

Case No. 2023-0388

Supreme Court of the State of Ohio

STATE OF OHIO *ex rel.* MARGARET DeBLASE, *et al.*,

Relators,

v.

OHIO BALLOT BOARD, *et al.*,

Respondents.

Original Action in Mandamus

RELATORS' MERIT BRIEF

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

INTRODUCTION..... 1

STATEMENT OF FACTS..... 2

The Process for Amending the Ohio Constitution by Initiative Petition 2

The Initiative Petition Seeking to Amend the Ohio Constitution 4

LAW AND ARGUMENT 7

PROPOSITION OF LAW No. 1: 7

The Ohio Supreme Court has original jurisdiction to issue a writ of mandamus.

PROPOSITION OF LAW No. 2: 7

Mandamus issues upon establishment of: (i) a clear legal right to the requested relief; (ii) a clear legal duty on the part of respondents to provide it; and (iii) the lack of an adequate remedy in the ordinary course of the law.

PROPOSITION OF LAW No. 3: 7

To establish the requisite clear legal right and a clear legal duty for issuance of a writ of mandamus in the context of actions by the Ohio Ballot Board as part the initiative-petition process, a relator must demonstrate that the Ohio Ballot Board engaged in fraud, corruption, an abuse of discretion, or acted in clear disregard of applicable legal provisions.

PROPOSITION OF LAW No. 4: 9

A public body abuses its discretion when it makes a determination of an issue but fails to undertake any substantive inquiry, assessment, analysis, or discussion, let alone fails to provide any rational explanation upon which its determination is based.

PROPOSITION OF LAW No. 5: 11

In order to not mislead the voters and in order to prevent logrolling, each initiative petition seeking to amend the Ohio Constitution must contain only one proposed constitutional amendment.

PROPOSITION OF LAW No. 6: 13

An act that has been recognized as being “inherently different” and a “unique act” cannot *ipso facto* relate to the same general object or purpose of other acts.

PROPOSITION OF LAW No. 7:	13
As abortion has been recognized as being “inherently different” and a “unique act”, “abortion” (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) does not and cannot relate to the same general object or purpose of other acts involving the undefined concept of “one’s own reproductive decisions” but which includes, without limitation, “contraception”, “fertility treatment”, and “miscarriage care”.	
PROPOSITION OF LAW No. 8:	16
Declaring a new constitutional right through broad and generalized language is not of the same general object or purpose of a self-executing constitutional provision enacting detailed legislation.	
PROPOSITION OF LAW No. 9:	18
Because there is no statutory right to appeal from the determination of the Ohio Ballot Board on the separate-petition requirement of R.C. 3505.062(A), those challenging such determination lack an adequate remedy ordinary course of law and, thus, may seek review through mandamus.	
CONCLUSION	19
Certificate of Service	21
Appendix	22

TABLE OF AUTHORITIES

Case Citations

Aetna Better Health, Inc. v. Colbert,
2012-Ohio-6206 (10th Dist.)..... 9

Aponte v. Holder,
610 F.3d 1 (1st Cir. 2010) 10

Atwood v. Newmont Gold Co.,
45 F.3d 1317 (9th Cir. 1994)..... 10

Cleveland v. State,
157 Ohio St.3d 330, 136 N.E.3d 466, 2019-Ohio-3820..... 16

Dobbs v. Jackson Women's Health Org.,
597 U.S. __, 142 S. Ct. 2228 (2022) 15

Erickson v. Morrison,
165 Ohio St. 3d 76, 176 N.E.3d 1, 2021-Ohio-746..... 17

Falls Church Med. Ctr., LLC v. Oliver,
412 F. Supp. 3d 668 (E.D. Va. 2019)..... 15

Figueroa v. Astrue,
848 F. Supp. 2d 894 (N.D. Ill. 2012) 11

In re G.B.,
2019-Ohio-236 (2d Dist.)..... 9

James v. Jacobson,
6 F.3d 233 (4th Cir. 1993)..... 11

Onwuamaegbu v. Gonzales,
470 F.3d 405 (1st Cir. 2006) 10

Pitcher v. Lakes Amusement Co.,
236 N.W.2d 333 (Iowa 1975)..... 16

Planned Parenthood v. Casey,
505 U.S. 833 (1992) 1, 14

Roe v. Wade,
410 U.S. 113 (1973) 1, 14

State v. Chase,
2015-Ohio-545 (2d Dist.)..... 10

State v. Gonzales,
150 Ohio St. 3d 276, 81 N.E.3d 419, 2017-Ohio-777..... 14

State ex rel. Beane v. Dayton,
112 Ohio St. 3d 553, 862 N.E.2d 97, 2007-Ohio-811..... 18

<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 288, 915 N.E.2d 1215, 2009-Ohio-5327.....	7-8
<i>State ex rel. La Prade v. Cox</i> , 43 Ariz. 174, 30 P.2d 825 (1934).....	16
<i>State ex rel. Morgan v. State Teachers Retirement Bd. of Ohio</i> , 121 Ohio St.3d 324, 904 N.E.2d 506, 2009-Ohio-591.....	18
<i>State ex rel. National City Bank v. Board of Ed. of the Cleveland City School Dist.</i> , 52 Ohio St.2d 81, 369 N.E.2d 1200 (1977).....	7
<i>State ex rel. Ohio Liberty Council v. Brunner</i> , 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845.....	<i>passim</i>
<i>State ex rel. Ohioans for Secure & Fair Elections v. LaRose</i> , 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459.....	8, 18
<i>State ex rel. Painter v. Brunner</i> , 128 Ohio St. 3d 17, 941 N.E.2d 782, 2011-Ohio-35.....	19
<i>State ex rel. Waters v. Spaeth</i> , 131 Ohio St.3d 55, 960 N.E.2d 452, 2012-Ohio-69.....	7
<i>State ex rel. Willke v. Hamilton Cty. Bd. of Comm'rs</i> , 90 Ohio St.3d 55, 734 N.E.2d 811, 2000-Ohio-13.....	7
<i>State ex rel. Willke v. Taft</i> , 107 Ohio St.3d 1, 836 N.E.2d 536, 2005-Ohio-5303.....	<i>passim</i>
<i>Yeldell v. Cooper Green Hosp.</i> , 956 F.2d 1056 (11th Cir. 1992).....	17
<u>State Constitution</u>	
<i>Ohio Constitution</i> , art. II, sec. 1	2
<i>Ohio Constitution</i> , art. II, sec. 1a	2
<i>Ohio Constitution</i> , art. XVI, sec. 1.....	11
<u>State Statutes</u>	
R.C. 3505.062(A).....	<i>passim</i>
R.C. 3519.01(A).....	<i>passim</i>
<u>Dictionary</u>	
Oxford English Dictionary (Clarendon Press, 1978 reprint).....	1

INTRODUCTION

unique: **1.** Of which there is only one; one and no other; single sole, solitary.
2. That is or forms the only of its kind; having no like or equal; standing alone in comparison with others,...; unequalled, unparalleled, unrivaled.

different: **1.** Having characters or qualities which diverge from one another; having unlike or distinguishing attributes; not of the same kind; not alike; of other nature, form, or quality.

– Oxford English Dictionary (Clarendon Press, 1978 reprint)

This original action calls upon this Court to correct the legal error of the OHIO BALLOT BOARD and its members who failed to consider or appreciate that when a certain act is “inherently different” and “unique”, that act cannot be of the same general object or purpose of other acts and, instead, must be considered and treated as separate and distinct. Simply stated, as abortion has already been recognized by the U.S. Supreme Court as being “inherently different”, *Roe v. Wade*, 410 U.S. 113, 159 (1973), and a “unique act”, *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), then, *a fortiori*, “abortion” (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) cannot relate to a singular object or purpose under the umbrella of “one’s own reproductive decisions” when such decisions are declared to also include other acts including, though without limitation, “contraception”, “fertility treatment”, or “miscarriage care”.

Because state law mandates that any initiative petition seeking to propose a constitutional amendment to the Ohio Constitution must contain “only one proposed...constitutional amendment”, R.C. 3505.062(A), so that any proposal must relate “to a single general object or purpose”, *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 836 N.E.2d 536, 2005-Ohio-5303 ¶34 (quoting *State ex rel. Roahrig v. Brown*, 30 Ohio St.2d 82, 84, 282 N.E.2d 584 (1972)), the OHIO BALLOT BOARD and its members abused their discretion and/or clearly disregard the

law itself, when, with no inquiry, assessment, analysis, or discussion, they summarily concluded that the “inherently different” and “unique act” of abortion (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) were related to a singular object or purpose under the umbrella of “one’s own reproductive decisions” even though the scope of such concept is ill-defined (or not defined) but simply declared to include, though without limitation, “contraception”, “fertility treatment”, or “miscarriage care”.¹ But simply stated, that which is “inherently different” or a “unique act” cannot *ipso facto* relate to the same general object or purpose of other acts.

In order to ensure compliance with state law, as well as to rectify the failure of the members of the OHIO BALLOT BOARD to exercise any discretion whatsoever, mandamus is appropriate to ensure compliance with the legal requirement under state law that an initiative petition contain “only one proposed constitutional amendment”.

STATEMENT OF FACTS

The Process for Amending the Ohio Constitution by Initiative Petition.

Pursuant to Article II, Sections 1 & 1a of the Ohio Constitution, the people of the State of Ohio reserved unto themselves the power to proposed amendments to the Ohio Constitution through an initiative petition process. Pursuant to R.C. 3519.01(A), those seeking to propose a constitutional amendment by initiative petition must, initially by a written preliminary initiative petition containing the signature of at least 1,000 registered voters in the State of Ohio, submit

¹ It is noteworthy that, in light of engaging in no inquiry, assessment, analysis, or discussion whatsoever on the issue, the OHIO BALLOT BOARD and its members failed to consider or assess what might fall within the ambit of “one’s own reproductive decision” as used in the proposed constitutional amendment before it. Without considering what is actually meant and intended by the proposed constitutional amendment, the OHIO BALLOT BOARD and its members simply and summarily concluded it proposed “only one proposed constitutional amendment” as that phrase is used R.C. 3505.062(A).

the proposed amendment and a summary thereof to the Ohio Attorney General. Upon receipt of the foregoing preliminary initiative petition, the Ohio Attorney General conducts an examination of the summary contained on the preliminary initiative petition in order to determine whether the summary is a fair and truthful statement of the proposed constitutional amendment. R.C. 3519.01(A).

If the Ohio Attorney General determines that the summary contained on the preliminary initiative petition is a fair and truthful statement of the proposed constitutional amendment, he then certifies such determination and forwards the petition to the OHIO BALLOT BOARD. R.C. 3519.01(A). Upon receipt of a preliminary initiative petition from the Ohio Attorney General, the OHIO BALLOT BOARD is then tasked to make a legal determination of “whether it contains only one proposed ... constitutional amendment so as to enable the voters to vote on a proposal separately.” R.C. 3505.062(A).

If the OHIO BALLOT BOARD determines that a preliminary initiative petition contains only one proposed constitutional amendment, it shall certify its approval thereof to the Ohio Attorney General. R.C. 3505.062(A). If, on the other hand, it makes the legal determination that a preliminary initiative petition contains more than one proposed constitutional amendment, the OHIO BALLOT BOARD is legally mandated to divide the petition into individual petitions each containing only one proposed constitutional amendment and, in turn, to certify its approval of each individual petition to the Ohio Attorney General. R.C. 3505.062(A). In the latter scenario, the petitioners advancing the initiative petition are then required to submit to the Ohio Attorney General appropriate summaries for each of the individual petitions arising from the BOARD’s division of the initiative petition for review. At this stage, petitioners may begin to circulate the petitions. R.C. 3505.062(A).

The Initiative Petition Seeking to Amend the Ohio Constitution

On February 21, 2023, a *Preliminary Initiative Petition* seeking to propose an amendment to the Ohio Constitution entitled as “The Right to Reproductive Freedom with Protections for Health and Safety Amendment”, together with a summary thereof, was presented to the Ohio Attorney General. *Stipulation of Facts ¶5*. In its entirety, the proposed constitutional amendment reads as follows:

Article I, Section 22. The Right to Reproductive Freedom with Protections for Health and Safety

A. Every individual has a right to make and carry out one’s own reproductive decisions, including but not limited to decisions on:

1. contraception;
2. fertility treatment;
3. continuing one’s own pregnancy;
4. miscarriage care; and
5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

1. An individual’s voluntary exercise of this right or
2. A person or entity that assists an individual exercising this right,

unless the State demonstrates that it is using the least restrictive means to advance the individual’s health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient’s treating physician it is necessary to protect the pregnant patient’s life or health.

C. As used in this Section:

1. “Fetal viability” means “the point in a pregnancy when, in the professional judgment of the pregnant patient’s treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis.”
2. “State” includes any governmental entity and any political subdivision.

D. This Section is self-executing.

Stipulation of Facts ¶6 and Exhibit A (StipExh 001 to 003). On March 2, 2023, Ohio Attorney General David Yost certified that the summary contained within the *Preliminary Initiative*

Petition was a fair and truthful statement of the proposed constitutional amendment. *Stipulation of Facts ¶¶7 & 8 and Exhibit B (StipExh 004 to 006)*.

Then on March 13, 2023, the OHIO BALLOT BOARD held a meeting for the purpose of considering, pursuant to R.C. 3505.062(A), whether the *Preliminary Initiative Petition* contained but a single proposed constitutional amendment. *Stipulation of Facts ¶9; see Stipulation of Facts ¶10 and Exhibit C (StipExh 007)*. At that meeting, Relator JOHN GIROUX spoke against the misleading aspect of the proposed constitutional amendment being considered as a single proposed amendment, as the real purpose of the proposal concerns abortion but that the proposal attempts to bootstrap, under the rubric of “reproductive decisions”, other matters such as contraception, miscarriage care, etc. *Stipulation of Facts ¶13 & Exhibit E, at StipExh 017 to 018*.

As for the actual consideration of the legal standard vis-à-vis the proposed constitutional amendment within the *Preliminary Initiative Petition*, the following ensued at the meeting:

CHAIRMAN LAROSE: All right, seeing [no other persons seeking to make comments], any discussion by Members of the Ballot Board?

(No response.)

CHAIRMAN LAROSE: If not, then I make a motion. I will move that the initiative petition contains one proposed constitutional amendment. Again, my motion is that this initiative petition contains one proposed constitutional amendment. Is there a second?

MEMBER HICKS-HUDSON: Second.

CHAIRMAN LAROSE: Seconded by Senator Paula Hicks-Hudson. Again, any discussion?

Stipulation of Facts ¶13 & Exhibit E, at StipExh 019. The only comment by any member of the OHIO BALLOT BOARD that occurred was by Respondent THERESA GAVARONE who simply wanted her personal opposition to abortion to be stated and noted for the record. *See Stipulation of Facts ¶13 & Exhibit E, at StipExh 019 to 020*.

The Chairman afforded one final opportunity for the members of the OHIO BALLOT BOARD to actually consider whether the proposed constitutional amendment put forth in the *Preliminary Initiative Petition* was limited to one proposed constitutional amendment. Instead, no inquiry, assessment, analysis, or discussion whatsoever ensued amongst the members of the OHIO BALLOT BOARD on the actual legal issue before them:

CHAIRMAN LAROSE: Other members of the Ballot Board care to comment?

(No Response.)

CHAIRMAN LAROSE: All right, seeing none, my motion again is that I move that the initiative petition contains one proposed constitutional amendment. It was seconded by Senator Paul Hicks-Hudson. At this time, Jeff, please call the roll.

Stipulation of Facts ¶13 & Exhibit E, at StipExh 020. By a 5-to-0 vote, the OHIO BALLOT BOARD made the legal determination that the proposed constitutional amendment put forth in the *Preliminary Initiative Petition* was limited to one proposed constitutional amendment. *Stipulation of Facts ¶13 & Exhibit E, at StipExh 020.* This decision was, in turn, certified back to the Ohio Attorney General later that same day. *Stipulation of Facts ¶¶15 & 16 and Exhibit F (StipExh 023).*

Recognizing the legal error of the OHIO BALLOT BOARD and its members, as well as their failure to exercise any discretion whatsoever, Relators MARGARET DEBLASE and JOHN GIROUX, resident electors of Montgomery County and Hamilton County, respectively, commenced the present mandamus action to compel enforcement of the legal duties of the OHIO BALLOT BOARD and their members, pursuant to R.C. 3505.062(A), to divide all initiative petitions that seek to propose more than one constitutional amendment into individual petitions and, in particular, to do so with respect to the proposal within the *Preliminary Initiative Petition*.

LAW AND ARGUMENT

PROPOSITION OF LAW No. 1:

The Ohio Supreme Court has original jurisdiction to issue a writ of mandamus.

“Original jurisdiction is conferred on this court in mandamus actions by Section 2(B)(1)(b) of Article IV of the Constitution of Ohio.” *State ex rel. National City Bank v. Board of Ed. of the Cleveland City School Dist.*, 52 Ohio St.2d 81, 86, 369 N.E.2d 1200 (1977); accord *State ex rel. Willke v. Hamilton Cty. Bd. of Comm’rs*, 90 Ohio St.3d 55, 59, 734 N.E.2d 811, 2000-Ohio-13 (“[u]nder Section 2(B)(1)(b), Article IV of the Ohio Constitution, the Supreme Court of Ohio has original jurisdiction in mandamus actions”).

PROPOSITION OF LAW No. 2:

Mandamus issues upon establishment of: (i) a clear legal right to the requested relief; (ii) a clear legal duty on the part of respondents to provide it; and (iii) the lack of an adequate remedy in the ordinary course of the law.

The standard for issuance of a writ of mandamus is well-established: to be entitled to a writ of mandamus, a relator must establish: (i) a clear legal right to the requested relief; (ii) a clear legal duty on the part of respondents to provide it; and (iii) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 960 N.E.2d 452, 2012-Ohio-69 ¶6.

PROPOSITION OF LAW No. 3:

To establish the requisite clear legal right and a clear legal duty for issuance of a writ of mandamus in the context of actions by the Ohio Ballot Board as part the initiative-petition process, a relator must demonstrate that the Ohio Ballot Board engaged in fraud, corruption, an abuse of discretion, or acted in clear disregard of applicable legal provisions.

“In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or

acted in clear disregard of applicable legal provisions.” *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 915 N.E.2d 1215, 2009-Ohio-5327 ¶9 (quoting *Whitman v. Hamilton Cty. Bd. of Elec.*, 97 Ohio St.3d 216, 778 N.E.2d 32, 2002-Ohio-5923 ¶11). “This standard also applies when evaluating a ballot-board decision to divide a proposed constitutional amendment into separate ballot measures.” *State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶14; accord *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶30 (“[t]his standard is also appropriate for gauging the propriety of the ballot board’s determination here”).

Thus, in the specific context of a challenge to the determination of the OHIO BALLOT BOARD as to whether one proposed constitutional amendment *vel non* is being proposed by an initiative petition, “[f]or the...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 or clearly disregarded applicable law.” *Ohioans for Secure & Fair Elections*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶66 (Kennedy, J., concurring); accord *Ohio Liberty Council*, 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶30.

In the present case involving the determination of the OHIO BALLOT BOARD under R.C. 3505.062(A) concerning the proposed constitutional amendment within the *Preliminary Initiative Petition*, Relators do not maintain the existence of fraud or corruption. Instead, Relators maintain that, in making its legal determination that the proposed constitutional amendment within the *Preliminary Initiative Petition* only contained one proposed amendment: (i) the OHIO BALLOT BOARD and its members engaged in an abuse of discretion when they summarily made that determination with no inquiry, assessment, analysis, or discussion whatsoever with regard to the content of the proposed constitutional amendment and the legal

question before them; and (ii) the OHIO BALLOT BOARD and its members acted in clear disregard of applicable the legal provision, *i.e.*, R.C. 3505.062(A), that mandates that only one amendment may be proposed by an initiative petition and that, because the proposed constitutional amendment within the *Preliminary Initiative Petition* seeks to proposed more than one amendment, the OHIO BALLOT BOARD had the legal duty to divide the *Petition* into individual petitions with each containing only one proposed constitutional amendment.

PROPOSITION OF LAW No. 4:

A public body abuses its discretion when it makes a determination of an issue but fails to undertake any substantive inquiry, assessment, analysis, or discussion, let alone fails to provide any rational explanation upon which its determination is based.

Because the members of the OHIO BALLOT BOARD engaged in no substantive inquiry, assessment, analysis, or discussion of the proposed constitutional amendment at its hearing on March 13, 2023, the only thing they can now offer are *post hoc* efforts to justify and rationalize their action. Thus, separate and distinct from the issue of whether the OHIO BALLOT BOARD and its members acted in clear disregard of the law is issue of whether they abused their discretion in arriving at the determination that the proposed constitutional amendment contained “only one proposed constitutional amendment”.

Most often, a decision or determination “constitutes an abuse of discretion because it is unreasonable, with an unreasonable judgment being one where there is ‘no reasoning process’ supporting the judgment.” *In re G.B.*, 2019-Ohio-236 ¶19 (2d Dist.); *accord Aetna Better Health, Inc. v. Colbert*, 2012-Ohio-6206 ¶21 (10th Dist.) (“[i]t is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. A decision is unreasonable if there is no sound reasoning process that would support that decision”).

In this case, the members of the OHIO BALLOT BOARD engaged in no inquiry, assessment, analysis, or discussion whatsoever with regard to the proposed constitutional amendment within the *Preliminary Initiative Petition* and, specifically, whether it truly sought to propose but a single constitutional amendment. Instead, the disposition thereof was done in a summary and perfunctory manner. The lack of any explanation as to how the members of the OHIO BALLOT BOARD actually arrived at the determination they made on March 13, 2023, demonstrates, in and of itself, an abuse of discretion. In fact, “[a]n inadequate explanation...constitutes an abuse of discretion.” *Aponte v. Holder*, 610 F.3d 1, 4 (1st Cir. 2010); see *Onwuamaegbu v. Gonzales*, 470 F.3d 405, 412 (1st Cir. 2006)(“cursory, summary or conclusory statements from the Board leave us to presume nothing other than an abuse of discretion” (quoting *Ke Zhen Zhao v. United States DOJ*, 265 F.3d 83, 97 (2d Cir. 2001)); see also *Atwood v. Newmont Gold Co.*, 45 F.3d 1317, 1323 (9th Cir. 1994)(“[i]t is an abuse of discretion for an ERISA plan administrator to make a decision without any explanation”); *State v. Chase*, 2015-Ohio-545 ¶18 (2d Dist.)(“it is not possible to determine if the decision is reasonable without some explanation of the reason or reasons for that decision”).

The lack of any inquiry, assessment, analysis, or discussion by the members of the OHIO BALLOT BOARD when making their decision on March 13, 2023, with respect to the critical legal issue before, *i.e.*, whether the proposed constitutional amendment in the *Preliminary Initiative Petition* actually contained “only one proposed constitutional amendment”, clearly rises to the level of constituting an abuse of discretion on the part of the OHIO BALLOT BOARD and its members. In order for any determination by the OHIO BALLOT BOARD and its members to have reason and logic, the record of proceedings by which such a determination was made needs to establish, or at least support, some basic rationale for that determination; a

post facto effort only after challenged in litigation does not suffice. In this case, there is a complete dearth of such support in the record of proceedings. “[I]n all contexts, failure to exercise discretion...is, itself, an abuse of discretion.” *Figueroa v. Astrue*, 848 F. Supp. 2d 894, 900 (N.D. Ill. 2012); *see James v. Jacobson*, 6 F.3d 233, 239 (4th Cir. 1993)(noting that a failure to exercise discretion is itself an abuse of discretion). Thus, the OHIO BALLOT BOARD and its members have abused their discretion in making the determination that the proposed constitutional amendment within the *Preliminary Initiative Petition* contains only one amendment and, accordingly, mandamus should issue.

PROPOSITION OF LAW No. 5:

In order to not mislead the voters and in order to prevent logrolling, each initiative petition seeking to amend the Ohio Constitution must contain only one proposed constitutional amendment,.

In Ohio, voters have a constitutional and statutory right to consider only one proposed constitutional amendment separate and distinct from other proposed constitutional amendments. With respect to constitutional amendments proposed through an initiative petition, this right is provided for in R.C. 3519.01(A): “[o]nly 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.” And it is the legal duty of the OHIO BALLOT BOARD and its members to review preliminary initiative petitions to make a legal determination of “whether it contains only one proposed...constitutional amendment so as to enable the voters to vote on a proposal separately.” R.C. 3505.062(A).

Just like the separate-vote requirement mandated in Article XVI, Section 1 of the Ohio Constitution for legislatively-initiated constitutional amendments, the separate-petition requirement is not a mere formality. *See Ohio Liberty Council*, 125 Ohio St.3d 315, 928 N.E.2d

410, 2010-Ohio-1845 ¶41 (“[b]ecause 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”). Instead, the separate-vote and separate-petition requirements have:

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, 836 N.E.2d 536, 2005-Ohio-5303 ¶28 (quoting *Andrews v. Governor*, 294 Md. 285, 295, 449 A.2d 1144 (1982) and *Fugina v. Donovan*, 259 Minn. 35, 38, 104 N.W.2d 911 (1960)); accord *Ohio Liberty Council*, 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶52. In order to satisfy the requirement that a proposed constitutional amendment within an initiative petition must propose only one amendment, all of the subjects therein must have a commonality such that they relate “to a single general object or purpose.” *Willke*, 107 Ohio St.3d 1, 836 N.E.2d 536, 2005 Ohio 5303 ¶34 (quoting *Roahrig*, 30 Ohio St.2d at 84). The proposed constitutional amendment within the *Preliminary Initiative Petition* does not meet or satisfy this standard.

PROPOSITION OF LAW No. 6:

An act that has been recognized as being “inherently different” and a “unique act” cannot *ipso facto* relate to the same general object or purpose of other acts.

PROPOSITION OF LAW No. 7:

As abortion has been recognized as being “inherently different” and a “unique act”, “abortion” (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) does not and cannot relate to the same general object or purpose of other acts involving the undefined concept of “one’s own reproductive decisions” but which includes, without limitation, “contraception”, “fertility treatment”, and “miscarriage care”.

Because the members of the OHIO BALLOT BOARD engaged in no substantive inquiry, assessment, analysis, or discussion of the proposed constitutional amendment at the hearing on March 13, 2023, they failed to even consider the particular language of the proposal and what actually falls (or may fall) within the ambit of being “one’s own reproductive decisions”, both in terms of the acts specifically decreed as being “included but limited” thereto, as well as other acts not specifically delineated. Because the statutory mandate that an initiative petition must contained “only one proposed constitutional amendment” raises an issue of law, the determination by the OHIO BALLOT BOARD and its members is ultimately a legal question and, to make the wrong legal determination on the issue naturally constitutes an action in clear disregard of applicable legal provisions.

By including “abortion” and “continuing one’s own pregnancy” as being under the rubric of “one’s own reproductive decisions” and on par with “contraception”, “fertility treatment”, and “miscarriage care” (and whatever other rights are being established), the proposed constitutional amendment does not and cannot relate to a single general object or purpose, as “abortion” has specifically been recognized by the United States Supreme Court as an “inherently different” and

“unique act” (and the same logic applies to the synonymous concept of decisions regarding “continuing one’s own pregnancy”).²

The unique distinction or difference between all intimate personal decisions, including those relating to contraception, miscarriage care, *etc.*, on the one hand, and abortion or deciding on continuing one’s own pregnancy, on the other hand, has repeatedly been recognized and acknowledged by the United States Supreme Court. In the seminal case on abortion, the Supreme Court clearly recognized and acknowledged that abortion was unlike other act:

The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education....

Roe v. Wade, 410 U.S. 113, 159 (1973)(emphasis added and internal citation omitted).

Similarly, in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the United States Supreme Court acknowledged that, while “[o]ur law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education” and “the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act.” *Id.* at 851-52 (emphasis added).

And this distinct and the inherently different and unique status of abortion was recently reiterated by the United States Supreme Court:

² It is a well-established tenant of statutory construction (which is also applicable to constitutional construction) that effect should be given to every word, phrase, or sentence, so as to avoid interpretations that would otherwise render a provision redundant, meaningless, or superfluous. *E.g.*, *State v. Gonzales*, 150 Ohio St. 3d 276, 81 N.E.3d 419, 2017-Ohio-777 ¶47. However, as the proposed constitutional amendment addresses decisions concerning “abortion” and “continuing one’s own pregnancy” as separate and distinct, the PETITIONERS have never explained this distinction, though statutory construction indicates the terms should mean something different. Until the PETITIONERS explain the difference, though, Relators treat these terms as synonymous though doing so is not dispositive of the challenge to the action by the OHIO BALLOT BOARD and its members in clear disregard of law.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call “potential life” and what the law at issue in this case regards as the life of an “unborn human being.” See *Roe*, 410 U.S., at 159, 93 S. Ct. 705, 35 L. Ed. 2d 147 (abortion is “inherently different”); *Casey*, 505 U. S., at 852, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (abortion is “a unique act”).

Dobbs v. Jackson Women's Health Org., 597 U.S. __, __, 142 S. Ct. 2228, 2258 (2022) (emphasis added); see *Falls Church Med. Ctr., LLC v. Oliver*, 412 F. Supp. 3d 668, 673 (E.D. Va. 2019)(“[t]his Court is fully cognizant of the unique nature of the abortion right”).

Furthermore, even the PETITIONERS advancing the proposal implicitly acknowledge that abortion is “inherently different” and a “unique act” when compared to other matters that their proposal declares to be within the ambit of “one’s own reproductive decisions”. It is very telling that PETITIONERS carve out abortion and only abortion for special and unique treatment in Sections B, C and D of the proposed constitutional amendment wherein detailed legislation is set forth and then declared to be self-executing. If abortion was truly related to the same general object or purpose as contraception, miscarriage care, *etc.* (and whatever else might fall under the rubric of “one’s own reproductive decisions”), then there would be no need for the special legislation concerning abortion and only abortion.

Simply stated, that which has been recognized as being “inherently different” and a “unique act” cannot *ipso facto* relate to the same general object or purpose of other acts, including, without limitation, “contraception”, “fertility treatment”, and “miscarriage care”. As the constitutional amendment being proposed by the *Preliminary Initiative Petition* involves, as a matter of law, separate and distinct matters, *i.e.*, it does not address a single general object or purpose, the OHIO BALLOT BOARD and its members acted in clear disregard of the law when

they determined the contrary, *i.e.*, that the proposal only involved one proposed constitutional amendment. Accordingly, mandamus should issue.

PROPOSITION OF LAW No. 8:

Declaring a new constitutional right through broad and generalized language is not of the same general object or purpose of a self-executing constitutional provision enacting detailed legislation.

“[C]onstitutions are for the purpose of laying down broad general principles, and not the expression of minute details of law.” *State ex rel. La Prade v. Cox*, 43 Ariz. 174, 30 P.2d 825, 826-27 (1934); *see Pitcher v. Lakes Amusement Co.*, 236 N.W.2d 333, 335-36 (Iowa 1975) (“unlike statutes, our constitution sets broad general principles”). Thus, “[t]he purpose of our written Constitution is to define and limit the powers of government and secure the rights of the people.” *Cleveland v. State*, 157 Ohio St.3d 330, 136 N.E.3d 466, 2019-Ohio-3820 ¶16. Yet, the constitutional amendment proposed in the *Preliminary Initiative Petition* improperly attempts, on the one hand, to declare a new constitutional right through broad and generalized language but, then, on the other hand, attempts to engage in a detailed legislative enactment, including detailed definitions applicable thereto.

Regardless of whether “abortion” and “continuing one’s own pregnancy” is of the same general object or purpose as “contraception”, “fertility treatment”, and “miscarriage care” (and whatever other undefined rights are being granted in Section A of the proposed constitutional amendment under the rubric of “one’s own reproductive decisions”), the nature of the entire proposal itself clearly involves two separate and discrete purposes – one constitutional, the other legislative or statutory. Within Section A, the proposed constitutional amendment purports to create a new constitutional right which is consistent with the nature of a constitutional enactment. But, as noted above, Sections B, C and D of the proposed constitutional amendment

do not attempt to enact broad general principles but, instead, seeks to enact detailed, self-executing legislative provisions. Stated otherwise, Sections B, C and D engage in line-drawing solely with respect to “abortion” which is not limited to or constrained to an individual’s “own reproductive decisions” but also concerns the interest and rights of a third party, *i.e.*, the unborn child, and such activity is in the nature of legislative, not constitutional, enactment. *See Yeldell v. Cooper Green Hosp.*, 956 F.2d 1056, 1062-63 (11th Cir. 1992)(“legislation involves line-drawing” (quoting *Ryan v. Burlington Cty.*, 889 F.2d 1286, 1291 (3d Cir. 1989)); *Erickson v. Morrison*, 165 Ohio St. 3d 76, 176 N.E.3d 1, 2021-Ohio-746 ¶34 (“[i]t is the function of the General Assembly to balance such competing interests when enacting legislation”).

Clearly, the specific legislative enactment within the proposed constitutional amendment limited solely to abortion and the balancing of competing interests, *i.e.*, Sections B, C, and D, are not of the same general object or purpose as the creation of a broad constitutional right, *i.e.*, Section A. Thus, regardless of this Court’s consideration of “abortion” (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) being “inherently different” and a “unique act” from “contraception”, “miscarriage care”, *etc.*, the creation of a constitutional right and the enactment of specific legislation on a particular subject are not of the same general object or purpose. Accordingly, the OHIO BALLOT BOARD and its members also acted in clear disregard of the law when they determined the constitutional amendment being proposed by the *Preliminary Initiative Petition* only involved one proposed constitutional amendment. For this additional and independent reason, mandamus should issue.

PROPOSITION OF LAW No. 9:

Because there is no statutory right to appeal from the determination of the Ohio Ballot Board on the separate-petition requirement of R.C. 3505.062(A), those challenging such determination lack an adequate remedy ordinary course of law and, thus, may seek review through mandamus.

As for the remaining requirement for issuance of a writ of mandamus, *i.e.*, the lack of an adequate remedy in the ordinary course of the law, state law does not provide or afford any person challenging the determination of the OHIO BALLOT BOARD on the separate-petition requirement of R.C. 3505.062(A) with a statutory right to appeal or otherwise challenge such determination. *See State ex rel. Morgan v. State Teachers Retirement Bd. of Ohio*, 121 Ohio St.3d 324, 904 N.E.2d 506, 2009-Ohio-591 ¶20 (mandamus is an appropriate remedy to correct an abuse of discretion by a public board in a decision that is not appealable). In fact, in cases challenging the separate-petition determination of the OHIO BALLOT BOARD, the lack of a statutory right to appeal was sufficient to establish the lack of an adequate remedy in the ordinary course of law. *See Ohioans for Secure & Fair Elections*, 159 Ohio St. 3d 568, 152 N.E.3d 267, 2020-Ohio-1459 ¶15 (“Ohio-SAFE does not have an adequate remedy[] because there is no statutory right to appeal from a decision of the ballot board”).

Additionally, however, “[t]he alternate remedy must be complete, beneficial, and speedy in order to be an adequate remedy at law.” *State ex rel. Beane v. Dayton*, 112 Ohio St. 3d 553, 862 N.E.2d 97, 2007-Ohio-811 ¶31. Due to the timing requirements for initiative petitions to be placed on the ballot, this Court has also acknowledged previously that timing issues for initiative petitions also establish the lack of an adequate remedy in the ordinary course of law when challenges are brought as to the determination of the OHIO BALLOT BOARD on whether a preliminary initiative petition proposes one or more constitutional amendments. *See Ohio Liberty Council*, 125 Ohio St.3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶27 (“[b]ecause 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 also State ex rel. Painter v. Brunner*, 128 Ohio St. 3d 17, 941 N.E.2d 782, 2011-Ohio-35 ¶30 (“because of our recognition of mandamus as the appropriate remedy and the need to resolve this election dispute in a timely fashion, relators lack an adequate remedy in the ordinary course of the law”).

CONCLUSION

Based upon the foregoing, mandamus should issue against the OHIO BALLOT BOARD and its members as they abused their discretion and/or acted in clear disregard the law, when, with no inquiry, assessment, analysis, or discussion, they summarily concluded that: (i) the “inherently different” and “unique act” of “abortion” (and the synonymous concept of decisions regarding “continuing one’s own pregnancy”) were related to a singular object or purpose under the umbrella of “one’s own reproductive decisions” even though the scope of such concept is ill-defined (or not defined) but simply declared to include, though without limitation, “contraception”, “fertility treatment”, or “miscarriage care”; and (ii) determined that the creation of a broad, though ill-defined, constitutional right related to the same general subject or purpose of a detailed and specific legislative enactment involving line-drawing and balancing of interests on a singular and particular subject.

Accordingly, this Court should order the issuance of a writ of mandamus to compel the OHIO BALLOT BOARD and its members:

- (i) to vacate their decision and determination of March 13, 2023, that, with respect to the initiative petition purportedly seeking to propose an amendment to the Ohio Constitution entitled “The Right to Reproductive Freedom with Protections for Health and Safety,” said petition contains only one proposed constitutional amendment;

and, pursuant to R.C. 3505.062:

- (ii) to issue a determination that the foregoing initiative petition contains more than one proposed amendment to the Ohio Constitution;
- (iii) to divide the foregoing initiative petition into individual petitions, each containing only one proposed constitutional amendment; and
- (iv) to certify the approval of each of the individual petitions containing only one proposed constitutional amendment to the attorney general.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be served upon the following via e-mail on the 31st day of March 2023:

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APPENDIX

R.C. 3505.062(A)

R.C. 3519.01(A)

R.C. 3505.062(A):

The Ohio ballot board shall do all of the following:

(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.

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.

R.C. 3519.01(A):

(A) 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.

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.

Whenever the Ohio ballot board divides an initiative petition into individual petitions containing only proposed law or constitutional amendment under division (A) of section 3505.062 of the Revised Code resulting in the need for the petitioners to resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, the attorney general shall review the resubmitted summaries, within ten days after their receipt, to determine if they are a fair and truthful statement of the respective proposed laws or constitutional amendments and, if so, certify them. These resubmissions shall contain no new explanations or arguments. Then, the attorney general shall file with the secretary of state a verified copy of each of the proposed laws or constitutional amendments together with their respective summaries and the attorney general's certification of each.