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Ohioans to see three issues on November 2015 ballot

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By **Marjorie J. Yano**

Ohio voters will be deciding three ballot issues this November. One proposes a new way to draw districts for Ohio’s General Assembly. The other two are opposing ballot issues that address the ability to add commercial monopolies to the Ohio Constitution and whether marijuana should be legalized in the state. Below are summaries of each issue, with a brief sampling of some of the arguments made by supporters and opponents.

Issue 1

House Joint Resolution 12 was enacted during the last few days of the 130th General Assembly to create a new Ohio Redistricting Commission. It is on the November 2015 ballot as Issue 1. If enacted by Ohio voters, Issue 1 will require a seven-person panel to draw new legislative districts, replacing the existing five-member Apportionment Board. The Ohio Redistricting Commission will consist of the governor, state auditor, secretary of state, one person appointed by the speaker of the House of Representatives, one person appointed by the House Minority Leader, one person appointed by the Senate President and one person appointed by the Senate Minority Leader.

The commission will convene every 10 years — in years ending in the numeral one — for the purpose of drawing new lines for General Assembly districts. The amendment requires the commission to make a draft plan public and to conduct a minimum of three public hearings to hear public input on the proposed plan before adopting it.

The proposal requires the affirmative vote of four members of the commission, including two minority party members, to adopt a new legislative map for the full 10-year term. A plan that is adopted by a simple majority, but fails to garner support from two minority party members of the commission, will become effective “until two general elections for

the house of representatives have occurred under the plan.” At that point, the commission will reconvene to redraw the districts.

In addition to detailing the process for the Ohio Redistricting Commission, the amendment also outlines the map-drawing process, including minimizing splits of political subdivisions. The amendment also states that no plan “shall be drawn primarily to favor or disfavor a political party” and that districts shall be compact.

Supporters of Issue 1 say that the proposal will add transparency in the redistricting process and will help eliminate partisan gerrymandering. Opponents say that members of the proposed commission will not be independent from legislators, allowing legislators to still influence the process, and note that third parties and independents are not represented on the commission.

Issue 2

House Joint Resolution 4, passed by the Ohio General Assembly in late June, proposes to amend Article II, §1e of the Ohio Constitution “to prohibit an initiated constitutional amendment that would grant a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, right, or license to any person or nonpublic entity.” It has been designated as Issue 2 by the Ohio Ballot Board.

Issue 2 does not bar future initiative efforts but creates a second layer for initiatives deemed by the Ballot Board to conflict with the anti-monopoly provision. In such event, the Ballot Board would place two questions on the ballot: one asking whether the petitioner should be granted an exception to the anti-monopoly provision, and the second describing the proposed constitutional amendment. The proposed constitutional amendment would take effect only if both questions are approved by voters.

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Issue 2 also includes language specifically stating that if on the November 3 ballot, voters approve a proposed amendment that conflicts with the anti-monopoly provisions in Issue 2 and creates a monopoly for the sale, distribution or other use of a federal Schedule 1 controlled substance, that amendment shall not take effect. This language seeks to prevent Issue 3 from becoming effective if both Issue 2 and Issue 3 are approved by voters.

Supporters of Issue 2 say that special interests should not be able to secure financial advantages in the Ohio Constitution. Opponents of Issue 2 say that the measure interferes with the constitutional initiative process to block a measure approved by voters.

Issue 3

A proposal from ResponsibleOhio, now Issue 3 on the November 2015 ballot, would allow persons aged 21 or older to use marijuana for medical and recreational purposes and to grow up to four plants for personal use. In addition, the amendment provides for 10 site-specific locations for the commercial growth of marijuana and retail sales of marijuana at approximately 1,100 locations throughout the state. The amendment also creates the Marijuana Control Commission as the regulatory entity over the industry.

Issue 3 would prohibit any state or local law, including zoning laws, from being applied to prohibit marijuana growth, cultivation or extraction facilities, retail stores or medical marijuana dispensaries in an area unless it is zoned exclusively residential on July 1, 2015, or as of the date the application is first filed for a license for a growing, cultivating, extraction, retail or dispensing site.

Under the plan, marijuana would be taxed at 15 percent on the gross revenue of each growth, cultivation and extraction facility and marijuana product manufacturing facility. A tax rate of 5 percent would be applied to gross revenue of each retail marijuana store. Tax revenues are directed to go to a municipal and township government fund, a strong county fund and the Marijuana Control Commission Fund.

Supporters of Issue 3 say that the measure creates a tightly controlled regulatory framework for the marijuana industry and will create jobs in Ohio. Opponents of Issue 3 say that the initiative would prevent competition in the industry and are concerned with the legalization of marijuana-infused products that may appeal to children.

What went wrong? Initiative promoter being investigated for misuse of campaign funds

By **Katie Reardon**

Tim Eyman is currently under investigation by the Washington Public Disclosure Commission (PDC) and the Attorney General's office for allegedly misusing campaign funds, *The Seattle Times* reports. According to the 224-page investigative report recently issued by the PDC, Eyman is accused of receiving secret payments from Citizen Solutions, a signature-gathering firm, "illegally shuffling donations between two separate 2012 initiatives and using campaign money for personal expenses." The PDC investigation has found evidence that "Eyman

has received hundreds of thousands of dollars in payments from the firm — including a \$300,000 wire transfer in 2012."

While the investigation continues, Eyman is campaigning for Initiative 1366, an anti-tax measure that will go before voters on the November 3 ballot. In his first media appearance since the PDC asked the Attorney Generals' office to investigate, Eyman refused to answer questions regarding the investigation.

Ballot issues: How involved can corporations get?

By **Maria J. Armstrong**

As the legalization of marijuana gains notoriety as a controversial and hot ballot topic, individuals and organizations are making their opinions known. Since the announcement of Issues 2 and 3 in early August, dozens of Ohio businesses and associations have released official statements, drawing their lines in the political sand. Because these issues may affect employers, many corporations — especially those with hundreds or thousands of employees — may be wondering how involved they can get in the persuasion of their own employees and the general public.

While Ohio law strictly prevents corporations from engaging directly in *political* activities, all corporations are permitted to use an unlimited amount of its resources to oppose or support ballot issues in Ohio. Some of the ways in which corporations can lawfully participate in ballot issue campaigning includes funding, sending communications to employees, and encouraging employees to volunteer time to ballot issue campaign and election efforts. However, each of these permitted activities has important guidelines.

Corporate contributions: R.C. 3599.03(C) states that:

“A corporation, a nonprofit corporation, or a labor organization may use its funds or property for or in aid of or opposition to a proposed or certified ballot issue. Such use of funds or property shall be reported on a form prescribed by the secretary of state....”

While there are no contribution limits, corporate contributions made to a ballot issue committee must be reported. This reporting requirement only applies to corporations; partnerships, LLCs and individuals are excluded. Reporting forms are available on the Ohio Secretary of State’s website and are relatively simple to complete and easy to file.

Communications with employees: Corporations may provide materials about ballot issues to employees and may ask employees to contribute to a ballot issue committee. They may also provide mailing lists or other information to a ballot issue committee, allowing them to contact employees directly. Employers should note that materials must be strictly non-partisan and employees cannot be coerced, enticed or threatened to make a donation or to take a specific stance. Likewise, the costs associated with material distribution, as well as providing mailing lists, must be properly reported as an in-kind contribution to a committee.

Volunteer activity: Paid employee time or corporate resources that benefit a ballot issue committee can constitute in-kind contributions and are permissible but must be reported. While a corporation may grant vacation or other leave to employees wishing to volunteer for a committee, subject to existing policies, it should be careful to apply this policy equally to all employees regardless of which side of the issue the employee supports.

Additionally, R.C. 3599.06 prohibits an employer from interfering with an employee’s efforts to vote on Election Day. Employees should be permitted a “reasonable amount of time” to vote, with consideration given to employees who work long shifts or some distance from their polling location. Employers are not required to give time off or pay employees for time spent voting, but should be sure to apply company policy equally to all employees.

As November 3 approaches, corporations must carefully consider their involvement in the ballot issues that impact them, their employees and their bottom lines. While Ohio gives freedom to those corporations wishing to participate in ballot issue campaigns, compliance with legal guidelines is essential to taking an effective and meaningful stance.

The “do’s” and “don’ts” of corporate participation in ballot issue campaigns

By **Maria J. Armstrong**

While corporations are not permitted to provide direct partisan political support, they may use their resources to support or oppose statewide ballot issues. Such support can be direct, like a monetary contribution, or indirect, such as using corporate time or resources to create, print and mail ballot issue literature. When participating in these activities, corporations should be careful to follow these general guidelines:

Do:

- Keep careful account of any monetary expenditure, direct or indirect, that your corporation makes in support of a ballot issue.
- File the required Form 30-B-1 or 30-B-2 disclosure reports with the Ohio Secretary of State in a timely manner.
- Put the appropriate disclaimers on any materials the corporation distributes.
- Make certain that any materials or information the corporation distributes are accurate, factual and supportable.
- Be mindful of any internal non-solicitation policies, internet or email policies, or other corporate policies.
- Allow your employees to make voluntary contributions or *voluntarily* participate in election activities.
- Allow your employees to take paid or unpaid leave from work to participate in voluntary election activities, but only in accordance with existing leave policies.

Don't:

- Include any reference to a candidate, political party or any other partisan matter in materials distributed by the company.
- Allow employees to use corporate resources to support any partisan candidate or political party.
- Coerce or threaten employees to contribute to or support an issue.
- Provide any reward or enticement to encourage employees to support an issue campaign or vote in a particular manner.
- Provide mailing lists and contact information for your employees to a ballot issue committee without first considering your corporate policies, your employees' expectation of privacy and the precedent set.
- Print any statement on pay envelopes intended to influence the political activity of employees.
- Interfere with an employee's ability to vote on Election Day.

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

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