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Ohio Statehouse Update: Point/Counterpoint on the Upcoming Elections

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With the elections right around the corner, Vorys is providing you with unique insights from both sides of the aisle on the upcoming races. Providing the Republican commentary is Fred Mills, a partner in the Columbus office and the leader of the firm's government relations group. Providing the Democrat commentary is Fred Ransier, a partner in the Columbus office and a member of the government relations and bankruptcy groups.

Considerations Once again Ohio is the national focus for the Presidential Election and the poster child for "swing state" status. Candidates from both parties and surrogates have been and will be in Ohio constantly from Labor Day until the Election. With all the attention that the national campaign and the attendant media bring to Ohio, it is hard to believe that there are any undecided voters in the state. Early voting is once again a source of controversy in Ohio. Even though Ohio has one of the most liberal laws in the country on absentee/no fault voting and every voter has received an absentee ballot application and even though early voting is taking place in all counties for five weeks before the election, there continues to be controversy involving early voting the weekend before the election. Democrats have been successful in overturning Ohio law in the Courts and as of this writing the U.S. Supreme Court has refused to take the case, meaning there will be early voting on the Saturday, Sunday and Monday before the election. Because of the importance of Ohio, the volume of media advertisements is at an all time high. An unintended consequence of the national election is that there is very little time left for local and legislative races because Federal law gives preferential treatment to national candidates. As a result the local elections will be fought more on the ground with door-to-door, mail and radio campaigns. Even though there are a few international issues being discussed during this year's election season (like the Benghazi Embassy attack), it is still "all about the economy." I believe that the election nationally will be won or lost based on the individual voter's viewpoint of how well the economy is doing and who is in the best position to go forward with a positive economic plan for the future. Because of recent Republican success in controlling the Apportionment Board in drawing Congressional districts, Democrats are focusing on only a few key races, namely the Presidential, Senatorial and perhaps the Issue 2 election

dealing with apportionment on a going-forward basis. It is evident that the Democratic strategy is to pour resources into these winnable races as opposed to House and Senate Statehouse races where there is virtually no chance for pickups by Democrats. In the final analysis it will come down to who can get their vote out before and during the election process. Four years ago there was a tremendous enthusiasm gap in favor of the Democratic ticket which may be somewhat tempered this election. It will come down to whether the Republican turnout machine of 2004 can overtake the Democrat turnout model from 2008. There has never been a Republican elected to the office of President of the United States without carrying Ohio, which is one explanation for the attention national media and the political campaigns have given to Ohio. Let us not forget, the legislation permitting early voting in Ohio was passed by a Republican General Assembly. Since passing early voting legislation, Republicans have been in search of justifications for limiting its application, leading to judicial intervention preserving early voting for all Ohio citizens. In a strange twist of events, there were several County Boards of Election, thought to have strong Republican majorities, that voted to have early voting on weekends leading up to the election. Further complicating local candidates ability to getting their messages out in Ohio, has been the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), a landmark decision in which the Court held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions. This is the first national election since the decision and we have seen independent expenditures on behalf of candidates that is in addition to what is already being expended by the candidates. We will soon learn what the impact of all of this money in political campaigns will have, if any. While I can agree that the economy is very important in national elections, we cannot overlook the fact that the United States economy is inextricably tied to the global economy. As we have seen in the stock market and the United States recovery, world events do have an impact on our economy. Voters need to be aware of international events and must weigh the effectiveness of our leaders in navigating relations with foreign countries. Ohio continues to be a State that is equally divided politically, yet Ohio's Congressional Districts and the General Assembly continue to be dominated by Republicans because of flaws in the system for drawing Congressional, and Ohio House and Senate Districts. To overcome these inequities, passage of Issue 2 is a priority for Ohio Democrats, along with re-electing President Obama and returning Sherrod Brown to the United States Senate. The only hope of Democrats making significant headway in the Ohio House and Senate would be to having a huge victory at the top of the ticket for Democrats in November lead by President Obama and Senator Brown. This will be a close election and voter turnout on both sides is essential for victory. Democrats are relying upon the large Obama campaign organization around the State and getting voters to the polls to cast early ballots in advance of election day which has proven to be a formula for success.

President The Presidential race will almost surely come down to Ohio with the winner gaining the necessary 270 electoral votes to become President of the United States. The President must roll up big majorities in the northern tier of the state and also Franklin County, while the challenger, Governor Romney, must do well in suburban Cincinnati and along the I-75 corridor. It is interesting to note that this cycle debates seem to really matter and that Governor Romney to date has the better record. Also, there does not seem to be as much enthusiasm for the Democratic ticket as four years ago. I project an approximately 50,000 vote plurality for Governor Romney and hope that whoever wins will be outside of a margin that would carry any decision into the courts for final resolution. The path to victory in the Presidential race is through Ohio. President Obama has consistently polled well throughout this election cycle and his challenge will be getting the Democratic base to the polls. The enthusiasm that existed in 2008 has not been as strong in the early parts of the campaign however we've recently seen signs of active engagement from students, women and minorities, the core base for an Obama victory. Obama has secured strong support from labor, particularly in bringing

the American auto industry back to life and with the defeat of SB 5. With a strong early voter turnout, I predict an Obama victory in Ohio in the range of 3- 5%. **U.S. Senate Race** One time boy-wonder politician Sherrod Brown is running against current boy-wonder politician Josh Mandel. Mandel, currently the State Treasurer, is relying on a very well-funded challenger race and his two tours of duty as a Marine in Afghanistan. Senator Brown is a populist and has been winning elections in Ohio since the 1970s as a state legislator, Secretary of State, Congressman and now U.S. Senator. This is a particularly hard-fought and somewhat nasty race and it is too close to call at this moment. This race has been hard fought from the inception. Josh Mandel has received millions of dollars in support from independent groups and has raised significant dollars outside of Ohio. Sherrod Brown is no stranger to Ohioans and has fought hard to restore Ohio's economy and bring back the middle class jobs lost during the recession. The Brown-Mandel race has been targeted by many observers. However, in the end, Sherrod Brown will return to the U.S. Senate with a victory margin of 5- 7%.

Congress Ohio loses two seats because of population loss and the redistricting process created 16 new seats with some interesting consequences. Incumbents Kusinich and Kaptur were placed together. Representative Kaptur won in the Primary and will have no problem in the General Election. Current incumbent Republican Jim Renacci is now squaring off against incumbent Democrat Betty Sutton in a race that has national implications. The other seats are relatively uncontested and Republicans will end up with either an 11-5 or 12-4 majority, depending on the outcome of the Renacci/Sutton seat. After redistricting there are few competitive races in Ohio. Given Ohio's political climate there are a close races worth following. The race for the new 16th Congressional District of Ohio pits Republican Congressional incumbent Jim Renacci against Democratic Congressional incumbent Betty Sutton. This is the most expensive House District race with more than \$15 million having been raised. I predict with Ohio coming out strong for President Obama and Senator Sherrod Brown, Betty Sutton will be the victor by a small margin. Another close race getting attention is the rematch for the 6th Congressional District between Republican incumbent Bill Johnson against former Congressman Charlie Wilson. Both candidates share good name recognition in the District. With strong voter turnout for President Obama, Charlie Wilson will carry this District. Another race to follow, assuming a strong victory for President Ohio, is in the 7th Congressional District pitting Republican incumbent Bob Gibbs against Democrat Joyce Healy-Abrams. This has been a highly contested race and Democrat Joyce Healy-Abrams will benefit should President Obama win Ohio by a large margin.

Ohio House Control for the Republicans in the Ohio House is almost as certain as in the Ohio Senate. Due to reapportionment being controlled by Republican leaders, the House districts are drawn to insure a GOP majority. There are approximately one-half dozen toss-up seats at this point with the over/under for majority control at 60-39. Speaker Batchelder will enter his last term as Speaker with a comfortable majority. Democrats again face a difficult challenge due to the reapportionment that was controlled by Republicans to insure its majority. Notwithstanding, Democrats are relying upon the strong organizational support at the top of the ticket to narrow the Republican majority.

Statewide Issues

Issue 1 Ohio's Constitution requires a statewide vote on the possibility of a Constitutional Convention be placed before the voters every 20 years. This is the fifth such election and there is no organized campaign on either side of Issue 1. If history repeats itself, and I expect that it will, voters will overwhelmingly turn down the request to call a Constitutional Convention. This is a difficult issue for the general electorate to get its arms around and given the little attention given to Issue 1, I tend to agree with my colleague and expect voters to turn down the request to call a Constitutional Convention.

Issue 2 This is an initiated Constitutional amendment supported by the Democratic Party, labor, Common Cause, the League of Women Voters and other related entities. The purpose is to change the way Ohio reapportions seats for the Legislature as well as for Congressional districts. It is based on the California Model and is supposed to be a “fairer” system. Most major newspapers in the state have editorialized against Issue 2 as being too complicated and not accomplishing the goal of a fair reapportionment system. Because the Judiciary is used as part of the system, the Ohio State Bar Association and the Court of Appeals Judges Association have both opposed the issue. I believe that Issue 2 will fail. Ohio voters have sought change in how Ohio reapportions seats for the General Assembly and Congressional Districts. Currently, Republicans who were in control of the reapportioning of State and Congressional seats, have focused on retaining its majority and have ignored the close balance of Republicans and Democrats in the State of Ohio. This will be apparent when President Obama and Senator Sherrod Brown win re-election in Ohio by comfortable margins. Given that our elected officials historically have been incapable of making the necessary change to the way Ohio reapportions its legislative and congressional seats, Issue 2 reaches the ballot for voters to decide by initiated Constitutional amendment. Given the heavy support cited by my colleague, Issue 2 will pass.

Closing Comment

As we head into the final campaign push, a lot can still change between now and November 6th, but you can be assured of one thing - Fred's predictions are right!