters can vote on each proposal separately.
   [R.C. 3505.062 (A)]

Process for Initiated Statute

2. Petitioners must collect signatures from qualified Ohio electors totaling at least 3% of total votes cast for governor in the last gubernatorial election.

   Signature Distribution Requirement:
   Petitioners must collect signatures from at least 44 of Ohio’s 88 counties, and in each of those counties, signatures equal to at least 1.5% of the vote cast in the last gubernatorial election.
Process for Initiated Statute
Petition must be filed with SOS not less than 10 days prior to commencement of a session of the General Assembly.

If the petition is valid, SOS sends the proposed statute to the General Assembly as soon as the General Assembly convenes.

The General Assembly has 4 months to act on the proposed law.

Process for Initiated Statute
If the General Assembly fails to act on the law or passes an amended version of the proposed law, petitioners then may petition to place the proposed law before voters.

Process for Initiated Statute
3. Petitioners must collect additional signatures of qualified Ohio electors equal to another 3% of total votes cast for governor in the last gubernatorial election, with the same distribution requirements as in step 2.

This petition must be filed within 90 days of GA's failure to act or amended action on the proposed law.
**Process for Initiated Statute**

At this stage, the proposed law may be worded as it was when originally filed or with amended language as adopted by the GA.

**Process for Initiated Statute**

If approved by voters, the statute becomes effective 30 days after the election.

**The Ohio Ballot Board**

Consists of 5 members:
- Secretary of State serves as chairperson
- 4 other members appointed as follows:
  - one person appointed by House majority,
  - one person appointed by House minority,
  - one person appointed by Senate majority and
  - one person appointed by Senate minority.

Article XVI, Sec 1 and R.C. 3505.061, .062, .063
Ohio Ballot Board Tasks

1. To determine whether a citizen-initiated constitutional amendment or initiated statute consists of a single proposed amendment or proposed law.

“One Amendment” Test

“A proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single general object or purpose.”

“Thus, where an amendment to the Constitution relates to a single purpose or object and all else contained therein is incidental and reasonably necessary to effectuate the purpose of the amendment, such amendment is not violative of the provisions of Section 1, Article XV.”

Courts have generally taken a "liberal [view] in interpreting what such a single general purpose or object may be."

State ex rel. Ohio Liberty Council v. Akron, 135 Ohio St. 3d 315 (2010)

Ohio Ballot Board Tasks

2. To draft ballot language

In order to pass constitutional muster, the ballot language must properly identify the substance of the proposal to be voted upon.

[Article 16, Section 1. See also State ex rel. Voters First v. Ohio Ballot Bd., 133 Ohio St. 3d 257 (2012)]
Ohio Ballot Board Tasks

2015's passage of the Anti-Monopoly Amendment gave the Ohio Ballot Board a new task:

To determine whether a proposal certified to the ballot
"grant[s] or create[s] a monopoly, oligopoly, or cartel,
specifies or determine[s] a tax rate, or confer[s] a
commercial interest, commercial right, or commercial
license to any person, nonpublic entity, or group of
persons or nonpublic entities, or any combination thereof,
however organized, that is not then available to other
similarly situated persons or nonpublic entities.”

(Article II, Section 1e)

Ohio Ballot Board Tasks

If the Ballot Board determines that the
certified ballot issue, does grant a monopoly,
oligopoly, or cartel, it must prescribe two
separate questions to appear on the ballot
when it drafts ballot language.

Ohio Ballot Board Tasks

1) "Shall the petitioner, in violation of division (B)(1) of
Section le of Article II of the Ohio Constitution, be
authorized to initiate a constitutional amendment that
grants or creates a monopoly, oligopoly, or cartel,
specifies or determines a tax rate, or confers a
commercial interest, commercial right, or commercial
license that is not available to other similarly situated
persons?"

2) The second question must describe the proposed
constitutional amendment.
Ohio Ballot Board Tasks

Only if both questions are approved or affirmed by a majority of the electors voting on them does the constitutional amendment take effect.

Ohio Ballot Board Tasks

3. To draft arguments and/or explanations for and against the proposals if the persons otherwise responsible for the preparation of those arguments do not submit them.

R.C. 3505.062(E)

Ohio Ballot Board Tasks

4. To direct the means by which the Secretary of State shall disseminate information about the statewide ballot issues to the voters.

R.C. 3505.062(F)
Ohio Ballot Board Tasks

5. To direct the Secretary of State to contract for the publication of ballot language, explanations, and arguments for each statewide issue in newspapers of general circulation in each county in the state.

R.C. 3505.062(G)

Secretary of State’s Tasks

1. To determine the title and ballot order of statewide issues. (3519.21)

2. To post full text, summary, ballot language, and arguments or explanations on its website. (3519.07)

3. To advertise the proposed law and arguments and/or explanations 1x week for 3 consecutive weeks preceding the election in at least one newspaper of general circulation in each county where a newspaper is published. (Article XVI, Section 1)

Secretary of State’s Tasks

The Secretary of State’s directives instruct the county boards of elections on the guidelines for determining the validity and sufficiency of signatures and petitions.

R.C. 3501.05, 3501.38, and Chapter 3519.
Technical Requirements for Petitions

- All part-petitions must be filed as a single instrument (at the same time).
- Each signer must be a registered elector.
- Signer must sign name, date his or her signature, and provide place of residence.
- Signatures must be written in ink (Article II, 1g).

Technical Requirements for Petitions

- Each part-petition must contain a circulator statement, which attests that the circulator witnessed each signature.
  - For statewide issues, the circulator also must include his or her residence and employer, if any, and employer's address.
- New filing requirements (electronic copy)
- Ohio Supreme Court has exclusive jurisdiction over any challenge made to petitions or individual signatures.

Resources

Secretary of State's Office website:

1. “Putting an Issue on the Ballot” compiles constitutional and statutory references in a step-by-step summary of the process.
3. Ballot Board page—Pending Statewide Ballot Issues
THE STATE EX REL. OHIO LIBERTY COUNCIL ET AL. v.

BRUNNER, SECY. OF STATE, ET AL.

[Cite as State ex rel. Ohio Liberty Council v. Brunner,

125 Ohio St.3d 315, 2010-Ohio-1845.]

Elections — Ohio Ballot Board's approval of a proposed constitutional amendment — Abuse-of-discretion standard — Writ granted.

(No. 2010-0643 — Submitted April 27, 2010 — Decided April 29, 2010.)

IN MANDAMUS.

Per Curiam.

¶ 1 This is an action for a writ of mandamus to compel respondents Secretary of State Jennifer Brunner and the Ohio Ballot Board to certify the board’s approval of a proposed constitutional amendment and to certify its approval to respondent Attorney General Richard Cordray. Because relators have established their entitlement to the requested extraordinary relief, we grant the writ.

Facts

¶ 2 On March 21, 2010, the United States Congress enacted the Patient Protection and Affordable Care Act, which was signed into law by President Barack Obama on March 23. Pub.L.No. 111-148, 124 Stat. 119 (2010). Among other things, the act requires individuals to maintain minimum essential healthcare coverage beginning in 2014 and imposes a penalty for failure to maintain this coverage. Section 1501, Subtitle F, Part 1 of the Patient Protection and Affordable Care Act.

¶ 3 On March 22, relators gathered over 3,000 signatures to submit an initiative petition to amend the Ohio Constitution “to preserve the freedom of
Ohioans to choose their health care and health care coverage.” Relators are Ohio Liberty Council, a nonprofit corporation and political action committee that is a statewide coalition of 25 grassroots groups, including nearly all of Ohio’s Tea Party organizations; the Ohio Project, a ballot-issue committee; and five Ohio Liberty Council members who are state electors.

¶ 4 On April 1, pursuant to R.C. 3519.01(A), the attorney general certified that relators’ summary of their proposed amendment contained “a fair and truthful statement of the proposed constitutional amendment” and then forwarded the proposed amendment to the secretary of state, in her capacity as the chair of the Ohio Ballot Board, for the board’s consideration under R.C. 3505.062.

¶ 5 The amendment, which proposes to add Section 21 to Article I of the Ohio Constitution, states:

¶ 6 “ARTICLE I

¶ 7 “Preservation of the freedom to choose health care and health care coverage

¶ 8 “Section 21 (A) No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.

¶ 9 “Section 21 (B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.

¶ 10 “Section 21 (C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

¶ 11 “Section 21 (D) This section does not affect laws or rules in effect as of March 19, 2010; affect which services a health care provider or hospital is required to perform or provide; affect terms and conditions of government employment; or affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.
“Section 21 (E) As used in this Section,

“(1) ‘Compel’ includes the levying of penalties or fines.

“(2) ‘Health care system’ means any public or private entity or program whose function or purpose includes the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services, health care data, or health care information for its participants.

“(3) ‘Penalty or fine’ means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section.” (Boldface sic.)

On April 9, the ballot board held a meeting to determine, pursuant to R.C. 3505.062(A), whether relators’ initiative petition contained more than one constitutional amendment. In the board’s discussion, the secretary of state opined that although Sections A, B, and C of the proposed amendment were arguably related to the subject of individual choice in health care and health insurance, Section D was not.

The secretary further explained that Section C of the proposed amendment could be successfully rationalized as relating to freedom of choice, but Section D could not:

“But then when I get to (D), (D) is where I really – I mean, (C) I could probably, you know, successfully rationalize that. But when I get to (D) is where I run into problems where I don’t see where I am talking about the purchase or sale of health insurance, but we’re talking directly about government regulation without dealing with that industry of – of individual choice.”

At the conclusion of the meeting, the ballot board adopted the secretary’s recommendation, dividing the petition into two separate issues and certifying to the attorney general the original petition as two proposed
constitutional amendments. In the ballot board’s April 9 letter to the attorney general, the board stated:

{¶ 20} "We, the undersigned members of the Ohio Ballot Board, hereby divide and certify that the initiative petition that you sent to us on April 1, 2010, proposing to add Section 21 to Article I of the Ohio Constitution contains two proposed constitutional amendments. The two proposed amendments are: one that deals with the freedom to choose health care and health care coverage; and the second that deals with the governance and oversight of the health care and health insurance industries."

{¶ 21} Four days later, on April 13, relators filed this action for writs of mandamus and prohibition to compel the secretary of state and the ballot board to certify the board’s approval of the proposed constitutional amendment as written and to certify its approval to the attorney general. In the alternative, relators request that the writs compel the attorney general to certify relators’ proposed constitutional amendment pursuant to R.C. Chapter 3519. On April 15, we granted an alternative writ on relators’ mandamus claim and issued an accelerated schedule for responses to the complaint and the submission of evidence and briefs. State ex rel. Ohio Liberty Council v. Brunner, 124 Ohio St.3d 1548, 2010-Ohio-1662, 924 N.E.2d 849. We also dismissed relators’ prohibition claim. Id.

{¶ 22} Respondents submitted answers, and the parties submitted evidence and briefs.

{¶ 23} This cause is now before the court for our consideration of the merits.

Legal Analysis

Preliminary Matters

{¶ 24} Before addressing the merits of relators’ claim, it is instructive to remember what our resolution of their claim does not address. This case is not about the relative merits of relators’ proposed constitutional amendment and
whether its passage would actually result in the specified purpose of preserving the freedom to choose health care and health-care coverage. Nor is this case about the constitutionality or legality of the substance of the proposed amendment. “Any claims alleging the unconstitutionality or illegality of the substance of the proposed [initiative], or actions to be taken pursuant to the [initiative] when enacted, are premature before its approval by the electorate.” *State ex rel. DeBrosse v. Cool* (1999), 87 Ohio St.3d 1, 6, 716 N.E.2d 1114.

¶ 25 Instead, the limited legal issue before us is whether the ballot board abused its discretion and clearly disregarded applicable law by determining that relators’ initiative petition contained more than one proposed constitutional amendment.

*Mandamus*

¶ 26 Relators request a writ of mandamus to compel the ballot board to certify its approval of the single proposed amendment as written and certify its approval to the attorney general. To be entitled to the writ, relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of respondents to provide it, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397, ¶ 11.

*Lack of Adequate Remedy in the Ordinary Course of Law*

¶ 27 Because of the proximity of the June 30 deadline to file the signed initiative petition with the secretary of state to have the proposed amendment submitted to the electorate at the November 2, 2010 general election, relators lack an adequate remedy in the ordinary course of law. See *State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 10; Section 1a, Article II, Ohio Constitution. No right to appeal from the ballot board’s determination is granted. See R.C. 3505.062; see also *State ex rel. Morgan v. State Teachers Retirement Bd. of Ohio*, 121 Ohio St.3d
324, 2009-Ohio-591, 904 N.E.2d 506, ¶ 20 (mandamus is an appropriate remedy to correct an abuse of discretion by a public board in a decision that is not appealable).

¶ 28 And notwithstanding respondents’ claim to the contrary, relators’ mandamus claim is not an ill-disguised claim of declaratory judgment and prohibitory injunction, and neither a declaratory judgment nor a prohibitory injunction would constitute an adequate remedy in the ordinary course of law. A declaratory judgment would not be an adequate remedy without a mandatory injunction ordering the ballot board to immediately certify its approval of relators’ proposed constitutional amendment, as written, to the attorney general. See State ex rel. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Tablack (1999), 86 Ohio St.3d 293, 297, 714 N.E.2d 917. And a prohibitory injunction would not provide relators with the relief they request: an order to compel the ballot board to comply with its duties under R.C. 3505.062 to certify its approval of their proposed constitutional amendment as written. Nor would it be sufficiently speedy, given the imminent deadline.

¶ 29 Therefore, relators’ complaint properly invokes our original jurisdiction, and an action in the court of common pleas for a declaratory judgment and a prohibitory injunction would not provide an adequate remedy in the ordinary course of law.

Clear Legal Right and Clear Legal Duty

¶ 30 In extraordinary actions challenging the decisions of the secretary of state and boards of elections, for example, the standard is whether they engaged in fraud, corruption, or abuse of discretion or acted in clear disregard of applicable legal provisions. See generally State ex rel. Owens v. Brunner, 125 Ohio St.3d 130, 2010-Ohio-1374, 926 N.E.2d 617, ¶ 26. This standard is also appropriate for gauging the propriety of the ballot board’s determination here. Therefore, 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 determining that relators' initiative petition contained two proposed constitutional amendments and in dividing the petition into two and in certifying the two proposed amendments to the attorney general.

¶ 31] Under Section 1, Article II of the Ohio Constitution, "the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided." "The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution." Section 1a, Article II of the Ohio Constitution. "The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws." Section 1, Article II of the Ohio Constitution.

¶ 32] Under Section 1, Article XVI of the Ohio Constitution, the General Assembly is authorized to propose a constitutional amendment by joint resolution, and one of the requirements specified therein for a legislatively initiated proposed constitutional amendment is that each amendment be submitted separately to the electors:

¶ 33] "When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately."

¶ 34] R.C. 3519.01(A) imposes a similar requirement on citizen-initiated proposed constitutional amendments:

¶ 35] "Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately. A petition shall include the text of
any existing statute or constitutional provision that would be amended or repealed if the proposed law or constitutional amendment is adopted.

§ 36 "Whoever seeks to propose a law or constitutional amendment by initiative petition shall, by a written petition signed by one thousand qualified electors, submit the proposed law or constitutional amendment and a summary of it to the attorney general for examination. Within ten days after the receipt of the written petition and the summary of it, the attorney general shall conduct an examination of the summary. If, in the opinion of the attorney general, the summary is a fair and truthful statement of the proposed law or constitutional amendment, the attorney general shall so certify and then forward the submitted petition to the Ohio ballot board for its approval under division (A) of section 3505.062 of the Revised Code. If the Ohio ballot board returns the submitted petition to the attorney general with its certification as described in that division, the attorney general shall then file with the secretary of state a verified copy of the proposed law or constitutional amendment together with its summary and the attorney general's certification." (Emphasis added.)

§ 37 R.C. 3505.062, in turn, specifies the duty of the ballot board to determine whether an initiative petition contains only one proposed law or constitutional amendment:

§ 38 "The Ohio ballot board shall do all of the following:

§ 39 "(A) Examine, within ten days after its receipt, each written initiative petition received from the attorney general under section 3519.01 of the Revised Code to determine whether it contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately. If the board so determines, it shall certify its approval to the attorney general, who then shall file with the secretary of state in accordance with division (A) of section 3519.01 of the Revised Code a verified copy of the proposed law or
constitutional amendment together with its summary and the attorney general's certification of it.

¶ 40 “If the board determines that the initiative petition contains more than one proposed law or constitutional amendment, the board shall divide the initiative petition into individual petitions containing only one proposed law or constitutional amendment so as to enable the voters to vote on each proposal separately and certify its approval to the attorney general. If the board so divides an initiative petition and so certifies its approval to the attorney general, the petitioners shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, and the attorney general then shall review the resubmissions as provided in division (A) of section 3519.01 of the Revised Code.” (Emphasis added.)

¶ 41 Because this separate-petition requirement is comparable to the separate-vote requirement for legislatively initiated constitutional amendments under Section 1, Article XVI of the Ohio Constitution, our precedent construing the constitutional provision is instructive in construing the statutory requirement. In State ex rel. Willke v. Taft, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, at ¶ 34, we set forth the test for determining satisfaction of the separate-vote requirement:

¶ 42 “[T]he applicable test for determining compliance with the separate-vote requirement of Section 1, Article XVI is that ‘a proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single general object or purpose.’ (Emphasis sic.) State ex rel. Roahrig v. Brown (1972), 30 Ohio St.2d [82] at 84, 59 O.O.2d 104, 282 N.E.2d 584. ‘Thus, where an amendment to the Constitution relates to a single purpose or object and all else contained therein is incidental and reasonably necessary to effectuate the purpose of the amendment, such amendment is not violative of the provisions of Section 1, Article XVI.’ State ex rel. Burton v.
Greater Portsmouth Growth Corp. (1966), 7 Ohio St.2d 34, 36, 36 O.O.2d 19, 218 N.E.2d 446. Courts have generally taken a 'liberal [view] in interpreting what such a single general purpose or object may be.' See [State ex rel.] Foreman [v. Brown (1967)], 10 Ohio St.2d [139] at 146, 39 O.O.2d 149, 226 N.E.2d 116; see, also, cases from other jurisdictions cited at fn. 7.”

¶ 43 In applying this test to relators’ proposed constitutional amendment here, we hold that the proposal consists of one amendment because all the sections contained therein bear some reasonable relationship to the single general purpose of preserving Ohioans’ freedom to choose their health care and health-care coverage as it existed on March 19, 2010, with certain exceptions, before the enactment of the Patient Protection and Affordable Care Act. Section 21(A) preserves this freedom of choice by prohibiting the government from compelling any person, employer, or health-care provider to participate in any health-care system. Section 21(B) advances the freedom of choice by forbidding the government to prohibit the purchase or sale of health care or health-care insurance. As relators observe, persons’, employers’, and health-care providers’ choices of health care and health-care insurance will be inhibited if their ability to choose between different providers is limited. Moreover, it is manifest that Section 21(E) of the proposed amendment, which merely provides definitions for some of the terms used in the other sections of the amendment, relates to the single purpose as well. Respondents do not argue to the contrary.

¶ 44 The ballot board and the secretary of state argue in their merit brief that although Sections A, B, D, and E of relators’ proposed constitutional amendment all relate to the single general purpose or object of preserving freedom of choice of health care and health-care coverage, Section C does not because its “unintended consequences” “transcend the availability and terms of coverage” and, if passed, it would “fundamentally rework the way Ohio regulates the insurance industry.” At its April 9 meeting, however, the board appeared to
acknowledge that Sections A, B, and C of relators’ proposed constitutional amendment relate to the single purpose or object of choice, but that Section D, which specifies exceptions to the amendment, constituted the separate amendment. Specifically, the ballot board seemingly determined that this section of the proposed amendment “deals with the governance and oversight of the health care and the health insurance industries” rather than “the freedom to choose health care and health care coverage.”

¶ 45 For the following reasons, the ballot board abused its discretion and clearly disregarded R.C. 3505.062 in so concluding, regardless of whether it relied on Section C or Section D of the proposed amendment.

¶ 46 First, despite respondents’ claims to the contrary, the transcript of the ballot board’s proceedings indicates that the board’s decision was based on Section D rather than Section C of relators’ proposed constitutional amendment. The secretary of state, in her capacity as chair of the ballot board, reasoned that Section C could be successfully rationalized as relating to the general purpose of freedom of choice of health care because a person “can’t be penalized for exercising freedom of choice to the point that it would impede the choice.”

¶ 47 Second, Section 21(C) reasonably relates to the general purpose of freedom of choice by prohibiting the government from imposing a penalty or fine for the sale or purchase of health care or health-care insurance. As the secretary of state acknowledged at the ballot board meeting, persons’ and employers’ choices of health care and health-care insurance would be impaired if their choice of certain providers were subject to a substantial penalty or fine. That is, as relators argue, “if a law imposes such a steep penalty upon the purchase or sale of private health care or health insurance to render it commercially and economically unrealistic, that law would effectively preclude the ability of an Ohioan to choose private health care or health care coverage.”
The ballot board asserts that relators improperly read Section 21(C) as if it had added the language “based on the contents of the policy” to “[n]o federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.” But this additional language is also not included at the end of Section 21(B), which uses language similar to that contained in Section C: “No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.” And relators admit that Section B is reasonably related to the single general purpose of freedom of choice.

Third, Section D of the proposed constitutional amendment, which the ballot board determined at the board’s meeting was different from the rest of the amendment, has no independent meaning separate from the remainder of the amendment. In fact, it specifies the exceptions to Sections A, B, and C by beginning with the phrase, “This section does not affect * * *.”

Fourth, limitations on the scope of or exceptions to the changes made in a proposed amendment do not change the single amendment into multiple amendments. In effect, every amendment generally contains some limitations, whether they be temporal or by subject matter. For example, in Foreman, 10 Ohio St.2d 139, 39 O.O.2d 149, 226 N.E.2d 116, paragraph four of the syllabus, we held that a proposed constitutional amendment that created a bond commission, but further specified the limited purposes for which money could be raised and used, did not violate the separate-vote requirement of Section 1, Article XVI of the Ohio Constitution by including limitations on the commission created by the amendment:

“If the proposed amendment provided only that a bond commission should be created to raise revenues for public purposes, no one would seriously contend that the proposal included more than one object and that therefore it represented more than one amendment. The fact, that the proposal limits the authority of the commission by specifying the purposes for which the
revenues may be raised and used, does not turn the proposal into one for more than one amendment.” Id. at 147.

{¶ 52} Fifth, relators’ proposed constitutional amendment does not violate the purposes of the separate-vote requirement. “The constitutional mandate that multifarious amendments shall be submitted separately has two great objectives. The first is to prevent imposition upon or deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable. The second is to afford the voters freedom of choice and prevent ‘logrolling’ or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts.” Willke, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, ¶ 28, quoting Andrews v. Governor (1982), 294 Md. 285, 295, 449 A.2d 1144, quoting Fugina v. Donovan (1960), 259 Minn. 35, 38, 104 N.W.2d 911, construing similar separate-vote requirements in the Maryland and Minnesota Constitutions.

{¶ 53} The inclusion of Sections C and D with the remaining sections of relators’ proposed constitutional amendment does not render the amendment as a whole deceptive or constitute the attachment of an unrelated, unpopular proposal.

{¶ 54} Finally, notwithstanding the ballot board’s implicit claim throughout its argument, there is no indication that the framers of the Constitution or the General Assembly intended that the citizens’ constitutional right of initiative to propose a constitutional amendment be relegated to a stricter separate-vote requirement than that required for the legislature’s constitutional right of initiative. In State ex rel. LetOhioVote.org v. Brunner, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 19-20, we recently reiterated that “[i]n 1912, the electors of Ohio adopted the initiative and referendum amendment to the constitution” and that “[s]hortly thereafter, we explained the significance of the amendment” by recognizing the following:
¶ 55} “Now, the people’s right to the use of the initiative and referendum is one of the most essential safeguards to representative government. * * * The potential virtue of the “I. & R.” does not reside in the good statutes and good constitutional amendments initiated, nor in the bad statutes and bad proposed constitutional amendments that are killed. Rather, the greatest efficiency of the “I. and R.” rests in the wholesome restraint imposed automatically upon the general assembly and the governor and the possibilities of that latent power when called into action by the voters.’” Id. at ¶ 20, quoting State ex rel. Nolan v. Clendenning (1915), 93 Ohio St. 264, 277-278, 112 N.E. 1029.

¶ 56} The power of initiative must be liberally construed, and the General Assembly cannot diminish that power. State ex rel. Hodges v. Taft (1992), 64 Ohio St.3d 1, 4, 591 N.E.2d 1186. By imposing the separate-vote requirement on citizen-initiated proposed amendments, therefore, the General Assembly could not diminish citizens’ constitutional right of initiative by construing that requirement more strictly than the similar constitutional requirement applicable to the legislative right of initiative.

¶ 57} Based on the foregoing, the ballot board has a clear legal duty to liberally construe the right of initiative, and as long as the citizen-initiated proposed amendment bears some reasonable relationship to a single general object or purpose, the board must certify its approval of the amendment as written without dividing it into multiple petitions. Because the board did not comply with this duty here, where relators’ proposed constitutional amendment bears some reasonable relationship to their single general object or purpose of preserving freedom of choice in health care and health-care coverage, relators are entitled to the requested writ of mandamus.

Remaining Claims
¶ 58} As a result of the foregoing, relators' alternate claim, that the ballot board lacks constitutional authority to divide a citizen-initiated proposed amendment, need not be addressed because it is not absolutely necessary to do so. See State ex rel. Miller v. Brady, 123 Ohio St.3d 255, 2009-Ohio-4942, 915 N.E.2d 1183, ¶ 11; Smith v. Leis, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 54 ("courts decide constitutional issues only when absolutely necessary").

¶ 59} Moreover, relators' alternate claim for a writ of mandamus to compel the attorney general to certify their proposed constitutional amendment is moot.

Extension of the Constitutional Deadline to Submit Initiative Petition

¶ 60} In their complaint, relators requested that the court grant them an "extension of days by which Relators may continue to gather signatures, so as to atone for the delay associated * * * with [the] Secretary of State and Ohio Ballot Board's wrongful conduct." We deny this request for the following reasons.

¶ 61} First, although relators requested this relief in their complaint, they failed to include any argument in support of their request in their initial merit brief. Instead, they resuscitated their request only in their reply brief in response to the ballot board's extended argument in its brief that no extension of the constitutional deadline is warranted. Consequently, we need not address relators' request. See State ex rel. Glasgow v. Jones, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 26 (court need not address claim that was raised in complaint but was not specifically argued in merit brief); State ex rel. Colvin v. Brunner, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 61 (relators in election-related writ case are forbidden to raise issue in reply brief that was not raised in initial merit brief).

¶ 62} Second, although we have extended the constitutional deadline for referendum petitioners to submit a petition when the secretary of state has
improperly refused to accept a summary and has thereby precluded the petitioners from circulating the petition for signatures, see *LetOhioVote.org*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 7, 54, and *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 236-237, 631 N.E.2d 582, respondents have introduced evidence here that an extension of the deadline would impair the ability of the secretary and the boards of elections to comply with their constitutional and statutory duties regarding the initiative petition and would affect several additional constitutional and statutory deadlines before the November 2, 2010 election.

¶ 63 For example, an extension of the deadline here could result in no resolution of whether the proposed constitutional amendment should be placed on the November 2, 2010 election ballot until after the absentee-ballot deadline has passed.

¶ 64 Finally, the primary impetus of relators’ proposed constitutional amendment is the portion of the Patient Protection and Affordable Care Act that requires individuals to maintain minimum essential health-care coverage and penalizes them if they do not, but these provisions are not effective until 2014. Therefore, relators need not be awarded an extension of time to place this issue on the November 2, 2010 ballot when they could seek placement of this initiative on the 2011, 2012, or 2013 general-election ballot without prejudice to their proposal or a departure from the constitutional deadlines.

¶ 65 Therefore, we deny the request for an extension.

**Conclusion**

¶ 66 Relators have established their entitlement to the requested extraordinary relief in mandamus. Therefore, we grant a writ of mandamus to compel the ballot board to immediately certify its approval of relators’ proposed constitutional amendment, as drafted, to the attorney general as one amendment.
This result is consistent with our duty to liberally construe the citizens' right of
initiative in favor of their exercise of this important right.

Writ granted.

PFEIFER, ACTING C.J., and LUNDBERG STRATTON, O'CONNOR, LANZINGER,
and CUPP, JJ., concur.

O'DONNEILL, J., concurs and would have extended the deadline for
submitting initiative petitions.

The late CHIEF JUSTICE THOMAS J. MOYER did not participate in the
decision in this case.

1851 Center for Constitutional Law and Maurice A. Thompson; and
Robert M. Owens, for relators.

Richard Cordray, Attorney General, and Michael J. Schuler, Richard N.
Coglianese, and Aaron N. Epstein, Assistant Attorneys General, for respondents
Secretary of State and Ohio Ballot Board.

Richard Cordray, Attorney General, and Pearl M. Chin and Damian W.
Sikora, Assistant Attorneys General, for respondent Attorney General.
Per Curiam.

{¶ 1} This is an original action pursuant to the Ohio Constitution, Article XVI, Section 1 for a writ of mandamus compelling respondent Ohio Ballot Board, which includes respondent Secretary of State Jon Husted, to reconvene forthwith to replace ballot language previously adopted with ballot language that properly describes the proposed constitutional amendment. Because relators have established their entitlement to the requested extraordinary relief, we grant the writ.

Facts

Relators’ Proposed Amendment

{¶ 2} Relator Voters First is an unincorporated association of individuals responsible for the supervision, management, and organization of the signature-gathering effort to certify a proposed constitutional amendment to the November 6, 2012 general-election ballot and to support its passage by electors. The
remaining relators are Ohio resident-electors who comprise the committee designated to represent the petitioners of the proposed amendment pursuant to R.C. 3519.02.

\{¶ 3\} The proposed amendment would amend the Ohio Constitution, Article XI, Sections 1, 3, 4, 6, 7, 9, 10, and 13, repeal Article XI, Sections 8 and 14, and adopt Article XI, Section 16, to set forth new constitutional standards and requirements to establish federal congressional and state legislative district lines for Ohio. The proposed amendment would establish the Ohio Citizens Independent Redistricting Commission, consisting of 12 members, to be chosen as follows. First, eligible persons would apply to the secretary of state for membership on the commission. Proposed Article XI, Section 1(C)(4). The chief justice of the Supreme Court would select by lot a panel of eight court of appeals judges, no more than four of whom may be of the same political party. Proposed Article XI, Section 1(C)(3). The panel would choose 42 persons from the applicants eligible for membership on the commission, consisting of three different 14-person pools, two from each of the two largest political parties and one from neither party. Proposed Article XI, Section 1(C)(5). The speaker of the Ohio House of Representatives and the highest ranking member of the house who is not of the same political party as the speaker would then be permitted to eliminate up to three persons from each of the three pools before the panel of judges selects nine commission members by lot. Proposed Article XI, Sections 1(C)(6) and (7). These nine members will then select from the remaining pool three more members for a total of 12. Proposed Article XI, Section 1(C)(7).

\{¶ 4\} In addition, the General Assembly is required to “make appropriations necessary to adequately fund the activities of the Commission including, but not limited to, funds to compensate Commission members; pay for necessary staff, office space, experts, legal counsel and the independent auditor;
and purchase necessary supplies and equipment.” Proposed Article XI, Section 1(D).

¶ 5 Further, the proposed amendment provides that the commission’s meetings shall be open to the public, that its records, communications, and draft plans are generally public records, and that the commission shall provide a reasonable opportunity for the public to submit proposed redistricting plans for the commission’s consideration. Proposed Article XI, Sections 1(E), (F), and (H).

¶ 6 The commission shall establish the new legislative district boundaries by October 1 of the year before elections are to be held in the new districts. If the commission fails to act by that date, an action may be initiated in the Supreme Court of Ohio to adopt district boundaries, and this court shall select from the plans submitted to or considered by the commission and adopt the plan that most closely meets the applicable requirements. Proposed Article XI, Section 1(K).

¶ 7 If the proposed amendment is approved by the electorate, the commission will establish new district boundaries for Ohio’s state legislative and federal congressional districts. Those new boundaries will be used in the next regularly scheduled state and federal elections held more than a year after the adoption of the amendment. These boundaries, or the ones selected by this court, shall not be changed until the ensuing federal decennial census unless declared invalid by this court or a federal court. Proposed Article XI, Section 6.

¶ 8 Under the proposed constitutional amendment, the commission shall adopt the redistricting plan that, in its judgment, most closely meets the specified factors of community preservation, competitiveness, representational fairness, and compactness, without violating applicable state and federal constitutional provisions, federal statutory provisions, and the requirement that each district shall be composed of contiguous territory. Proposed Article XI, Section 7(A), (B), and (C). In addition, the commission must consider and make
publicly available with each proposed redistricting plan a report that identifies for each district the boundaries, population, racial and ethnic composition, compactness measure, governmental units that are divided, and political party indexes. Proposed Article XI, Section 7(D). No plan shall be drawn or adopted with the intent to favor or disfavor a political party, incumbent, or potential candidate. Proposed Article XI, Section 7(E). The legislative districts cannot contain a population less than 98 percent or greater than 102 percent of the ratio of representation. Proposed Article XI, Sections 3 and 4.

¶ 9 Finally, the proposed amendment vests exclusive, original jurisdiction in the Supreme Court of Ohio in all cases arising under Article XI, requires the commission to establish new boundaries should any districts be determined to be invalid either by this court or a federal court, and, when necessary, requires courts to establish district boundaries by selecting the plan that most closely meets the pertinent requirements among the plans submitted to and considered by the commission. Proposed Article XI, Section 13(A), (B), and (C).

Respondents’ Actions on Relators’ Proposed Constitutional Amendment

¶ 10 On August 6, 2012, respondent Secretary of State Husted certified that relators’ petition proposing the amendment contained sufficient valid signatures to satisfy the requirements of Article II, Sections 1a and 1g of the Ohio Constitution and stated that the proposed amendment would be submitted to the electors of the state for their approval or rejection at the November 6, 2012 general election. The secretary later announced that a meeting of respondent Ohio Ballot Board would be held to consider and certify ballot language for the proposed amendment.

¶ 11 On August 15, the ballot board met to certify ballot language for the proposed amendment. Relators and Protect Your Vote Ohio, a committee organized to oppose the proposed amendment, appeared and offered competing
versions of proposed ballot language. The secretary of state’s staff also submitted its version of proposed ballot language. Protect Your Vote Ohio ultimately withdrew its proposal and supported the secretary’s proposed ballot language, with additional suggested language, including a statement that the proposed amendment would change the standards and requirements for drawing state legislative and federal congressional districts. During the meeting, the secretary of state stated that he “would have liked to have placed the entire text as it was written by the proponents on the ballot,” but he did not do so because “it would have doubled the cost for someone to send a mail-in ballot back and it would have doubled the cost of sending the initial ballot out to the voter.” Instead, the secretary asked his staff to draft “summary language that was brief and would do the best job possible of neutrally or generically describing the issue.”

¶ 12 After a couple of modifications, including adding Protect Your Vote Ohio’s suggested statement that the proposed amendment would “[c]hange the standards and requirements in the Constitution for drawing legislative and congressional districts,” the board voted 3 to 2 to adopt language prepared by the secretary of state’s staff.

¶ 13 The board’s approved ballot language provides:

**Issue 2**

**[TITLE HERE]**

**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 as follows: four affiliated with the largest political party, four affiliated with the second largest political party and four not affiliated with either of the two largest political parties. Affirmative votes of 7 of 12 members are needed to select a plan.

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. 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. Change the standards and requirements in the Constitution for drawing legislative and congressional districts.

5. Mandate the General Assembly to appropriate all funds as determined by the Commission including, but not be limited to, compensating:
   1. Staff
   2. Consultants
   3. Legal counsel
   4. Commission members
January Term, 2012

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

SHALL THE AMENDMENT BE APPROVED?

YES

NO

(Boldface sic.)

Original Action

¶ 14 Eight days after the ballot board’s approval of the secretary’s proposed language, on August 23, relators filed this original action pursuant to the Ohio Constitution, Article XVI, Section 1 for a writ of mandamus to find that the approved ballot language is invalid and to compel the board and the secretary of state to reconvene forthwith to adopt ballot language that properly describes the proposed constitutional amendment for the November 6, 2012 general election. Respondents filed an answer, and the parties submitted evidence and briefs pursuant to the accelerated schedule for expedited-election cases in S.Ct.Prac.R. 10.9.

¶ 15 This cause is now before the court for our consideration.

Analysis

Laches

¶ 16 We initially reject the ballot board’s and the secretary of state’s claim that this action is barred by laches. “Laches may bar an action for relief in an election-related matter if the persons seeking this relief fail to act with the requisite diligence.” Smith v. Scioto Cty. Bd. of Elections, 123 Ohio St.3d 467, 2009-Ohio-5866, 918 N.E.2d 131, ¶ 11.

¶ 17 Relators’ filing of this action eight days after the August 15 ballot board decision approving the language they challenge was reasonable under the
circumstances. Relators needed time to research and prepare their legal challenge to ballot language that they had not seen before the August 15 hearing.

¶ 18 In addition, relators filed this action in advance of the constitutional deadline of 64 days before the election. See Ohio Constitution, Article XVI, Section 1.

¶ 19 Moreover, the ballot board’s and the secretary of state’s ability to prepare and defend against relators’ mandamus claim has not been affected by relators’ minimal delay. See State ex rel. Owens v. Brunner, 125 Ohio St.3d 130, 2010-Ohio-1374, 926 N.E.2d 617, ¶ 20. And respondents’ evidence does not establish that any absentee-ballot deadline would have passed by the time briefing in this case was completed. Nor is there evidence that the brief delay in filing this case was intentionally engineered by relators to obtain a strategic advantage. Id. at ¶ 22.

¶ 20 Finally, the cases cited by the ballot board and the secretary of state do not dictate a finding of laches here. They are either cases in which the court held that laches did not bar the writ action, see Owens, State ex rel. Craig v. Scioto Cty. Bd. of Elections, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, and State ex rel. Willke v. Tafiri, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, or involved significantly lengthier delays that resulted in prejudice, see, e.g., Smith, 123 Ohio St.3d 467, 2009-Ohio-5866, 918 N.E.2d 131 (laches barred postelection challenge to allegedly misleading petition and ballot language for special election on a proposed amendment to the city charter, where challengers were aware of or should have been aware of the ballot language long before the special election); State ex rel. Fishman v. Lucas Cty. Bd. of Elections, 116 Ohio St.3d 19, 2007-Ohio-5583, 876 N.E.2d 517 (laches barred prohibition claim to prevent placement of candidate’s name on ballot when relator filed protest 16 days after candidate’s nominating petition was filed and filed expedited election case 38 days after board denied his protest).
{¶ 21} Therefore, laches does not bar our consideration of relators’ mandamus claim. This result is consistent with the “fundamental tenet of judicial review in Ohio”—“that courts should decide cases on their merits.” *State ex rel. Becker v. Eastlake*, 93 Ohio St.3d 502, 505, 756 N.E.2d 1228 (2001).

*Mandamus*

{¶ 22} Relators request a writ of mandamus invalidating the ballot language adopted by the ballot board, including the secretary of state, and to compel the board to reconvene forthwith to adopt ballot language that properly describes the proposed constitutional amendment. To be entitled to the requested extraordinary relief, relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of the board to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Lucas Cty. Republican Party Executive Comm. v. Brunner*, 125 Ohio St.3d 427, 2010-Ohio-1873, 928 N.E.2d 1072, ¶ 9. Because of the proximity of the November 6 general election, relators lack an adequate remedy in the ordinary course of law to challenge the ballot language adopted by the ballot board. See *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

{¶ 23} For the remaining requirements of clear legal right and clear legal duty, 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. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, ¶ 30.

*Pertinent Constitutional and Statutory Provisions*

{¶ 24} In determining the applicable duties imposed on the ballot board, we must review the pertinent constitutional and statutory provisions. Under the Ohio Constitution, Article II, Section 1g, the ballot board’s language must comply
with the Article XVI, Section 1 requirements for issues proposed by the General Assembly. In turn, Article XVI, Section 1 provides that the Ohio Ballot Board shall prescribe the ballot language for proposed constitutional amendments, that the ballot language "shall properly identify the substance of the proposal to be voted upon," and that the ballot "need not contain the full text nor a condensed text of the proposal." R.C. 3505.062(B) similarly imposes a duty on the ballot board to "[p]lease describe 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." See also R.C. 3505.06(E). The Ohio Constitution, Article XVI, Section 1 vests this court with "exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors."

{¶ 25} The question to be decided by this court is not whether the amendment proposed by relators should become part of the Ohio Constitution. See State ex rel. Foreman v. Brown, 10 Ohio St.2d 139, 151-152, 226 N.E.2d 116 (1967). Nor is it pertinent "whether the members of this court might have used different words to describe the language used in the proposed amendment, but, rather, whether the language adopted by the ballot board properly describes the proposed amendment." State ex rel. Bailey v. Celebrazza, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 (1981).

{¶ 26} Under Article XVI, Section 1, the sole issue is whether the board's approved ballot language "is such as to mislead, deceive, or defraud the voters." In Bailey, at 519, we adopted the following three-part test for evaluating the propriety of ballot language for a proposed constitutional amendment:

First, a voter has the right to know what it is he is being asked to vote upon. State, ex rel. Burton, v. Greater Portsmouth Growth Corp. (1966), 7 Ohio St.2d 34, 37[, 218 N.E.2d 446].
Second, use of language which is "‘in the nature of a persuasive argument in favor of or against the issue * * *’" is prohibited. *Beck v. Cincinnati* (1955), 162 Ohio St. 473, 474-475[, 124 N.E.2d 120]. And, third, “the determinative issue * * * is whether the cumulative effect of these technical defects [in ballot language] is harmless or fatal to the validity of the ballot.” *State, ex rel. Williams, v. Brown* (1977), 52 Ohio St.2d 13, 19[, 368 N.E.2d 838]; *State, ex rel. Commrs. of the Sinking Fund, v. Brown* (1957), 167 Ohio St. 71[, 146 N.E.2d 287].


*Application of the Test to Relators’ Claims:*

*Material Omissions*

{¶ 27} Relators challenge several aspects of the ballot language approved by the board. They first contend that the board’s ballot language contains several material omissions: the commission’s name, the selection process for commission members, the criteria for adopting redistricting plans, and provisions for an open redistricting process.

{¶ 28} The ballot board and the secretary of state initially contend that “ballot language is designed to communicate the substance of the proposed amendment in condensed terms” and that “omissions are necessary to the process of condensing the text of the proposed amendment.” Respondents’ contention suggests that the board had a duty to provide a condensed version of the proposed constitutional amendment, but this contention lacks merit. Both the constitutional and statutory provisions permit the inclusion of either the full text or a condensed text of the proposed constitutional amendment on the ballot. Ohio Constitution,
Article XVI, Section 1 ("The ballot need not contain the full text nor a condensed text of the proposal"); R.C. 3505.06(E).

{¶ 29} "In 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.'" Bailey, 67 Ohio St.2d at 519, 426 N.E.2d 493, quoting Markus v. Trumbull Cty. Bd. of Elections, 22 Ohio St.2d 197, 259 N.E.2d 501 (1970), paragraph four of the syllabus. "In the larger community, in many instances, the only real knowledge a voter obtains on the issue for which he is voting comes when he enters the polling place and reads the description of the proposed issue set forth on the ballot." Schnoerr v. Miller, 2 Ohio St.2d 121, 125, 206 N.E.2d 902 (1965). The ballot language "‘ought to be free from any misleading tendency, whether of amplification, or omission.’" Markus at 203, quoting the trial judge’s decision therein; see also State ex rel. Miller Diversified Holdings, L.L.C. v. Wood Cty. Bd. of Elections, 123 Ohio St.3d 260, 2009-Ohio-4980, 915 N.E.2d 1187, ¶ 25 (noting in an extraordinary-writ case challenging a zoning-amendment summary on a referendum petition that if the summary is misleading or inaccurate or contains material omissions that would confuse the average person, the petition is invalid and may not form the basis for submission to a vote).

{¶ 30} Therefore, if, as here, the ballot board approves a condensed text of the proposed constitutional amendment, any omitted substance of the proposal must not be material, i.e., its absence must not affect the fairness or accuracy of the text. See State ex rel. Minus v. Brown, 30 Ohio St.2d 75, 81, 283 N.E.2d 131 (1972) ("R.C. 3505.06 serves to inform and protect the voter and presupposes a condensed text which is fair, honest, clear and complete, and from which no essential part of the proposed amendment is omitted").
{¶ 31} We conclude that the ballot language approved by the board omits material provisions concerning the commission-member selection process and the commission’s criteria for redistricting.

{¶ 32} For the selection process for the commission members, the board’s approved language states that the proposed amendment would:

2. Create a state funded commission of appointed officials from a limited pool of applicants to replace the aforementioned [elected representatives]. The Commission will consist of 12 members as follows: four affiliated with the largest political party, four affiliated with the second largest political party and four not affiliated with either of the two largest political parties. Affirmative votes of 7 of 12 members are needed to select a plan.

{¶ 33} The board’s approved ballot language includes one salient point concerning the selection process—that the proposal calls for a 12-member commission that is politically balanced in its composition, with four members from each of the two largest political parties and the remaining four members not affiliated with those political parties.

{¶ 34} But the approved ballot language says nothing about who will be selecting the commission members. It is axiomatic that “[w]ho does the appointing is just as important as who is appointed.” Abel, A Right to Counsel in Civil Cases: Lessons from Gideon v. Wainwright, 15 Temp.Pol. & Civ.Rts.L.Rev. 527, 545 (2006); Fitzpatrick, The Politics of Merit Selection, 74 Mo.L.Rev. 675 (2009) (opining that merit-selection system for judges relying on state bar associations and lawyers may not necessarily be any less political than electing them or having elected officials appoint them). There is a vast difference between, for example, conferring the authority to select commission members on
one elected official and authorizing a bipartisan panel of individuals to perform the selection. Without any description of this process even in the most general terms, the ballot language leaves voters to speculate about who selects the commission members.

¶ 35 In this regard, even the ballot language originally submitted by Protect Your Vote Ohio, the committee opposed to relators’ proposed amendment, specified that the selection process includes “appellate court judges.”

¶ 36 And notwithstanding respondents’ argument to the contrary, relators’ submitted ballot language contains a detailed summation of the selection process proposed by the amendment.

¶ 37 By not including, at a minimum, who would be selecting the commission members, the ballot board’s ballot language fails to properly identify one of the key elements of the proposed constitutional amendment.

¶ 38 The ballot language is similarly deficient because it does not state what criteria the commission will use in drawing federal and state legislative districts. A key part of the proposed amendment specifies that the commission must adopt the 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. Proposed Article XI, Section 7(A), (B), and (C). And the commission must also not draw or adopt a plan with an intent to favor or disfavor a political party, incumbent, or potential candidate. Id. at Section 7(E).

¶ 39 Instead of specifying any of the pertinent criteria that the commission must follow in redistricting, the ballot language merely states that if approved, the proposed constitutional amendment would “[c]hange the standards and requirements in the Constitution for drawing legislative and congressional districts.”
¶ 40 The board’s ballot language thus states very generally that the proposed amendment would change the constitutional standards and requirements for creating federal and state legislative districts in Ohio without describing those changes or the pertinent redistricting criteria.

¶ 41 Because this subject matter strikes at the very core of the proposed amendment, the board’s condensed ballot statement does not fairly and accurately present the issue to be decided so as “to assure a free, intelligent and informed vote by the average citizen affected.” Bailey, 67 Ohio St.2d at 519, 426 N.E.2d 493, quoting Markus v. Trumbull Cty. Bd. of Elections, 22 Ohio St.2d 197, 259 N.E.2d 501, paragraph four of the syllabus. This defect is comparable to a referendum petition summarizing a resolution rezoning property as a change in the zoning on the property without specifying the precise nature of the change. See State ex rel. Gemienhardt v. Delaware Cty. Bd. of Elections, 109 Ohio St.3d 212, 2006-Ohio-1666, 846 N.E.2d 1223, ¶ 57 (referendum-petition summary of township zoning-amendment resolution “was inaccurate and contained material omissions that could have misled or confused petition signers about the precise nature and effect” of the resolution); State ex rel. Brown v. Butler Cty. Bd. of Elections, 109 Ohio St.3d 63, 2006-Ohio-1292, 846 N.E.2d 8, ¶ 32 (referendum petition summary of township zoning-amendment resolution complied with statutory requirement because it “adequately informed electors of the precise nature of the zoning change”). We can require no less in construing the constitutional and statutory requirements applicable to ballot-language cases for proposed statewide constitutional amendments, which have a greater effect on the people of this state than local zoning amendments.

¶ 42 The ballot board and the secretary of state argue that the criteria to be used by the commission in redistricting “are already part of Ohio law and will not be changed by the proposed amendment” and that “including any changes to the standards would have little to no meaning unless the ballot language also
included a full list of the current standards.” This argument, however, concedes that the proposed constitutional amendment does, in fact, include changes to the current standards and requirements for federal congressional redistricting and state legislative apportionment. At a minimum, the ballot summary could have included language that the proposed amendment would change the existing redistricting and reapportionment standards by, for example, maximizing the number of politically balanced districts, balancing the number of districts leaning towards each political party, specifying that no plan shall be drawn with intent to favor or disfavor a political party, incumbent, or potential candidate, and reducing the permissible population deviation from the ratio of representation for legislative districts. See Proposed Article XI, Sections 7(C)(2) and (C)(3), 7(E), and Section 3.

{¶ 43} By omitting the substantive criteria for redistricting that would be applied by the commission, the ballot language approved by the board fails to adequately inform the average voter of the precise nature of the proposed constitutional amendment.

{¶ 44} We reject relators’ remaining claims of material omissions concerning the commission’s name and the provisions for an open redistricting process because we are not persuaded that the omission of these items prevents voters from knowing the substance of the proposal being voted upon or misleads, deceives, or defrauds voters.

{¶ 45} Therefore, in response to relators’ initial contentions, we find that the board’s ballot language for relators’ proposed constitutional amendment does not properly identify the substance of the proposed constitutional amendment because it does not state who selects the commission members and it fails to specify any of the pertinent criteria that the commission will apply in adopting federal and state legislative districts.
Application of the Test to Relators' Claims:

Inaccurate and Prejudicial Language

¶ 46 Relators next claim that the ballot language adopted by the ballot board is defective because it contains inaccurate and prejudicial language concerning the commission-member selection process, commission funding, and challenges to legislative districts.

¶ 47 We agree with relators' contention regarding the language approved by the ballot board in paragraph five of its summary, which states that the proposed amendment would "[m]andate the General Assembly to appropriate all funds as determined by the Commission." That statement is inaccurate and prejudicial because it indicates that the General Assembly must appropriate all funds to the commission without qualification.

¶ 48 The actual text of the proposed constitutional amendment does not state that the redistricting commission would have—as the ballot board's language indicates—a blank check for all funds as determined by the commission. Rather, the proposed constitutional amendment expressly limits appropriations for the commission to those "necessary to adequately fund the activities" of the commission. Even the language proposed by the group opposing relators' amendment included the limitation that the General Assembly would "provide any and all funds necessary to finance operations of the commission." (Emphasis added.) In essence, the omission in the ballot's board's condensed ballot language of the qualifying limitations on commission funding is in the nature of a persuasive argument against its adoption. "[E]ffective arguments can be made [in proposed ballot language] as easily by what is said as by what is left unsaid, or implied." Bailey, 67 Ohio St.2d at 520, 426 N.E.2d 493.

¶ 49 In fact, there is no indication or argument that the proposed constitutional amendment represents a departure from the state's appropriations for either the federal redistricting presently done by the General Assembly or the
state reapportionment currently accomplished by the Ohio Apportionment Board. Moreover, the subject of funding of the commission in the proposed constitutional amendment is not a major part of the proposal, comprising only two sentences appearing in over 20 new paragraphs, yet it appears in two of the five paragraphs in the ballot board’s approved condensed ballot language.

{¶ 50} Respondents counter that the funding provision must be important to the proposed amendment because relators’ argument in this case focuses on the issue. But respondents are wrong—the only reason that relators focus on this issue is because respondents did (and inaccurately at that) in the ballot language they approved.

{¶ 51} Thus, the secretary’s ballot language, adopted by the ballot board, both inaccurately states that under the amendment, the General Assembly would have a duty to “appropriate all funds as determined by the Commission” without mentioning the “necessary” and “adequate[]” qualifications contained in the proposed amendment and erroneously implies that the amendment’s funding provision is a material departure from the funding provisions for the entities currently responsible for redistricting and reapportionment in Ohio.

{¶ 52} On balance, if this were the only defect in the board’s ballot language, the court may have been inclined to permit the language to stand. But because we have also determined that the ballot language contains material omissions, the board should remedy this error by either removing the commission-funding provisions completely or adding the limitations specified in the text of the proposed amendment.

{¶ 53} We find no merit in relators’ remaining contentions concerning the board’s use of the word “consultants” in lieu of “experts,” its use of the terms “elected representatives” and “appointed officials” in describing the change to the commission, and its language concerning challenges to the adopted legislative districts.
{¶ 54} Therefore, for relators' second set of contentions, they have established that the ballot board's commission-funding provision is inaccurate and prejudicially misleading.

**Conclusion**

{¶ 55} Based on the foregoing, relators have established that the ballot board’s condensed ballot language for the proposed redistricting amendment is defective in three ways: (1) it materially omits who selects the commission members, (2) it materially omits the criteria used by the commission to adopt new legislative districts, and (3) it inaccurately states that the General Assembly must appropriate all funds as determined by the commission. This factual inaccuracy and the material omissions deprive voters of the right to know what it is they are being asked to vote upon, and the factual inaccuracy concerning the funding of the commission is in the nature of a persuasive argument against the proposed amendment.

{¶ 56} The cumulative effect of these defects in the ballot language is fatal to the validity of the ballot because it fails to properly identify the substance of the amendment, a failure that misleads voters.

{¶ 57} We find lacking in merit respondents’ claim that the inclusion of the full text of the proposed amendment in each polling place and in newspapers, see R.C. 3505.06(E) and 3505.062(G), renders any error in the ballot language harmless. The lone case respondents cite for this proposition, *State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 368 N.E.2d 838 (1977), emphasized that the ballot challenged in that case “contains the actual text of the proposed amendment, not merely a condensed text.” *Id.* at 19. That is not the case here. Furthermore, as relators note, voters cannot leave their voting booth to read the full text of the proposed amendment and then return to cast their vote. As noted previously, for many voters, their only knowledge of the proposed constitutional
amendment comes from the ballot language. *Schnoerr*, 2 Ohio St.2d at 125, 206 N.E.2d 902.

¶ 58 Therefore, for all of the foregoing reasons, the ballot board’s approved ballot language is invalid. While we do not suggest that either the board or the secretary was motivated by anything other than honorable intentions in approving the ballot language or that they intended to mislead voters, the language has the effect of misleading. We thus grant the writ of mandamus to compel the ballot board, including the secretary of state, to reconvene forthwith and adopt ballot language that properly describes the proposed constitutional amendment so that it may appear on ballot for the November 6, 2012 general election. See *Bailey*, 67 Ohio St.2d at 520, 426 N.E.2d 493.

Writ granted.

O’CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O’DONNELL, CUPP,
and McGEE BROWN, JJ., concur.

LANZINGER, J., dissents.

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O’CONNOR, C.J., concurring.

¶ 59 I concur in the judgment and opinion granting the writ of mandamus to compel the Ohio Ballot Board to reconvene forthwith to replace its previously adopted ballot language for State Issue 2 with language that properly describes the proposed constitutional amendment. I write separately, however, to respond to Justice Pfeifer’s suggestion in his concurring opinion that we should usurp the ballot board’s exclusive constitutional authority to craft the ballot language for the proposed constitutional amendment. To do so would violate the doctrine of separation of powers, the Ohio Constitution, and our precedent.

¶ 60 “The first, and defining, principle of a free constitutional government is the separation of powers.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 39. “While Ohio, unlike other jurisdictions,
does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158-159, 503 N.E.2d 136 (1986); *State ex rel. Cydrus v. Ohio Pub. Empls. Retirement Sys.*, 127 Ohio St.3d 257, 2010-Ohio-5770, 938 N.E.2d 1028, ¶ 2. “The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments * * *.'” *Bodyke* at ¶ 44, quoting *State ex rel. Bryant v. Akron Metro. Park Dist. of Summit Cty.*, 120 Ohio St. 464, 473, 166 N.E. 407 (1929).

{¶ 61} The Ohio Constitution, Article XVI, Section 1 vests exclusive jurisdiction to prescribe the ballot language for proposed constitutional amendments in the Ohio Ballot Board, which consists of the secretary of state and “four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party.” Under R.C. 3505.061(A), “[o]ne of the members [of the ballot board] shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house of representatives, and one shall be appointed by the minority leader of the house of representatives.”

{¶ 62} Although that same constitutional section vests this court with exclusive, original jurisdiction in all cases challenging the ballot language prescribed by the ballot board, it limits our authority to a determination of whether the contested language is invalid. *See* Ohio Constitution, Article XVI, Section 1 (“The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters”). 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. See State ex rel. State v. Lewis, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195, ¶ 34 (when the Supreme Court declares an act of the legislative branch of government to be unconstitutional, the judiciary’s role in the matter is complete).

¶ 63 Consistent with the plain language of the Ohio Constitution, Article XVI, Section 1, once this court has exercised its jurisdiction by determining that the language prescribed by the ballot board is invalid, our authority over the matter ends, and it is up to the ballot board to exercise its exclusive constitutional authority to adopt ballot language that properly describes the proposed constitutional amendment. This practice is consistent with our precedent. For example, in State ex rel. Bailey v. Celebrezze, 67 Ohio St.2d 516, 520, 426 N.E.2d 493 (1981), once we held that the ballot board’s language for a proposed constitutional amendment was invalid, we granted a writ of mandamus to order the board to reconvene, forthwith, to adopt ballot language that properly described the proposed constitutional amendment so that it could appear on the general-election ballot. Therefore, as dictated by the doctrine of separation of powers and by the Ohio Constitution, Article XVI, Section 1 and our precedent construing it, we lack jurisdiction to infringe upon the ballot board’s exclusive constitutional authority to prescribe the appropriate ballot language after this court’s determination that it is invalid.

LUNDBERG STRATTON and MCGEE BROWN, JJ., concur in the foregoing opinion.

PFEIFER, J., concurring.

¶ 64 I concur in the judgment granting relators’ request for a writ of mandamus, but write separately to suggest ballot language that would “‘assure a free, intelligent and informed vote by the average citizen affected.’” State ex rel. Bailey v. Celebrezze, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 (1981), quoting
Markus v. Trumbull Cty. Bd. of Elections, 22 Ohio St.2d 197, 259 N.E.2d 501 (1970), paragraph four of the syllabus. Given the proximity of the applicable deadlines for boards of elections to have absentee ballots printed and ready to use, it is appropriate for this court to provide specific guidance to the ballot board regarding ballot language.

The Ballot Board Language

Paragraph One

¶ 65 Paragraph one of the board's language uses terminology—"elected representatives" and "appointed officials" that, while perhaps not inherently false, strays toward editorial commentary. In adopting that language, the ballot board appears to place its thumb on the scales in favor of one side of the issue. Specifically identifying the institutions currently entrusted with federal congressional redistricting and state legislative reapportionment would better inform voters of the substance of the change of the proposed amendment. Including the name of the commission that would be adopted if the voters approve the measure would also enhance voters' understanding of the proposal.

Paragraph Two

¶ 66 In regard to paragraph two of the ballot language, I disagree with the majority that the particulars of the selection process need to be included. Adding the complex, multilayered details of the commission-member selection process, including a reference to the duties of the chief justice and the court of appeals judges, would not significantly add to voters' knowledge of the proposal. The commission's second paragraph sufficiently explains the key point—the end product of the selection process is a commission that is effectively politically neutral, composed of four Republicans, four Democrats, and four independents. Judicial involvement in the selection process is not material to understanding the central import of the amendment.
Paragraph Four

¶ 67 I agree with the majority that the ballot board’s approved language in paragraph four completely fails to inform the average voter of the preeminent part of the amendment—the criteria required for the commission to draw district lines. This is the guts of the proposal and adds significant new requirements to the drawing of district lines.

Paragraph Five

¶ 68 I concur in the majority’s conclusion regarding paragraph five that by not including the qualifying language for commission funding, the ballot board’s language is inaccurate and misleading. New language should include the limitations specified in the actual text of the amendment—“appropriations necessary to adequately fund the activities of the Commission.”

New Ballot Language

¶ 69 By expressly suggesting to the ballot board appropriate language that could be adopted, we would prevent any further delays concerning this matter that might prejudicially affect the right to intelligently vote on this important issue. In my view, the following language would properly summarize the substance of the relators’ proposed amendment:

Issue 2

[TITLE HERE]
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 the General Assembly in federal congressional redistricting and the authority of the Ohio Apportionment Board in state legislative reapportionment and grant new authority to draw the boundaries of congressional and state legislative district lines to an appointed commission to be known as the Ohio Citizens Independent Redistricting Commission.

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 as follows: four affiliated with the largest political party, four affiliated with the second largest political party, and four not affiliated with either of the two largest political parties. Affirmative votes of 7 of 12 members are needed to select a plan.

3. Require that 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. In the event the commission is not able to determine a plan by October 1, the Ohio Supreme Court would adopt a plan from all the plans submitted to the commission.

4. Change the standards and requirements in the Constitution for drawing state legislative and federal congressional districts by requiring that no plan shall be drawn or adopted with intent to favor or disfavor a political party, incumbent, or potential candidate and requiring that the commission adopt the redistricting
plan that most closely meets the factors of community preservation (minimizing the number of governmental units that must be divided between different districts), competitiveness (maximizing the number of politically balanced districts), representational fairness (balancing the number of districts leaning toward each political party so that the number of districts leaning toward each party closely corresponds to the preferences of the voters of Ohio), and compactness (creating districts that are compact). No plan shall be adopted that does not comply with all applicable state and federal constitutional provisions and all applicable federal statutory provisions and the requirement that each district shall be composed of contiguous territory.

5. Mandate the General Assembly to make appropriations necessary to adequately fund the activities of the commission.

If approved, the amendment will be effective 30 days after the election.

YES
NO
SHALL THE AMENDMENT BE APPROVED?

LANZINGER, J., dissenting.

¶ 70 I respectfully dissent. The Ohio Constitution, Article XVI, Section 1 creates a high standard for declaring ballot language invalid:

The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal.
* * * The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

(Emphasis added.)

¶ 71 The ballot language summarizes and identifies the substance of the proposal, and

the test for determining the validity of proposed ballot language is not whether the members of this court might have used different words to describe the language used in the proposed amendment, but, rather, whether the language adopted by the ballot board properly describes the proposed amendment.


¶ 72 The majority identifies what it considers to be three flaws in the ballot language approved by the Ohio Ballot Board: the omission of any mention of who appoints the new commission, the omission of standards to be used by the new commission in its redistricting, and the omission of the limitation on the commission’s funding to that which is necessary for its activities. But these omissions do not make the ballot summary itself false. The proposed change would give reapportionment authority to appointed members rather than to current elected members. The standards for the reapportionment process are not spelled out, but it is noted that they would be changed. And finally, the ballot language states that the General Assembly would fund the commission.

¶ 73 The varying opinions of the justices show that there are different interpretations of what must be included in a summary, suggesting that to avoid
these concerns, the entire text of the proposed amendment should be placed on the ballot. But this is not what the constitution requires. Although I might have written a different summary in light of the arguments made, I cannot say that these purported flaws rise to the level of misleading, deceiving, or defrauding the voters. Nor do I believe that this court should rewrite the ballot summary, as one of the concurring justices suggests.

¶ 74 I would hold the omissions to be harmless because the summary properly identifies the substance of the proposal, and I would therefore deny the writ.

McTigue & McGinnis, L.L.C., Donald J. McTigue, Mark A. McGinnis, and J. Corey Colombo, for relators.

Michael DeWine, Attorney General, and Richard N. Coglianese, Sarah E. Pierce, and Michael J. Schuler, Assistant Attorneys General, for respondents.
NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2015-OHIO-3758

THE STATE EX REL. RESPONSIBLE OHIO ET AL. V. OHIO BALLOT BOARD ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Responsible Ohio v. Ohio Ballot Bd., Slip Opinion No. 2015-Ohio-3758.]

Mandamus—Elections—Proposed constitutional amendment—Ballot language and ballot title challenged as misleading—Writ granted to compel members of Ballot Board to reconvene forthwith and adopt language that properly describes proposed amendment—Writ denied as to ballot title.

(No. 2015-1411—Submitted September 16, 2015—Decided September 16, 2015.)

IN MANDAMUS.

Per Curiam.

¶ 1 This is an original action for writs of mandamus compelling respondent the Ohio Ballot Board to reconvene forthwith to replace ballot language drafted and approved to accompany State Issue 3 on the November 2015 ballot. We grant a writ with respect to the four specific paragraphs of the ballot
language discussed below. Relators, the signature-gathering organization ResponsibleOhio and others, also seek a writ of mandamus against Ohio Secretary of State Jon Husted, in connection with Issue 3’s ballot title, which we deny.

Discussion

¶ 2 Issue 3 is a proposed constitutional amendment to Article XV of the Ohio Constitution. The amendment would add a new section 12, which its sponsors have entitled “Legalization, Regulation and Taxation of Medical and Personal Use of Marijuana.” The complete text runs in excess of 11 single-spaced pages. Among other things, the amendment legalizes the use of medical marijuana for debilitating medical conditions (Section 12(B)), authorizes licensed persons to home-grow marijuana (Section 12(D)), legalizes the possession and personal use of up to one ounce of marijuana (Section 12(D)), authorizes growth and extraction facilities at ten designated locations in Ohio (Section 12(F)), creates the Ohio Marijuana Control Commission to regulate the industry (Section 12(I)), and provides for taxation of the industry (Section 12(E)).

¶ 3 On August 18, 2015, the Ballot Board, by a three-to-two vote, adopted ballot language for Issue 3. On August 25, 2015, Husted issued the ballot title. Two days later, on August 27, 2015, relators commenced this action for a writ of mandamus.

Laches

¶ 4 At the outset, we find that relators acted reasonably promptly to bring this action, and we therefore reject the proposed defense of laches. State ex rel. Voters First v. Ohio Ballot Bd., 133 Ohio St.3d 257, 2012-Ohio-4149, 978 N.E.2d 119, ¶ 16-17.

Analysis of the proposed ballot language

¶ 5 This court may not declare the Ballot Board’s approved ballot language invalid “unless it is such as to mislead, deceive, or defraud the voters.” Article XVI, Section 1, Ohio Constitution; Voters First at ¶ 26. Upon review, we
hold that the ballot language for Issue 3 is misleading in only four critical respects.

{¶ 6} First, Section 12(J)(1) of the proposed amendment prohibits marijuana establishments within 1,000 feet of a house of worship, public library, public or chartered elementary or secondary school, state-licensed day-care center, or public playground, subject to a grandfather clause: after a certain date, a new day-care, library, etc., cannot force a preexisting marijuana establishment to relocate by opening a new location within 1,000 feet of the business. According to the ballot language, instead of prohibiting marijuana establishments within 1,000 feet of churches, playgrounds, and so forth, the amendment would permit them to be within 1,000 feet of such places.

{¶ 7} Second, the ballot language informs voters that the amendment would permit any person age 21 or older to grow and transport over one-half-pound of marijuana plus four flowering marijuana plants. These are not accurate representations of the amendment. Under the amendment, growing up to eight ounces of marijuana plus four flowering marijuana plants is permitted only by persons holding valid state licenses, and even those persons are not permitted to transport the marijuana.

{¶ 8} Third, the ballot language is misleading because it omits two critical facts concerning retail establishments selling marijuana and marijuana-infused products: (1) that such retail establishments must have a state license and (2) that a license may be obtained only if the electors of the precinct where the store will be located approve the use of the location for such purpose at a local option election, which means local residents can veto the operation of such a business in their neighborhood.

{¶ 9} Fourth, the ballot language is misleading because it informs voters that after four years, an additional marijuana growth, cultivation, and extraction
facility may be allowed, but it does not explain that an additional growth facility can open only if existing facilities cannot meet consumer demand.

\[ \text{¶ 10} \] Based on the foregoing, relators have established that the Ballot Board’s ballot language inaccurately states pertinent information and omits essential information. The cumulative effect of these defects in the ballot language is fatal because the ballot language fails to properly identify the substance of the amendment, a failure that misleads voters.

\[ \text{¶ 11} \] We thus grant a writ of mandamus to compel the members of the Ballot Board to reconvene forthwith and adopt language in these four paragraphs that properly describes the proposed constitutional amendment, so that it may appear on the ballot for the November 3, 2015 general election.

**The ballot title**

\[ \text{¶ 12} \] A ballot 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. Husted’s ballot title is not “inaccurate, incorrect, or illegal,” “confusing, misleading, or argumentative,” or persuasive in nature. *Jurecisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 141-142, 519 N.E.2d 347 (1988). We therefore deny a writ of mandamus as to the title.

\[ \text{¶ 13} \] Due to the short time remaining to finalize ballots, the court will entertain no additional motions in this case.

Writ granted in part
and denied in part,
and writ denied.

O’CONNOR, C.J., and PFEIFER, KENNEDY, and FRENCH, JJ., concur.

LANZINGER, J., concurs in judgment only.

O’NEILL, J., concurs in part and dissents in part and would grant the writs as to Secretary Husted and the Ballot Board and direct them to adopt the neutral,
factually correct language as approved by Michael DeWine, the Attorney General of Ohio.

O’DONNELL, J., dissents and would deny the writs.


Michael DeWine, Attorney General, and Zachery P. Keller, Jordan S. Berman, and Ryan L. Richardson, Assistant Attorneys General, for respondents.

Taft, Stettinius & Hollister, L.L.P., John B. Nalbandian, and W. Stuart Dornette, urging granting of the writ for amici curiae Frank E. Wood and DGF, L.L.C.


Chad A. Endsley, Leah F. Curtis, and Amy M. Milam, urging denial of the writ for amicus curiae Ohio Farm Bureau Federation.

Vorys, Sater, Seymour & Pease, L.L.P., Elizabeth T. Smith, John J. Kulewicz, William A. Sieck, and Adam M. Rusnak, urging denial of the writ for amici curiae National Federation of Independent Businesses—Ohio, Ohio Chamber of Commerce, Ohio Children’s Hospital Association, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers Association, and Ohioans to End Prohibition.