

IN THE SUPREME COURT OF OHIO

STATE ex rel. LETOHIOVOTE.ORG, et al., : Case No. 2009-1310
: :
Relators, : Original Action in Mandamus
: :
v. : :
: :
JENNIFER BRUNNER, : :
Ohio Secretary of State : :
: :
Respondent. : :

BRIEF OF *AMICI CURIAE* THE BUCKEYE INSTITUTE FOR PUBLIC POLICY SOLUTIONS, CITIZENS IN CHARGE, OHIO CITIZEN ACTION, AND THE OHIO FREEDOM ALLIANCE IN SUPPORT OF RELATORS STATE EX. REL. LETOHIOVOTE.ORG, ET AL.

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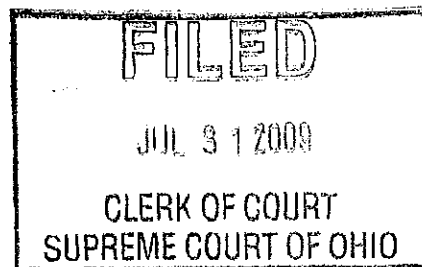


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INTEREST OF *AMICI CURIAE*

The Buckeye Institute for Public Policy Solutions is a non-profit research organization formed in 1994 to support public policies that advance liberty, individual rights, and a strong economy in Ohio. The Buckeye Institute for Public Policy Solutions is a nonpartisan research and educational institute devoted to individual liberty, economic freedom, personal responsibility and limited government in Ohio.

The Buckeye Institute develops ideas with the assistance of 45 scholars from 23 universities and colleges throughout Ohio, disseminates them through our publications, lectures and special events, and distributes them to policy makers and key opinion leaders to make meaningful change. The Buckeye Institute's work has made inroads in numerous areas: identifying regulations that stifle economic growth, demonstrating the benefits of market-based education reform, publicizing free market alternatives in health care, showing the savings that competition will bring to state and local governments, and identifying how to cut sales, income, property and business taxes and questionable government spending.

The Buckeye Institute's 1851 Center for Constitutional Law is dedicated to protecting Ohioans' control over their lives, their families, their property, and ultimately, their destinies. More pointedly, the 1851 Center has an interest in protecting Ohioans' rights to be free from unconstitutional taxation, and relatedly, in advancing statewide prosperity. *Amicus* thus has a strong interest in this Court's ruling on whether the state of Ohio imposes an excise tax on the purchase of food in Ohio: all Ohioans purchase food, and increasing the costs of such purchases leaves Ohioans less disposable income with which to carry out their own wills.

Citizens in Charge ("CIC") is a 501(c)(4) advocacy group that seeks to protect and expand citizens' initiative and referendum rights, both in Ohio and across the country. It

believes in maintaining citizen control of government. Thus, while CIC never takes stands on specific ballot issues (unless those issues relate to the initiative and referendum process), it finds that it commonly assists local groups who have an interest in limiting government power. CIC believes that, increasingly, measures that would advance these goals, even incrementally, are difficult to pass through state legislatures. It further believes that, in state after state, the legislative branch has become susceptible to strong and disproportionate influence from state administrators and public employees who are natural stakeholders in a large, heavily-funded public sector. Given these hurdles, CIC advocates for direct democracy as a remaining avenue for concerned citizens to enact laws limiting government. Thus, CIC has an interest in ensuring that these groups continue to have access to the initiative right.

CIC has closely monitored the states' ever-increasing efforts over the last few decades to restrict citizens' use of the initiative, including regulation of the residency and payment of petition circulators. Several of these regulations have been challenged in federal court. CIC believes that the reported cases have turned not on clear, bright-line rules about what is and what is not permissible, but on the nature of the evidence submitted at the district court level. Accordingly, it submits this brief to specifically address two cases reported from the Eighth and Ninth Circuits which are given great weight in the Appellant's brief, but should carry little persuasive authority in this or subsequent cases. As CIC argues below, the evidence submitted by the plaintiffs in each case to show the existence of a burden on their First Amendment rights was far less compelling than the evidence before the District Court here, and in fact is less likely to be far less compelling than the evidence that able counsel will bring before future courts that address this issue.

The Coalition Opposed to Additional Spending & Taxes (“COAST”) was founded in 1999 to oppose higher taxes and spending in the city of Cincinnati and Hamilton County. It had a string of early successes, including defeating the police communications levy and the zoo tax levy that year.

COAST has saved taxpayers in southwest Ohio literally billions of tax dollars. Two notable accomplishments came from coalitions with other groups. In 2003, it joined Alternatives to Light Rail Transit (“ALRT”) to defeat a one cent sales tax increase to fund a multi-billion dollar light rail system. In 2007, after a one-half cent sales tax increase was imposed without a public vote, COAST joined with the NAACP, the Green Party, the Libertarian Party, Cincinnati Progressive Action, and others to collect 56,000 signatures in 42 days to place the issue on the ballot, and defeated the tax.

Amongst COAST's other prominent victories are the 2002 settlement of a federal suit against the Cincinnati Public Schools, who agreed to never again use school resources to aid political campaigns, and, in conjunction with the 2007 sales tax campaign, a lawsuit that enjoined the Hamilton County Sheriff from stop him from misusing tax dollars on the pro-tax campaign. COAST, in conjunction with WeDemandaVote, also recently collected enough signatures to place the City of Cincinnati’s trolley project on the ballot.

Ohio Citizen Action, founded in 1975, has 80,000 members. Since 1994, Ohio Citizen Action's Money in Politics Project has been the authoritative source for data and analysis of the role of money in Ohio politics. The Money in Politics Project is committed to fundamental democratic values and principles: honesty, fairness, transparency, accountability, citizen participation, competition, respect for constitutional rights and the rule of law, and the public’s need for reliable information.

Ohio Citizen Action has a lengthy and illustrious history of engagement in direct democracy in the state of Ohio. Since 1979, Ohio Citizen Action has collected signatures and advocated for six local and eight state initiatives. In 1992, Ohio Citizen Action and the Ohio Roundtable and others gathered enough signatures to get Constitutional Amendments for term limits on the ballot. In 1997, Ohio Citizen Action and others waged a successful referendum campaign against workers' compensation legislation.

The Ohio Freedom Alliance is a non-profit limited liability company concerned citizens working together to promote freedom in Ohio. We are focused on educating people in our local communities, building alliances with other liberty-minded groups who share our common goals. Members of the Ohio Freedom Alliance are actively lobbying the Ohio General Assembly to support policies that advance liberty, individual rights, limited government, sound monetary reform, and a strong economy in Ohio.

One of the ways that the Ohio Freedom Alliance is dedicated to promoting limited government in the State of Ohio is through the opposition of tax increases and government spending, in favor of tax decreases and spending reductions in the State budget. The Ohio Freedom Alliance is also dedicated to protecting the democratic processes by which any measures which impact Ohioans financially should be adhered to. *Amicus* thus has a strong interest in this Court's ruling on whether the state of Ohio establishes video lottery terminals in Ohio: as video lottery terminals will provide additional revenue from the pockets of Ohio citizens to the state of Ohio, it is essentially a tax that will enable the growth, not force the reduction, of the size and scope of government in Ohio. Also, Ohioans have consistently voted down gambling measures in the state of Ohio, and should be given the opportunity to do so on this measure through the referendum process.

STATEMENT OF THE CASE AND FACTS

In July of 2009, the Governor of Ohio and the Ohio General Assembly were confronted with a genuine conundrum: although the Ohio Constitution requires passage of a balanced biennium budget, projections indicated that the amount the parties wished to spend was at least \$1 Billion greater than the revenue available to allow for such spending. Armed with the knowledge that both tax increases and spending cuts could be politically unpopular, a solution was devised: rather than cutting spending or raising taxes, the General Assembly and Governor simply generate the desired revenue by authorizing the Ohio Lottery Commission to operate Video Lottery Terminals (“VLTs”) at seven horse tracks statewide.¹

Even this solution was no panacea: Since 1990, the people of Ohio had rejected such gambling measures each of the four times that they had appeared on the ballot.² Most poignantly, in 2006, the people of Ohio specifically rejected a proposal for *slot machines at seven horse tracks statewide*.³ With such widespread public opposition to gambling arrangements such as the VLTs, there was a clear risk that authorization of the VLTs may not only be the subject of a Referendum campaign, but could quite plausibly be defeated if such a campaign were initiated. The Ohio General Assembly’s solution was to simply eliminate the people of Ohio’s constitutional right to Referendum on the issue of VLT authorization with the

¹ Prior to this authorization, R.C. 2915.02, R.C. 2915.03, and R.C. 2915.04 subjected operation of VLT’s to criminal penalties, the first offense constituting a first degree misdemeanor, and subsequent operation amounting to felonious conduct.

² See <http://www.sos.state.oh.us/SOS/Text.aspx?page=504&AspxAutoDetectCookieSupport=1>; see also http://www.cleveland.com/datacentral/index.ssf/2009/07/facts_and_figures_on_casino_is.html.

³ Id.

following phraseology: “The amendment, enactment, or repeal by this act of the sections listed below is *exempt from referendum because it is or relates to an appropriation for current expenses * * ** and therefore takes effect immediately.”⁴

Notably, however, several other sections of House Bill 1, a bill containing “an appropriation for current expenses,” are explicitly made subject to Referendum.⁵ This leaves the authorization of VLTs in a unique place. Fortunately, Ohioans’ constitutional rights may not be eviscerated with such impunity.

ARGUMENT

A. The Referendum process outlined in the Ohio Constitution is sacrosanct, and must be tread upon lightly.

*“I believe in the initiative and the referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. * * * But in actual practice it has been found in very many states that legislative bodies have not been responsive to the popular will. Therefore I believe that the state should provide for the possibility of direct popular action in order to make good such legislative failure.”⁶*

-President Theodore Roosevelt

Nearly one hundred years ago, on September 3, 1912, the electors of Ohio adopted amendments to Article II: Sections 1 to 1g of the Ohio Constitution providing for initiative and referendum.⁷ That special election marked the high tide of the reform movement in

⁴ House Bill 1, Section 812.20, amending R.C. 3770.21 and R.C. 3770.03

⁵ See House Bill 1, Sections 812.10, 812.30, 812.40, and 812.50.

⁶ See 1 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912), at page 383.

⁷ Section 1c, Article II of the Ohio Constitution further describes the power of referendum:

** * * 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 state government.⁸ Of the 41 amendments on the ballot that day none was more representative or symbolic of the Progressive Era than the initiative and referendum.⁹ The Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912) reflect that 17 days were devoted to considering the initiative and referendum.¹⁰

Section 1, Article II of the Ohio Constitution reserves to the people of this state the right of Referendum, a right which “serves as a check on the General Assembly by permitting laws or parts of laws passed by that body to be submitted to the voters for approval or rejection.”¹¹ Section 1, Article II provides in part:

[T]he 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. *They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided * * *.*

When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

⁸ *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 5 O.O.3d 125, 365 N.E.2d 876 (O’Neill, dissenting) (Justice O’Neill’s dissenting opinion was later adopted by the majority in *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 631 N.E.2d 582).

⁹ Id.

¹⁰ Id.

¹¹ *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 631 N.E.2d 582.

In instituting the right of Referendum, the delegates to the 1912 Constitutional Convention relied upon statesman William Jennings Bryan's address to the Convention and state:

The initiative and referendum do not overthrow representative government they have not come to destroy but to fulfill. *The purpose of representative government is to represent, and that purpose fails when representatives mis-represent their constituents.*

* * *

Experience has shown that the defects of our government are not in the people themselves, but in those who, acting as representatives of the people, embezzle power and turn to their own advantage the authority given them for the advancement of the public welfare. It has cost centuries to secure popular government; the blood of millions of the best and the bravest has been poured out to establish the doctrine that governments derive their just powers from the consent of the governed.

* * *

All this struggle, all this sacrifice, has been in vain if, when we secure a representative government, the people's representatives can betray them with impunity and mock their constituents while they draw salaries from the public treasury.¹²

The magnitude of Referendum rights is further displayed by the unequivocal and seemingly unanimous expressions of the delegates to the Convention themselves. The first act of the Constitutional Convention was to elect a president to preside over the proceedings. Delegate John Fackler, of Cuyahoga County, made an impassioned speech in support of Hamilton County delegate Herbert Bigelow, explaining that Mr. Bigelow had "for many years given unselfishly and unsparingly of his energy in support of the initiative and referendum."¹³ Fackler explained that the issues of initiative and referendum were "above all, overshadowing all other questions * * * almost to the exclusion of every other issue * * * and I have yet to learn of the election of a

¹² 1 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912), at page 664.

¹³ Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912), at 26.

single man who opposed the initiative and referendum.”¹⁴ Mr. Bigelow was summarily elected President of the Convention by a considerable margin.¹⁵

Cuyahoga Count Delegate Aaron Hahn expressed his understanding of the reasons for the 1912 Constitutional Convention as follows: “*We have been sent here by our constituency to secure for them the initiative and referendum.* What does initiative and referendum mean? It means to give them back the sovereignty which has been partly taken away from them.”¹⁶ Coshocton County Delegate Allen Marshall further expressed the sentiment of the time: “I would not vote for the expenditure of a dollar of money on the roads unless I know for a certainty that we are to have a separate submission of this matter to the people. That is the initiative and referendum. I want the people to rule.”¹⁷ Finally, Marion Count Delegate Caleb Norris noted “[t]here have been steps taken by this Convention to inaugurate one of the most important matters that will be presented to this Convention, the initiative and referendum, to protect the people from arbitrary power, and so long as government exists, the elements of arbitrary power will be present.”¹⁸

In 1915, just three years removed from the ratification of the Initiative and Referendum in Ohio, the Supreme Court explained the meaning and importance of Initiative and Referendum rights:

Now, the people's right to the use of the initiative and referendum is one of the most essential safeguards to representative government. The enemies of the ‘I. &

¹⁴ Id.

¹⁵ Id., at 32.

¹⁶ Id., at 348.

¹⁷ Id., at 304.

¹⁸ Id., at 191.

R.' persistently misrepresent it as destroying representative government, but it is not so. It is rather a guaranty or safeguard to preserve representative government. *It is only when government ceases to be representative of the public welfare that the 'I. & R.' can be successfully invoked.* If the people get real representative government there is no occasion for the 'I. & R.' 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. & 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.* (Emphasis added.) * * * An examination of the various provisions of the constitution shows with what painstaking care *the right of referendum was safeguarded, and that provision was made in the constitution expressly denying to the legislature any impairment of the right of referendum * * *.*"¹⁹

Notably, Section 1g of Article II of the Ohio Constitution provides, in part, that the referendum provisions "shall be self-executing, except as herein otherwise provided. *Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.*" The Supreme Court of Ohio elaborated on this iron-clad articulation of the supremacy of the Referendum several years after its passage:

In this connection it will not escape notice that as to the state-wide exercise of the power the constitution goes into the minutest detail, leaving nothing to the action of the general assembly and concluding with the general statement that the provisions of the whole section should be self-executing, *thereby putting it beyond the power of an unfriendly legislature to cripple or destroy it.*" (Emphasis added.)²⁰

In 1970, the Supreme Court of Ohio again unanimously amplified the sacred nature of the Referendum, noting that (1) Referendum is "the ultimate and important goal of the legitimate obtaining of a voted expression of the will of the electorate;" and (2) Courts should strive to

¹⁹ *State ex rel. Nolan v. Clendenning* (1915), 93 Ohio St. 264, 277-78, 112 N.E. 1029, at 1032. (Emphasis added).

²⁰ *Shryock v. Zanesville* (1915), 92 Ohio St. 375, 382, 110 N.E. 937, 939,

nurture and preserve the integrity of the right of referendum.”²¹ Even more recently, the Supreme Court of Ohio has acknowledged that “[t]he people's constitutional right of referendum is one of the bedrocks of democracy * * *.”²²

Further, former Supreme Court of Ohio Justice Herbert once noted that “the people's right of referendum” is a “fundamental reservation in Ohio's democratic form of government,” and one that the Court has historically guarded.²³ Justice Herbert also sternly warned “[o]nly human beings can cause our three branches of government to function. Hence, at any time and in any branch, there exists the real possibility that power will be abused. It can occur unintentionally, but that does not lessen the need for a check or balance to rectify the transgression.”²⁴ Finally, he noted that Referendum is “the ultimate check upon one of th[e] branches of government: the people's constitutional right to legitimately strike down legislation with which they might strongly disagree.”²⁵ For these reasons, The Supreme Court of Ohio treats incursion upon of the peoples’ right of Referendum with such gravity that Justice Paul W. Brown once remarked that deprivation of the Referendum by legislative subterfuge “mark[ed] the beginning of the demise of constitutional government in Ohio.”²⁶

²¹ See *Markus v. Bd. of Elections* (1970), 22 Ohio St.2d 197, 200, 259 N.E.2d 501, 503.

²² *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 5 O.O.3d 125, 365 N.E.2d 876 (O’Neill, dissenting) (Justice O’Neill’s dissenting opinion was later adopted by the majority in *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 631 N.E.2d 582).

²³ *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 5 O.O.3d 125, 365 N.E.2d 876 (Herbert, dissenting). (This dissenting opinion was later adopted by the majority in *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 631 N.E.2d 582).

²⁴ Id.

²⁵ Id.

²⁶ *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 5 O.O.3d 125, 365 N.E.2d 876 (Brown, dissenting). (This dissenting opinion was later adopted by the majority in *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 631 N.E.2d 582).

These remarks, and the Referendum's language itself, echo the spirit of Ohio's 1851 Constitution, which unequivocally declared that "*all political power is inherent in the people*. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they deem it necessary * * *." Sixty years later, the Referendum similarly reaffirms that all political power resides with the people of Ohio, and does so with the equally vital, if more temperate, assertion that, in addition to their form of government, Ohioans may alter, reform, or abolish legislative whenever they deem it necessary.

The lessons underlying these Constitutional provisions, and the historical expressions of their importance, are simple: If the will of the people is undermined by their elected representatives, the people should have an opportunity to correct this undermining. If a Referendum is successful, it is evidence that the General Assembly has undermined the peoples' will. If it is unsuccessful, the status quo is preserved, and the challenged provision becomes law. In either result, the will of the people is properly manifested.

Today, the Governor and Ohio General Assembly seek to free themselves from the "wholesome restraint[s]" of Referendum. Ironically, however, in seeking to arbitrarily and unconstitutionally deprive the people of Ohio of their right to Referendum, the General Assembly accentuates the very reason why Initiative and Referendum are so vital to Ohio's governance.

B. House Bill 1's authorization of Video Lottery Terminals is subject to Referendum.

The law on this matter is well-settled. *In State ex. Rel. Ohio v. Voinovich*, this Court adopted the dissents of Chief Justice O'Neill and Justices Herbert and Paul W. Brown in *Riffe*. In his *Riffe* dissent, Chief Justice O'Neill stated that "[t]he language of Section 1c [Article

II] providing that 'such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection * * * ' establishes unequivocally that an Act *need not necessarily have a single effective date.*"²⁷

Further, "[i]n all previous cases involving Section 1d exceptions [the Supreme Court of Ohio] has recognized that *the right of referendum attaches to each section of the law not specifically falling within Section 1d.*"²⁸ Accordingly "any section of a law which changes the permanent law of the state is subject to referendum under the powers reserved to the people by Section 1 of Article II, even though the law also contains a section providing for an appropriation for the current expenses of the state government and state institutions which under Section 1d, Article II, becomes immediately effective."²⁹

There is little doubt that the above rules of law apply to invalidate the Ohio General Assembly's hollow declaration that VLT authorization is not subject to Referendum. As in Riffe and Voinovich, the subject legislation, House Bill 1, contains an appropriation for the current expenses of state government.

However, House Bill 1 also contains sections that are clearly not appropriations. These sections do nothing more than amend R.C. 3770.03 and R.C. 3770.21 so as to permanently authorize Video Lottery Terminals at seven race tracks in the state of Ohio. Pursuant to *Riffe* and *Voinovich*, the sections of House Bill 1 articulating these amendments must be (1) given a later

²⁷ *Id.* at 163, 5 O.O.3d at 133, 365 N.E.2d at 884. (Emphasis added.)

²⁸ *Id.* at 164, 5 O.O.3d at 133, 365 N.E.2d at 884-885. (Emphasis added.)

²⁹ *Id.*, 51 *Ohio St.2d* at 167, 5 O.O.3d at 135, 365 N.E.2d at 886.

effective date than appropriations measures (90 days from the date certified by the Secretary of State); and (2) subjected to Referendum.

C. Controversial public policy decisions should not be immunized from referendum merely because they are attached to appropriations bills.

As a policy matter, exempting House Bill 1's VLT authorization from Referendum would encourage legislative gamesmanship: it would invite the General Assembly to attach controversial measures to appropriations bills so as to avoid the check of Referendum. Although the Ohio Constitution, exempts laws providing for appropriations from the scrutiny of Referendum,³⁰ the General Assembly abuses this exemption when, as here, it uses the appropriations limitation to shield controversial policy decisions from appropriate checks and balances, such as the Referendum rights of the people.

Ohio's system of government was designed to prevent such abuse and gamesmanship. The framers of Ohio's Constitution were particularly concerned about the practice of "logrolling." "Logrolling," is the practice of attaching unrelated "riders" to popular or necessary bills, so as to insure passage of the riders and insulate them from a veto. Logrolling has also been described as "the practice by which several matters are consolidated in a single bill for the purpose of obtaining passage for proposals which would never achieve a majority if voted on separately. "This is the very practice which Section 15(D) [, Article II] was designed to prevent."³¹

³⁰ Section 1d, Article II of the Ohio Constitution limits the power of referendum by providing that certain laws are not subject to referendum: "Laws providing for tax levies, *appropriations for the current expenses of the state government* and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. * * * The laws mentioned in this section shall not be subject to the referendum." (Emphasis added.)

³¹ *Id.*

That the one-subject rule was readopted in 1912 simultaneously with Sections 1 c and 1 d, Article II, of the Ohio Constitution, which provide for referendum, demonstrates the framers' intent to (1) interject transparency into the legislative process; (2) prevent the linkage of controversial changes in the law to necessary and/or immediate bills; and (3) render all changes in the law, *other than those specifically exempted*, subject to the will of the people.

Here, however, the Governor and General Assembly have done precisely what the Ohio Constitution was designed to prevent: they have attached the authorization of VLTs to a seemingly urgent and necessary budgeted bill, while concomitantly stripping the people of Ohio of their sacred right to approve or disapprove of that authorization through Referendum. Further, they have done so in an era where the people of Ohio have, on four separate occasions, rejected gambling-related ballot measures in Ohio, and even specifically rejected a nearly identical proposal to that which House Bill 1 authorizes.

If this Court permits such a transgression of the plain language and intention of our state constitutions, it will open the door to further legislative subterfuge, and as Justice Brown feared nearly thirty years ago, it may “mark the beginning of the demise of Constitutional government in Ohio.”

CONCLUSION

This Court must find that the Video Lottery Terminal authorization contained in House Bill 1 is subject to Referendum, and that the legislature's declaration that the Video Lottery Terminal is exempt from Referendum is unconstitutional, and therefore null and void.



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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following, via email, this 31st Day of July,

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