



Dave Yost • Auditor of State

June 29, 2015

Keith Faber
President, Ohio Senate
Chair, Senate Rules and Reference Committee
1 Capitol Square
Ohio Statehouse
Columbus, OH 43215

Dear President Faber:

I write today to offer my support for House Joint Resolution 4, which seeks to bar individuals from writing monopolistic interests into our Constitution.

Contrary to assertions made last week, this Resolution does not implicate collective bargaining rights, minimum wage proposals, right to work, or women's health care issues. The amendment provides, in pertinent part:

(B)(1) The power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly or a special interest, privilege, benefit, right, or license of a commercial economic nature to any person, partnership, association, corporation, organization, or other nonpublic entity, or any combination thereof, however organized, that is not available to other similarly situated persons, partnerships, associations, corporations, organizations, or other nonpublic entities at the time the amendment is scheduled to become effective (emphasis added).

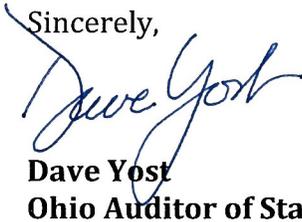
Those opposed to this amendment fail to recognize the import of the four words: "other similarly situated persons." A future amendment raising the minimum wage would, by definition, raise the minimum wage for all individuals in the class. It would not run afoul of HJR4 because it provides the benefits to all similarly situated individuals – those within the class that suffer a wage disparity. Likewise, a collective bargaining amendment would apply to all members in a bargaining unit, or to all unions, and would therefore pass scrutiny. In short, "similarly situated" applies to the class as a whole, not just a segment who perceives and is seeking to correct some inequality. The same rationale applies to women's health issues and marriage equality (which as of Friday is no longer an issue). HJR4 simply says no amendment may be put forward which does not afford the same benefits to all members of the class at hand.

Additionally, collective bargaining rights are not, and have never been construed as, monopolistic commercial interests. Some opponents would have you believe all activity is commercial activity. But a broad reading of the commerce clause (which has fallen out of favor of late) is an entirely different thing than assigning the “commercial” moniker to every conceivable future amendment. The language of the amendment is clear: the power of the initiative is not to be used to create a commercial economic interest for one group that is not available to others similarly situated. In the labor context, this means one union cannot write an interest into the Constitution that is not afforded to all other unions. The language is sufficiently narrow to address the harm sought to be avoided.

Finally, some have suggested that this amendment will lead to endless litigation over the meaning and intent of its words. This is a non-argument. There is no sentence in the English language that cannot be litigated by a clever lawyer. Based on this argument, the legislature might as well stop revising the code for fear of litigation. The perfect cannot be the enemy of the good. In any event, the present language provides ample means for it to be overturned should voters wish to resume enacting monopolies into our Constitution.

I urge the Senate to take swift action on this measure to prevent the powerful few from further enshrining their interests into our Ohio Constitution.

Sincerely,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

Dave Yost
Ohio Auditor of State

cc: Senate Rules and Reference Committee