



Coalition on Homelessness
and Housing in Ohio
COHHIO

July 3, 2008

Nancy Rogers
Ohio Attorney General
30 E. Broad St. 17th Floor
Columbus, Ohio 43215

Dear Attorney General Rogers:

I am writing once more to express serious concerns about the deceptive tactics employed by the Reject House Bill 545 Committee.

As you noted when rejecting the Committee's initial summary on its referendum petitions, Ohio law requires that a summary represent a fair and truthful statement characterizing the bill and its major effects.

The Committee has responded to your ruling by producing a new summary that is unfair and unclear and by launching a separate referendum that relies on a separate summary that is misleading and deceptive.

The Reject House Bill 545 Committee is now pursuing two referendums.

One would repeal Ohio's new payday lending reform statute in its entirety. The cornerstone of the reform law is a provision that caps at 28 percent APR that lenders can charge. The intent of the rate cap was to end the payday industry's practice of charging 391 percent APR on a typical two week loan. Voter approval of the referendum would result in lenders being permitted to continue to charge 391 percent APR.

The second referendum seeks to repeal just a portion of the reform law but its approval would also likely result in lenders being permitted to charge 391 percent APR on small-dollar loans.

After a lengthy review by our staff and by our attorneys, Bricker & Eckler, the Coalition on Homelessness and Housing in Ohio is respectfully asking you to reject both of these summaries. Our reasons are detailed below.

Referendum 1: Effort to Repeal all of House Bill 545

In a 1972 opinion, the Ohio Attorney General concluded that an appropriate summary must be a short and concise explanation of the proposal. The purpose of a summary is to provide an informative synopsis to individuals who are asked to sign the petitions that are needed to place a referendum before voters. For more information, see attached Confidential Memorandum from Bricker and Eckler.

The committee's latest effort is neither short nor concise, nor is it responsive to the guidance you provided to the Committee in your June 19th lettering rejecting its initial summary.

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Specifically, the latest summary should be rejected for the following reasons:

- It is not a summary; it is a soliloquy. It begins by listing seven provisions in the bill in bullet point form, then includes a 15-page technical bill analysis borrowed from the Legislative Services Commission. According to LSC, “Bill Analyses explain, in detail, the contents of each version of a bill as it advances through the legislative process.” The LSC analysis is useful for state legislators, their staff and attorneys, but is not helpful for voters who are seeking to learn more about a bill through a concise summary document.
- It fails to highlight the new rate cap. In your June 19 letter to the Reject HB 545 Committee, you rejected the earlier summary, in part, because it should have “state[d] that the interest rates for such loans are capped at 28%” and you called the rate cap “the most fundamental change that HB 545 brought about.”

The current summary’s only reference to this fundamental change is embedded in a table on pages 4-6 of the petitions. To understand the practical ramifications of the interest rate change, petition signers must look at the “maximum interest rate” and “maximum loan origination fees” rows of this table, calculate an allowable APR from the Check Cashing Lender Law provisions to figure out that it is a 391 percent APR on a typical two-week loan, then compare this with the Short-Term Lender Law provision of 28 percent APR.

This is asking far too much of the potential petition-signer. The Reject HB 545 Committee drafting this petition could easily provide this information – if it wanted to.

Until the Reject HB 545 Committee includes the reduction in allowable APR charged from 391 percent to 28 percent by HB 545 as one of the endeavor’s key components, it has not met the Attorney General’s standards for a “fair and truthful” statement. Indeed, since you have stated that the interest rate cap is the fundamental provision in HB 545, it should be among the first bullet points listed.

- It confuses voters by failing to use the term “payday loan.” While not directly addressed in your June 19th letter, we maintain that the terms “payday loan” and “payday advance loan” should be included in the summary, since these are the terms with which the general public is most familiar.
- It omits other pro-consumer provisions contained in the new law in its bullet point summary. It does not note that the reform law limits borrowers to four payday loans per year, reduces the maximum loan amount, bans the collection of treble damages and offers new protections against abusive debt collection practices.

Referendum 2: Effort to Repeal a Portion of the Reform Law:

Voter approval of this second referendum would have the same outcome as approval of the first: It apparently legalizes the 391 percent annual interest rates. By reading the summary, however, voters would not learn that lenders are attempting to undermine the 28 percent rate cap that is the cornerstone of the HB 545 reforms.

HB 545 repealed the Ohio Check-Cashing Lender Law. This law allowed payday lenders to typically charge 391 percent APR and exempts them from the state’s usury laws. If the second referendum is successful, the current payday-lending model would likely remain in effect and the industry could continue to gouge those in need of short-term cash.

Specifically, the summary should be rejected for the following reasons:

- The petition summary is not a fair and truthful statement because material information is omitted. The summary of a petition must be accurate, unambiguous and must not contain material omissions. The summary makes no mention that other provisions in the law are enacted to regulate these types of loans. See attached note on Material Omission for further explanation and case law citations.
- It misleads voters by not explaining the impact passage would have on the rate cap. As you correctly noted in your June 19 letter, the 28 percent rate cap is the most fundamental provision contained in the new law. The summary does not mention either the 28 percent rate cap or note that voter approval of this referendum would result in lenders being permitted to charge 391 percent APR.
- It confuses voters by failing to use the term “payday loan.” The terms “payday loan” and “payday advance loan” should be included in the summary, since these are the terms with which the general public is most familiar.

The payday loan industry knows that the 28 percent rate cap enjoys the same strong support from voters that it has enjoyed from legislators. Mindful of that support, the industry is now using high-priced lawyers and misleading language to mask its efforts to legalize 391 percent interest.

I urge you reject this greedy industry’s latest efforts deceive the hard-working people of Ohio.

Sincerely,



Bill Faith
Executive Director

Attachments:

Bricker and Eckler Confidential Memorandum
Note on Material Omission

cc: Sheryl Maxfield
Thomas Winters
Nadine Ballard



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CONFIDENTIAL MEMORANDUM

TO: Bill Faith
FROM: Maria Armstrong
Victoria Flinn
DATE: July 2, 2008
RE: Petition Summaries

This is in response to your request that we review the referendum petition filed June 25, 2008 seeking a referendum of House Bill 545. Specifically, you asked us to provide an analysis of the law related to the requirement for a summary provision for a state-wide referendum petition.

I. Statutory Background

Ohio Revised Code Section 3519.01 deals with requirements for initiative and referendum petitions. It states that in addition to the written petition, a summary of the petition must be submitted to the attorney general for examination. R.C. 3519.01 (B)(3). Section 3519.01 also states that “[i]f in the attorney general's opinion, the summary is a fair and truthful statement of the measure to be referred, so certify.” *Id.*

II. Case Law

In *State ex rel. Hubbell v. Bettman* (1931), 124 Ohio St. 24, 176 N.E. 664, the Ohio Supreme Court dismissed a petition and denied a writ of mandamus because the proffered summary “failed to comply with the spirit and purpose of the statute.” *Id.* at *6. Specifically, the summary in *Hubbell* contained approximately 4,900 words, while the text of the proposed amendment contained 4,800 words.

The court reasoned that “there would manifestly be no point to having a summary in addition to the text itself unless the summary is just what the definition of that term expresses, viz. ‘a short, concise summing up,’ which will *properly advise those who are asked to either sign the petition or to support the amendment at the polls of the character and of purpose the amendments without the necessity of perusing them at length.*” *Id.* at *6 (emphasis added).

Similarly, the Hamilton County Common Pleas Court discussed *Hubbell*, noting that “the summary...should not describe at length the character of the proposal to be submitted but should contain a short, concise,

succinct summing up reduced into a narrow compass.” *Seyler v. Clark* (1961), 175 N.E.2d 881 at *7 (quoting *Hubbell, supra*, syllabus two).

In *Markus et al. v. Trumbull County Board of Elections et al.* (1968), 19 Ohio Misc. 67, 250 N.E.2d 106, the Trumble County Common Pleas Court affirmed *Hubbell* and stated that “the summary of the issue involved on the referendum petitions and the condensed text on the ballot was insufficient, ambiguous and misleading to the average citizen who might be affected thereby.” *Id.* at 73.

III. Ohio Attorney General Opinions

The Ohio Attorney General has also found that an appropriate summary must be a short and concise summary of the proposal. In Ohio Attorney General Opinion No. 72-010 (1972), the summary of the proposed constitutional amendment did not contain a “fair and truthful statement” of the proposed amendment for two reasons. 1972 Ohio Atty.Gen.Ops. No. 72-010. First, it was a not a fair, accurate and clear summary of the amendment. *Id.* Second, it did not contain an explanation of the character and effect of the proposed amendment as required by Ohio Revised Code Section 3519.01. *Id.* The AG came to this conclusion after examining at length passages in *Hubbell*, *Trumbull* and *Seyler*, discussed *supra*, and making special mention of the clear and concise nature of a “summary.” *Id.*

Similarly, in Ohio Attorney General Opinion No. 850 (1939), the AG refused to certify a petition because the summary was “not a summary within the meaning of the legislative intent of [the General Code], as interpreted by the Supreme Court [in *Hubbell*].” 1939 Ohio Atty.Gen.Ops. No. 850. In this opinion, the AG quoted the aforementioned passages in *Hubbell* describing the appropriate definition of “summary.” *Id.* Moreover, the AG stated that the proffered summary “is written in almost the identical words of the proposed sections and is substantially of the same length.” *Id.* Accordingly, certification was denied.

IV. Conclusion

The summary accompanying an initiative or referendum petition must be a fair and truthful statement of the proposed law or constitutional amendment. The purpose of the summary is to provide a concise and informative synopsis so that individuals who are asked to sign the petition do not need to peruse the entire petition in order to understand it. If the summary is too lengthy, ambiguous, or misleading, the Attorney General and Ohio courts may find that the summary is not fair and truthful.

In *State ex rel. McCord v. Delaware Cty. Bd. of Elections* (2005), 106 Ohio St. 3d 346, 353, 2005 Ohio 4758, 835 N.E.2d 336, the Court concluded that “if the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and may not form the basis for submission to a vote.” *Id.* (quoting *State ex rel. Hamilton v. Clinton Cty. Bd. of Elections* (1993), 67 Ohio St.3d 556, 559, 621 N.E.2d 391). In this instance, the summary begins with a bullet-pointed “bill summary” followed by a lengthy analysis of HB 545.

The bullet-pointed “bill summary,” followed by a “table of contents,” could suggest to the average person that the entire summary is included on the first page of the petition. In other words, few individuals are likely to read beyond the “bill summary” or understand that additional “summary” is included in the table of contents and beyond.

The Attorney General’s June 19, 2008 denial of the first petition submitted by these petitioners cites several reasons for finding that the first petition was not fair and truthful. The Attorney General’s guidance regarding a failure to properly address “the most fundamental changes brought about by the bill” are seemingly not addressed in the “bill summary” portion of the petition. The average person could find that the bill summary on the first page is misleading; a confusion that may not be adequately corrected by the table of contents and narrative text that follow.

As such, the referendum petition form you asked us to review could also be considered unfair or untruthful. Moreover, it does not meet the requirements of ‘a short, concise summing up,’ required by Ohio case law.

Material Omission

It may be possible to argue that the petition summary is not a fair and truthful statement because material information is omitted. The summary of a petition must be accurate, unambiguous and must not contain material omissions. *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d 346, 354, 2005 Ohio 4758, 835 N.E.2d 336; *S.I. Dev. & Constr. v. Medina Cty. Bd. of Elections* (2003), 100 Ohio St.3d 272, 274, 2003 Ohio 5791, 798 N.E.2d 587. “If the summary is misleading, inaccurate, or contains material omissions which would confuse the average person, the petition is invalid and may not form the basis for submission to a vote.” *Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections* (1984), 12 Ohio St.3d 140, 141, 465 N.E.2d 883; *State ex rel. Hamilton v. Clinton Cty. Bd. of Elections* (1993), 67 Ohio St.3d 556, 559, 621 N.E.2d 391. *Markus v. Trumbull Cty. Bd. of Elections* (1968), 19 Ohio Misc. 67, 73, 250 N.E.2d 106.

The court in *Markus* reasoned that the summary must not be misleading or incomplete “so that the electors would have knowledge of the issue involved upon being asked for their signatures.” *Markus v. Trumbull Cty. Bd. of Elections*, 19 Ohio Misc. at 70. There, “the summary of the issue involved on the referendum petitions and the condensed text on the ballot was insufficient, ambiguous and misleading to the average citizen who might be affected thereby.” *Id.* at 73. Thus, the petition was declared invalid. *Id.*

Likewise, in *McCord*, the court concluded that the summary contained “material omissions that could have conveyed the mistaken impression to petition signers that they were voting on the same rezoning that had previously been defeated.” *McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d at 354. Specifically, the summary omitted additional material uses for the lots at issue and failed to disclose the appropriate number of lots in question. *Id.* The court noted that “the dispositive issue is ‘whether the language [of the summary] itself coupled with the actual existing circumstances is misleading to the average voter utilizing an objective standard.’” *Id.* at 355 (quoting *Olen Corp. v. Franklin Cty. Bd. of Elections* (1988), 43 Ohio App. 3d 189, 193, 541 N.E.2d 80.). Accordingly, the court in *McCord* found that the language in the summary “conveyed a false impression as to the effect of [the resolution], especially in light of the surrounding circumstances.” *McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d at 357.