



Via Electronic Mail

September 19, 2023

Kandie Horton, Director
Adam Brannon, Deputy Director
Logan County Board of Elections
225 S Main St.
Bellefontaine, OH 43311

Re: Tie Votes Regarding a Protest on an Initiative Petition

Dear Director Horton and Deputy Director Brannon,

I have been asked to resolve two tie votes taken by the Logan County Board of Elections (the "Board") on September 7, 2023. At an official meeting of the Board on that date, members considered a protest filed against the certification of an initiative petition to the November 7, 2023 ballot. The Board voted first to sustain the protest and remove the petition from the November ballot and tied 2-2. The Board then voted to overrule the protest and allow the petition to remain on the November ballot and again tied 2-2. These tie votes were submitted to the Secretary of State on September 12, 2023.

I. BACKGROUND

On April 14, 2023, petitioners seeking a change to the Codified Ordinances of the City of Bellefontaine (the "Ordinances") filed proposed language for a municipal petition with the City Auditor of the City of Bellefontaine, Ohio (the "City Auditor"). The petition proposed a change to the Ordinances that would classify drag shows as "Adult Cabaret Performances" and prohibit all Adult Cabaret Performances from being performed on public property or in any location viewable by a minor. It would also prohibit the attendance of minors at all Adult Cabaret Performances.

On April 14, 2023, prior to circulation of the petition for signature, the petitioners filed Secretary of State Form 6-I with the City Auditor. That form reads as follows:

To the City Auditor of the City of Bellefontaine, Ohio:

We, the undersigned, electors of the City of Bellefontaine, Ohio, respectfully propose to the electors of such city, village or township for their approval or rejection at the general election to be held on the 7th day of November, 2023 the following Ordinance:

The following is a full and correct copy of the title and text of the proposed Ordinance:

The classification of drag artist(s) and drag shows as Adult Cabaret Performance. Adult oriented exhibitions featuring male or female impersonators who provide displays and entertainment appealing to sexual interest, shall not permit the attendance of a minor.

Adult Cabaret Performances shall not be held on public property, or any location viewable by a minor.

The petitioners circulated the petition for signature between April 14 and July 24, 2023. When the part-petitions were circulated, the petitioners also made available a copy of the chapter of the zoning ordinances that would be changed should the proposed ordinance pass. This allowed any voter considering whether to sign the petition to review the actual changes that the petition would make in the context of the city's zoning ordinance scheme.

The circulated part-petitions read as follows:

The classification of drag artist(s) and drag shows as Adult Cabaret Performance. Adult oriented exhibitions featuring male or female impersonators who provide displays and entertainment appealing to sexual interest, shall not permit the attendance of a minor.

Adult Cabaret Performances shall not be held on public property, or any location viewable by a minor.

As shown above, the initiative petition that was circulated for signature is identical to the one that was submitted to the City Auditor prior to circulation on April 14, 2023. However, on July 24, 2023, the final petition was submitted to the City Auditor for certification. The submission contained 27 part-petitions with 796 signatures. Along with the final part-petitions, petitioners also included a cover sheet on Secretary of State Form 6-I. Form 6-I is only required to be filed with the City Auditor prior to circulation of the petition and is **not** required to be filed with the final part-petitions,¹ but the petitioners included it with their final submission anyway. The copy of the petition that was submitted to the City Auditor on Form 6-I on July 24, 2023, reads as follows:

**Proposal to amend City of Bellefontaine Codified Ordinance Chapter
1177 Adult Entertainment – 1177.02 Definition**

by adding the following text:

The classification of drag artist(s) and drag shows as Adult Cabaret Performance. Adult oriented exhibitions featuring male or female impersonators who provide displays and entertainment appealing to sexual interest, shall not permit the attendance of a minor. Adult Cabaret Performances shall not be held on public property, or any location viewable by a minor.

As is evident above, the final version of the petition that was submitted to the City Auditor on July 24, 2023 is **not** the exact same as the version of the petition that was submitted on April 14, 2023, nor is it the same as the version of the petition that was circulated to the voters of Bellefontaine for signature. Namely, the final version contained the following headers, which did not appear on either the April 14 submission or the circulated part-petitions:

**Proposal to amend City of Bellefontaine Codified Ordinance Chapter
1177 Adult Entertainment – 1177.02 Definition**

by adding the following text:

However, it is undisputed that the text of the proposed ordinance remained the same between the April 14 submission, the circulated part-petitions, and the final version submitted on July 24, 2023. It was never amended or changed.

¹ R.C. 731.32 - 33.

On August 4, 2023, the City Auditor certified the petition with 799 signatures to the Board. Board staff then verified that 500 of the 799 submitted signatures were valid. As only 357 signatures are needed for an initiative petition to qualify for the ballot in Bellefontaine, on August 21, 2023, the Board voted 2-1 to certify the petition to the November 7, 2023 ballot. On August 25, 2023, a protest against the certification of the initiative petition was submitted to the Board. The protesters alleged that the petition did not include a full and correct copy of the title and text of the proposed ordinance. The protesters further alleged that the petition forms submitted to the City Auditor on July 24, 2023 were not identical to the forms filed on April 14, 2023.

The Board held a protest hearing on September 7, 2023. After submission of evidence and testimony, Board Member Kathryn Clark moved to sustain the protest and remove the initiative petition from the November 7, 2023 ballot. Chairman Robert Fulton seconded the motion. The resulting vote on the motion ended in a 2-2 tie, with Member Clark and Chairman Fulton voting for the motion and Members Steven Fansler and Ranae Lentz voting against the motion. Subsequently, Board Member Fansler made a motion to overrule the protest and keep the initiative petition on the November 7, 2023 ballot. The resulting vote on this motion also ended in a 2-2 tie, with Board Members Fansler and Lentz voting for the motion and Board Member Clark and Chairman Robert Fulton voting against the motion.

In accordance with Ohio Revised Code 3501.11(X) and [Chapter 2 of the Ohio Election Official Manual](#), the Board certified both tie votes to my Office on September 12, 2023. Along with this certification, the Board also provided a copy of the protest, the petitioners' response to the protest, a copy of the transcript from the September 7 protest hearing, and the Board members' position statements and the accompanying supporting evidence to my Office.

II. Analysis of the Issue

In examining this matter, I have reviewed the protest filed against the initiative petition, the petitioners' response to the protest, the position statements both for and against the protest, the transcript of the protest hearing, and a letter from the Board summarizing the protest hearing and the resulting tie votes. The protestors and petitioners raised several arguments for and against certification of the petition; however, the only relevant issue is whether the circulated part-petitions contained the full and complete title of the proposed ordinance.

The law requires all part-petitions circulated for signature to contain a full and correct copy of the title and text of the proposed ordinance.² In this case, neither side disputes that the circulated part-petitions contained a full and correct copy of the text of the proposed ordinance. The only question is whether the circulated part-petitions contained a full and correct copy of the **title** of the proposed ordinance.

A full and correct title is required because the title gives voters notice of the proposed change in the ordinances so they know what they are signing.³ Titles also help prevent signers from being misled about what they are signing.⁴ Therefore, to qualify for the ballot, part-petitions circulated for signature must contain a title for the proposed ordinance.⁵

Upon review of the submitted materials, I find that the part-petitions that were circulated for signature in this matter **did** contain the full and correct copy of the title of the proposed ordinance, specifically: "The classification of drag artist(s) and drag shows as Adult Cabaret Performance." The headers added to Form 6-I, filed on July 24, 2023, are not the title of the proposed ordinance; rather, they are headings that explain what the proposed ordinance would do should it pass.⁶

III. Conclusion and Vote Cast on the Tie Votes

Accordingly, based upon the evidence provided to my Office, it is my view that the initiative petition and the part-petitions presented to voters were compliant with the law. **As such, I am breaking the tie votes by voting "nay" on Member Clark's motion to sustain the protest and by voting "yea" on Member Fansler's motion to overrule the protest. The proposed ordinance will therefore be placed on the November 7, 2023 ballot.**

² R.C. 731.31.

³³ *State ex rel. Esch v. Lake County Bd. of Elections*, 61 Ohio St. 3d 595, 597, citing *Chevalier v. Brown*, 17 Ohio St.3d 61, 63, 17 OBR 64, 66, 477 N.E.2d 623, 625 (1985); *State, ex rel. Evergreen, Co., v. Bd. of Elections*, 48 Ohio St.2d 29, 31, 2 O.O.3d 126, 127, 356 N.E.2d 716, 717 (1976); *State, ex rel. Janasik, v. Sarosy*, 12 Ohio St.2d 5, 41 O.O.2d 3, 230 N.E.2d 346 (1967) ("More so than the text, the title immediately alerts signers to the nature of proposed legislation.").

⁴ *Id.*

⁵ *Id.*

⁶ See *State ex rel. Hazel v. Cuyahoga County Bd. of Elections*, 80 Ohio St. 3d 165, 167 (1997) ("Contrary to the board's argument, the proposed ordinance contains a title which is designated as "Penal Facilities Acquisition/Construction/Regulation.").

If you have any questions regarding this decision, please contact Paul Disantis, Chief Legal Counsel at the Secretary of State's Office, at pdisantis@ohiosos.gov, or Shanda Behrens, Chief Elections Counsel at the Secretary of State's Office, at sbehrens@ohiosos.gov.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: Rob Fulton, Chairman of the Union County Board of Elections
Ranae Lentz, Board Member
Steve Fansler, Board Member
Kathryn Clark, Board Member