



# **OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

## **Constitutional Revision and Updating Committee Report**



Issued July 1, 2017

Cover photo shows officers of the 1912 Ohio Constitutional Convention on the dais of House Chambers in the Ohio Statehouse, Columbus, Ohio, April 1, 1912. Courtesy of the Ohio History Connection (AL05522).

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***Report of the Constitutional Revision and Updating Committee***

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*Report of the Legislative Branch and Executive Branch Committee*

## Letter from the Chair



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June 23, 2017

Senator Charleta B. Tavares, Co-chair  
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Representative Jonathan Dever, Co-chair  
Riffe Center for Government and the Arts  
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13<sup>th</sup> Floor  
Columbus, Ohio 43215

Dear Co-chairs Tavares and Dever,

On behalf of the Constitutional Revision and Updating Committee, I present the committee's final report. The committee's charge was to review the sections of Article II relating to the constitutional initiative, the statutory initiative, and the referendum, as well as Article XVI, governing legislatively-proposed amendments to the constitution as well as providing for a constitutional convention to be proposed to voters at regular intervals.

Throughout the four-and-a-half years of its existence, the committee intensely reviewed all aspects of the initiative and referendum process, hearing from numerous interested parties, and considering a myriad of ways to improve how Ohio's citizens can access the ballot. The result of that work may be seen in our comprehensive report and recommendation outlining the many changes we recommended, including a reorganization of the pertinent sections for the sake of clarity and ease of use. Although that report – which was unanimously supported by the committee – failed to reach a final vote to adopt it in the Commission, the work we did and the recommendations we made will be helpful to future efforts to improve that process.

Early on, we discussed how to prevent moneyed interests from constitutionalizing business plans, like casinos or marijuana cultivation. To that end, State Auditor David Yost and the General Assembly borrowed from the incomplete work the committee had done and presented to the voters an amendment designed to prevent monopolies. That effort became Issue 2 and was passed by the voters in November of 2015. I will say, however, that the final version presented to the voters looked unlike what we had been working on, but nonetheless was drawn from our discussions.

Our committee became a useful and necessary incubator for ideas intended to improve government and foster civic engagement. We performed our role in the spirit of bipartisan cooperation and compromise and successfully met the challenge of our charge. We did recognize that nearly every interested party liked and approved of many of our recommendations, but no group liked everything we suggested. The effort to slightly increase the percentage of votes to pass a constitutional amendment to 55% aroused the most opposition. I would like to note the irony, however, of the groups that opposed our work. The committee understood that no matter what we proposed, we would generate opposition. But after four and one-half years of study, our recommendations evolved out of the twin ideas of making the initiative and referendum processes better for petitioners and zealously protecting the rights of citizens to engage in that process. We believed this to be a good government proposal and simply wanted to give the people a chance to decide if they agreed with us. The opposition, while claiming to be the voice of the electorate, did not want the people to decide this issue for themselves. Thus, the charge that we were being anti-democratic was not only a false one, but laced with irony.

I am pleased to present this report on behalf of the members of our committee who reliably and conscientiously dedicated so much of their time to this project.

Very truly yours,



Dennis P. Mulvihill, Chair  
Constitutional Revision and Updating Committee

Enclosure

## **I. Introduction**

This Report of the Constitutional Revision and Updating Committee (“CRU Committee”) is issued pursuant to the conclusion of the work of the Ohio Constitutional Modernization Commission (“Commission”). It contains a summary of the committee’s organization and work products, including topics discussed and all recommendations made to the Commission.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the 129th Ohio General Assembly. The Commission was charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

The Commission used six subject matter committees for the purpose of reviewing constitutional provisions: Education, Public Institutions, and Local Government Committee; Finance, Taxation, and Economic Development Committee; Judicial Branch and Administration of Justice Committee; Bill of Rights and Voting Committee; Constitutional Revision and Updating Committee; and Legislative Branch and Executive Branch Committee. There is a separate report for each committee providing a summary of its work and recommendations to the Commission.

The CRU Committee was assigned the responsibility of reviewing the following sections of the Ohio Constitution:

- Article II (Legislative)
  - Sections 1, 1a, 1b, 1c, 1d, 1e, 1f, and 1g only
- Article XVI (Amendments)

In addition, all committees could be assigned to review other issues or proposed constitutional amendments as needed by the Coordinating Committee or the Commission.

## II. Membership of the Committee

Under Rule 6.2, each member of the Commission was assigned to serve on two subject matter committees. In total, nine members were appointed to the Constitutional Revision and Updating Committee.

The following individuals were serving on the CRU Committee in June 2017:

- Dennis P. Mulvihill      Chair
- Charles F. Kurfess      Vice-chair
- Janet Gilligan Abaray
- Roger L. Beckett
- Rep. Robert R. Cupp
- Rep. Glenn Holmes
- Sen. Kris Jordan
- Sen. Vernon Sykes
- Mark Wagoner

### Constitutional Revision and Updating Committee Meeting



### **III. Summary of Recommendations**

In total, the CRU Committee made one recommendation to the Commission, as shown in Table 1.

Under Rules 8.3 and 9.4 of the Commission Rules of Procedure and Conduct, a committee recommendation for no change to the Constitution required consideration at one scheduled meeting and a majority vote in favor, while a recommendation for change required consideration at two meetings and a vote in favor by a majority of the committee members. Following a favorable vote, a recommendation was forwarded to the Coordinating Committee to review the recommendation as to form. After Coordinating Committee approval, the recommendation was then sent to the Commission co-chairs to place on the Commission agenda.

The recommendation was the subject of a separate report containing the background and discussion regarding the affected constitutional provisions. The separate report is available in Appendix 1.

In some cases, constitutional sections were the subject of discussion by the committee but no recommendation was made. In other cases, there were constitutional sections assigned to the committee that were not able to be discussed before the closure of the Commission. Appendix 3 contains a status summary of all sections assigned to the committee, including those which did not progress to the Commission.

Table 1: Constitutional Revision and Updating Committee Recommendation

Constitutional provision	Topic	Recommendation	Committee approval	Commission action	Vote
Art. II, §§ 1–1i, 15, 17	Initiative and Referendum	<b>Revise</b>	May 11, 2017	Tabled June 8, 2017	20-1

#### **IV. Summary Proceedings of the Constitutional Revision and Updating Committee**

(NOTE: The full record of committee minutes is presented in Appendix 2.)

##### 2013-2014

The Constitutional Revision and Updating Committee began its work by focusing on the existing initiative provisions that allow citizens directly to seek voter approval for new laws and constitutional amendments. The committee also reviewed similar existing referendum provisions that allow citizens to use the ballot to defeat existing laws or constitutional amendments. The primary question before the committee on this topic was whether the existing constitutional provisions regarding initiative and referendum should be retained, or whether they should be modified in favor of a system that would encourage members of the public wishing to effect change to pursue the enactment of statutory law rather than the adoption of constitutional amendments.

Speakers who appeared before the committee included Assistant Attorney General Richard Coglianesse, who presented an overview of the role of the office of the Attorney General in the initiative and referendum process; Elizabeth Luper Schuster, Chief Elections Counsel for the Office of the Ohio Secretary of State, who presented an overview of the role of the Secretary of State in placing initiatives and referenda on the ballot as well as a statistical history of voter response to initiatives and referenda; Richard T. Robol, a member of the Ohio Delegation of Independent Voters, who advocated changes to Ohio's primary system; Maurice A. Thompson, Executive Director of the 1851 Center for Constitutional Law, who presented proposals for improving the initiative and referendum process; Donald J. McTigue, an attorney with McTigue & McGinnis, LLC, who advocated for constitutional changes that would make it easier for citizens to utilize the initiative and referendum process; Scott J. Tillman, National Field Director for Citizens in Charge, whose testimony echoed Mr. McTigue's concerns about overburdening citizens seeking to use the initiative and referendum process; Stanford University Professor of Political Science Bruce E. Cain, who appeared via videoconference, and discussed comparisons between initiative and referendum procedures in Ohio and California; Political Science Professor John Dinan of Wake Forest University's Department of Politics and International Affairs, who discussed procedures for encouraging initiated laws as opposed to initiated amendments; and Peg Rosenfield, who suggested methods for encouraging the use of initiated statutes rather than initiated amendments.

The committee voted to request a draft amendment from the Ohio Legislative Service Commission ("LSC") that would reduce the geographic signature requirement for the initiated statute process from 44 counties to 22 counties and would require a two-thirds vote from the legislature for a period of five years in order for an initiated statute to be changed or repealed. The requested draft was provided by LSC for the committee's consideration.

##### *Reports and Recommendations*

The Constitutional Revision and Updating Committee did not forward any reports and recommendations to the Commission during this biennium.

##### 2015-2016

The Constitutional Revision and Updating Committee continued its consideration of whether the existing constitutional provisions regarding initiative and referendum should be retained, or whether they should be modified in favor of a system that would encourage members of the public wishing to effect change to pursue the enactment of statutory law rather than the adoption of constitutional amendments.

Significantly, in 2015 the committee focused on ways to prevent persons seeking an economic advantage from using the initiative process to create a monopoly under the constitution. These discussions were beneficial to a General Assembly effort to place an issue on the ballot asking voters to approve a constitutional provision preventing the initiative process from being used in this manner. Thus, “Issue 2” was approved by voters on November 3, 2015, resulting in an amendment to Article II, Section 1e.

In November 2015, the committee continued its ongoing consideration of potential changes to the indirect statutory initiative. As a preliminary step toward issuing a report and recommendation addressing the statutory initiative process, the committee considered whether a revision of the relevant sections should include language eliminating the supplemental petition requirement, keeping the statutory initiative, and indicating that, if the General Assembly passes something different or refuses to act, the proponents of the initiative can go directly to the voters. The committee also considered a “safe harbor” provision preventing the General Assembly from acting on an initiated statute for five years absent a two-thirds vote, and raising the petition signature requirement from three percent to five percent.

The committee continued its consideration of potential changes to the initiative and referendum process throughout 2016. Its discussion culminated in the preparation of a draft that reorganized Article II, Sections 1 through 1g. The draft primarily rearranged the existing constitutional provisions, streamlining the process and making it easier to understand the various steps involved in seeking an amendment to the constitution, a new statutory law, or the repeal of an existing law. In the process, the draft also moved parts of existing sections to several new sections. The first of these, Section 1h, limits the use of the initiative and referendum to pass a law authorizing property classifications for tax purposes, as well as limiting the use of the initiative to amend the constitution to create or grant a monopoly or other commercial benefit not available to others. The draft also added Section 1i, which applies the powers of the initiative and referendum to municipalities; Section 15 (E), which allows for the enactment of an emergency law; and Section 17, providing an effective date of a law as being 90 days after the governor files it with the secretary of state. The draft also created a safe harbor for initiated statutes, eliminated the supplementary petition for initiated statutes, and proposed that the General Assembly be permitted to enact law to modernize the signature gathering and publication processes.

### *Reports and Recommendations*

The Constitutional Revision and Updating Committee did not complete work on its report and recommendation to the Commission during this biennium.

### 2017

In 2017, the committee held five meetings at which it refined its proposal to amend Article II to strengthen the statutory initiative in the hope of encouraging the use of the statutory initiative as contrasted to the constitutional initiative. In addition, the committee’s proposal made modest

changes in the constitutional initiative and modernized the entire initiative process. Finally, the committee also reviewed Article XVI, the other article that governs constitutional amendments. During this period, the committee was aided by input from Attorney Donald J. McTigue, McTigue & Colombo LLC, and from Ann Henkener and Peg Rosenfield of the League of Women Voters of Ohio.

In discussing the initiative proposal, the committee chair expressed the view that the suggested changes created a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protected the rights of petitioners to bring their ideas to the voters and reduced the potential for political interference with that right; allowed constitutional amendments to be considered by more voters, given the significant drop-off between even and odd year elections; and encouraged petitioners to use the statutory process, rather than placing in the constitution issues that more appropriately belong in the statutes.

The initiative proposal went through multiple drafts, and ultimately the committee unanimously approved a proposal that:

- Made the provisions in Article II largely self-executing, consistent with explicit wishes of the 1912 convention;
- Made the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision under which initiated statutes could not be amended or repealed for five years, absent a two-thirds vote in each house of General Assembly;
- Decreased the number of signatures required to initiate a statute from six percent (assuming a supplementary petition was needed) to five percent;
- Retained the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process;
- Created constitutional authority for the initial 1,000 signature requirement and for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Required initiatives to use gender-neutral language, where appropriate;
- Permitted the proponents to include in their initial petitions a proposed title and explanation, and required the ballot board to review the proposed ballot title and proposed explanation at the start of the process.
- Front-end loaded the work of the ballot board by requiring the board to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before petitioners gathered the hundreds of thousands of required signatures;
- Moved to the beginning of the process the ballot board's determination of whether a proposed initiated constitutional amendment created a monopoly, determined a tax rate, or conferred a special benefit;
- Provided clearly that the one amendment/separate vote requirement applicable to legislatively-initiated amendments also applied to citizen-initiated constitutional amendments;
- Increased the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitted initiated constitutional amendments to be on the ballot only in even years, when more people actually vote;

- Provided clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitted the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Gave the Ohio Supreme Court exclusive original jurisdiction over determinations concerning the fair and truthful summary, the one amendment/separate vote requirement, the monopoly determination, and the validity of the title and explanation, and determinations by the secretary of state as to the validity, invalidity, sufficiency, and insufficiency of signatures;
- Made the initiative and referendum sections more user-friendly and understandable and eliminated sections that often went on for paragraphs without punctuation; and
- Applied the new procedural requirements for the constitutional initiative petition to the statutory initiative process.

In making its recommendation, the committee relied on the fact that since 1913 when the initiative process is used, 85 percent of the time petitioners use the constitutional route. As a result, many provisions placed in the constitution by initiative are more appropriate for the Ohio Revised Code. The committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

The committee was also advised that there is a substantial drop off of voters in odd-numbered years. Since the committee wanted more voters to be able to weigh in on proposed constitutional amendments, the recommended changes included only permitting proposed initiated amendments to go on the ballot in even-numbered fall elections.

In addition to addressing the constitutional initiative, the committee reviewed Article XVI, which governs the amendment process. The committee did not have time to review in depth the experiences of other states in amending their constitutions, but the committee did review, albeit briefly, issues related to Article XVI. This included amendments proposed by the General Assembly, state constitutional conventions, the mandatory twenty-year vote on a convention call, and the use of state constitutional revision commissions.

### *Report and Recommendation*

The work of the committee resulted in a single, comprehensive report and recommendation on the statutory and constitutional initiative. The committee unanimously approved this recommendation and presented it to the full Commission. Despite unanimous committee support, the proposed report and recommendation encountered significant opposition at its second reading before the Commission on June 8, 2017, with concerns expressed primarily by those opposing the increase in the passing percentage for proposed initiated amendments. Ultimately, the Commission voted that the issue be tabled.

# **Appendix 1**

## **Constitutional Revision and Updating Committee**

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### **Report & Recommendation of the Committee**

## Report & Recommendation of the Committee

Constitutional provision	Topic
Art. II, §§ 1–1i, 15, 17	Initiative and Referendum



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

#### OHIO CONSTITUTION ARTICLE II, SECTIONS 1 to 1i, 15(G), and 17

#### THE OHIO STATUTORY AND CONSTITUTIONAL INITIATIVE

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The Constitutional Revision and Updating Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article II, Sections 1 to 1i, 15(G) and 17 of the Ohio Constitution concerning the statutory and constitutional initiative. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

The committee recommends that Article II, Sections 1 to 1i, 15(G), and 17, be amended to make changes in both the statutory and the constitutional initiative and to modernize, streamline, and make more transparent the provisions of Article II. The full text of the current provisions is in Attachment A and the full text of the proposed amendment is in Attachment B. This proposal does not make any substantive changes in the referendum or in the use of the initiative and referendum by the people of municipalities.

Article II, Sections 1 to 1g, currently contains some of the most confusing and difficult to understand language in the Ohio Constitution. In addition to the substantive changes designed to encourage the use of the statutory initiative as contrasted to the constitutional initiative, this report and recommendation proposes to make these provisions more readable by reorganizing this portion of Article II, by removing difficult to understand language, and by using appropriate subsections and divisions. It also proposes to create new Sections 1h and 1i, to add Section 15(G) to Section 15, and to move some provisions to the unused Section 17.

The report and recommendation:

- Makes the statutory initiative more user-friendly by eliminating the supplementary petition;

- Creates a five-year safe harbor in which initiated statutes can only be amended or repealed by the General Assembly with a two-thirds supermajority vote;
- Decreases the number of signatures required to initiate a statute from six percent to five percent but requiring the signatures to be submitted at the beginning of the process;
- Creates constitutional authority for the initial 1,000-signature petition presently in the Ohio Revised Code for the initiative and the referendum;
- Creates constitutional authority for the determination by the attorney general that the summary of the initiative and referendum is “fair and truthful”;
- Requires initiatives for statutes and for constitutional amendments to use gender-neutral language, where appropriate;
- Increases the passing percentage for proposed initiated constitutional amendments from 50 percent to 55 percent;
- Permits proposed initiated amendments to be on the general election ballot only in even-numbered years;
- Provides that the one amendment requirement for General Assembly-initiated constitutional amendments also applies to initiated constitutional amendments;
- Provides greater clarity by specifying the dates when proposed statutory and constitutional initiatives may be submitted to the voters; and
- Permits the General Assembly to modernize the signature-gathering process by using electronic means to gather signatures and to verify them either to supplement or replace current requirements.

### Summary of Affected Provisions of Current Constitution

This report and recommendation seeks to amend the following current provisions of Article II, which are summarized below.

#### Article II (Current Provisions)

Section 1	In Whom Power Vested	Provides that the legislative power of the state is vested in the General Assembly but reserves to the people the power to propose laws and amendments and to reject laws.
Section 1a	Initiative and Referendum to Amend Constitution	Permits the use of the initiative to amend the constitution and describes the process to be followed.
Section 1b	Initiative and Referendum to Enact Laws	Permits the use of the initiative to adopt statutes and describes the process to be followed.
Section 1c	Referendum to Challenge Laws Enacted by General Assembly	Permits the use of the referendum to challenge laws passed by the General Assembly and describes the process to be followed.
Section 1d	Emergency Laws; Not Subject to Referendum	Bars the use of the referendum to challenge laws providing for tax levies and emergency laws.

Section 1e	Powers; Limitations of Use	Bars the use of the statutory initiative to adopt laws classifying property or authorizing a single tax on land; limits the use of the constitutional initiative to create monopolies, to determine tax rates, and to confer special benefits.
Section 1f	Power of Municipalities	Guarantees the right of the initiative and referendum to the people of each municipality.
Section 1g	Petition Requirements and Preparation; Submission; Ballot Language; By Ohio Ballot Board	Describes the process of collecting signatures; gives the supreme court original and exclusive jurisdiction over challenges to petitions; establishes timeline for judicial review of petitions and signatures; describes the duties of the Ohio Ballot Board; describes the provisions as self-executing, but giving the GA authority to adopt laws that facilitate their operation.
Section 15	How Bills Shall Be Passed	Describes the constitutional requirements for passing bills.
Section 17	[open section]	

## Background<sup>1</sup>

Article II concerns the powers and duties of the legislative branch. Article II, Section 1 of the 1851 Constitution expressed the simple but fundamental concept that legislative power is vested in a legislative body. It read in its entirety: “[t]he legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.”<sup>2</sup>

The Ohio Constitutional Convention of 1912 proposed, and voters approved, the adoption of the indirect statutory initiative, the direct constitutional initiative and the referendum as part of a comprehensive direct democracy proposal.<sup>3</sup> The placement of the statutory and constitutional initiatives in Article II reflected the delegates’ view that the full legislative (and constitution-amending) power rested with the people, clarifying that the full power was not delegated to the General Assembly. Sections 1 to 1g of Article II now contains the detailed constitutional provisions concerning the initiative and the referendum. Despite amendments in the last century, the statutory and constitutional initiatives look very much today as they did when first adopted.

### *Indirect Statutory Initiative*

The constitution is silent on the steps to be taken before a petition for a proposed initiated statute is filed with the secretary of state, but the Ohio Revised Code requires that a petition signed by 1,000 qualified electors first be submitted to the attorney general along with the text of the proposed statute and a summary of it. *See* R.C. 3519.01(A). The attorney general then has ten days to determine whether “the summary is a fair and truthful statement of the proposed law \* \* \*.” *Id.*

If the attorney general certifies the summary as being a fair and truthful statement of the proposed law, the ballot board determines whether the petition contains only one proposed law.<sup>4</sup> Petitioners may not begin to collect signatures until after the certification by the attorney general and the determination by the ballot board.

The statutory initiative requires the filing of a petition signed by three percent of the total votes cast for the office of governor in the last gubernatorial election. In the event the secretary of state determines petitioners have not provided a sufficient number of signatures, petitioners have a ten-day period to obtain additional signatures on a supplemental form. *See* R.C. 3519.16(F).

The constitution contains geographic distribution requirements for the signatures. Petitions must include signatures with one-half of the required percentage from 44 of Ohio's 88 counties.<sup>5</sup> Thus, in 44 counties there must be signatures from at least 1.5 percent of the total votes cast for the office of governor in the last gubernatorial election.<sup>6</sup> To simplify this, the secretary of state's website lists the requisite percentages by county.<sup>7</sup>

Because Ohio has an indirect statutory initiative, the petition with the requisite signatures must be filed with the secretary of state at least ten days prior to the convening of a regular session of the General Assembly, which is the first Monday in January in odd-numbered years.<sup>8</sup> The secretary of state then sends the proposal for a new law to the General Assembly.

If the General Assembly fails to adopt the proposed law, amends it, or takes no action within four months from the date of its receipt of the petition, the petitioners may seek signatures on a supplementary petition demanding that the proposal be presented to the voters at the next regular or general election. As with the initial petition, the supplementary petition must contain signatures of three percent of the voters at the most recent gubernatorial election, subject to the same geographic distribution requirement. The petition must be filed with the secretary of state within 90 days after the General Assembly fails to adopt the proposed law, and not later than 125 days before the scheduled general election.<sup>9</sup> Given these deadlines, proponents of a proposed law will have approximately 60 days to gather signatures for their supplementary petition, if they wish to present a proposed statute to the voters in the same year that they presented it to the General Assembly.<sup>10</sup>

If the secretary of state determines that a petition contains an insufficient number of signatures, the petitioner has ten additional days to cure and submit additional signatures.<sup>11</sup> Under R.C. 3519.16(F), a petitioner must stop collecting additional signatures upon filing the petition until the secretary of state provides notice that petitioner may renew the collection of signatures.

If the voters approve a proposed initiated statute by a majority of votes on the issue, the law becomes effective 30 days after the election.<sup>12</sup> Any initiated statute approved by voters must conform to the requirements of the Ohio Constitution.<sup>13</sup> The governor may not veto a law adopted by initiative, but such laws are subject to the referendum and may be amended by the General Assembly.<sup>14</sup>

The statutory initiative may not be used to adopt legislation that would impose a single tax on land or establish a non-uniform classification system of property for purposes of taxation. This limitation, which is contained in Article II, Section 1e(A), provides:

The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.<sup>15</sup>

Since the adoption of the constitutional amendment in 1912 permitting statutes to be initiated, proponents of legislation have used the statutory initiative to bring twelve proposed laws to the ballot, but the voters approved the proposed laws in only three instances.<sup>16</sup> It is not clear, however, how often the General Assembly adopted a law that had first been proposed by statutory initiative because no records are available tracking this and (by definition) no proposal went to the ballot.<sup>17</sup> Nor is it clear how much of a factor the threat of a statutory initiative played in the legislative process.

### *Constitutional Initiative*

Under the Ohio direct constitutional initiative, a petition signed by ten percent of the electors (with a 44-county geographic distribution requirement) may be submitted directly to the voters. Amendments that are approved by more than 50 percent of the voters voting on the proposed amendment are approved.

As with the statutory initiative, the direct constitutional initiative begins with the submission of a petition signed by 1,000 voters to the attorney general along with the text of the proposed statute and a summary of it for a “fair and truthful” determination. The ballot board then determines whether the petition contains only one proposed law.

Proposed amendments may only be on the fall general election ballot, and to make this deadline a petition with the requisite number of approved signatures must be filed at least 125 days prior to the general election (which means a filing deadline between June 30 and July 6, depending on the date of the general election).<sup>18</sup>

If the voters approve a proposed constitutional amendment, by a vote of a majority of those voting on the issue, the amendment becomes effective 30 days after the election.<sup>19</sup> If the voters approve conflicting amendments at the same election, the one with the highest number of affirmative votes becomes part of the constitution.<sup>20</sup>

The constitutional initiative may not be used to adopt amendments that create monopolies, that determine tax rates, or that confer special benefits unless the voters also respond affirmatively to a separate question of whether they approve that use of the initiative.<sup>21</sup>

Since 1913, Ohio voters have voted on 69 amendments proposed by the initiative, and the voters approved 18 or 26.1 percent of them. During this same period, the General Assembly proposed 154 amendments, and the voters approved 106 or 68.8 percent of them.

### *The Origins of the Initiative in Ohio - The 1912 Constitutional Convention*

Prior to 1912, efforts had been made in Ohio to get the General Assembly to adopt the initiative and referendum, but the efforts failed. Progressives, especially Herbert S. Bigelow, a minister from Cincinnati and the future president of the 1912 Constitutional Convention, looked to a constitutional convention, which in 1911 was subject to a mandatory 20-year vote.<sup>22</sup> The proposed constitutional call, which was put on the ballot on November 8, 1910, one year earlier than required, was supported by the Democratic and Republican Parties and by a surprisingly wide array of other interests, including the Direct Legislation League, Progressives, Labor, Municipal home rule supporters, the Ohio State Board of Commerce, the liquor interests, and the Ohio Woman Suffrage Association.<sup>23</sup> The voters approved the holding of a convention by an overwhelming vote of 693,263 to 67,718.<sup>24</sup>

The 1912 Ohio Constitutional Convention held in Columbus during the height of the Progressive Movement was a much-watched national event, and it included appearances by President William Howard Taft, former President Theodore Roosevelt, three-time presidential candidate William Jennings Bryan, California Governor Hiram Johnson, Ohio Governor Judson Harmon, and Cleveland Mayor Newton D. Baker.<sup>25</sup> Ultimately, in a successful effort to avoid the plight of the proposed 1874 Ohio Constitution (which had been defeated in an all-or-nothing up-and-down vote), the 1912 delegates proposed 42 amendments to the voters, who approved 34 of them.

In the non-partisan election that selected the 119 delegates to the convention, the most hotly contested issues involved the initiative and referendum,<sup>26</sup> and this was also the most hotly contested issue at the convention. The delegates, who convened on January 9, 1912 and adjourned on August 26, 1912, its 83<sup>rd</sup> legislative day, spent more time on the initiative and referendum than on any other topic, and there were 12 roll call votes on these issues during the debates.<sup>27</sup>

A majority of the delegates elected to the convention had pledged support for direct democracy before the start of the convention,<sup>28</sup> but during the debates there were sharp disagreements about the shape of direct democracy among its supporters. Ultimately, the delegates approved a compromise that rejected the use of a fixed number of required signatures on an at-large basis in favor of a fixed statewide percentage with a geographic distribution requirement – ten percent for constitutional initiatives and an initial three percent for the statutory initiative. They also proposed the use of an indirect statutory initiative (with the requirement of an additional three percent of signatures collected on a supplementary petition), but they rejected an effort by opponents of the statutory initiative to include a “poison pill” that would have removed the property tax exclusion and single-tax bar from the statutory initiative, thus preventing the statutory initiative from being used to enact the economic policies of the 19<sup>th</sup> century economist

Henry George.<sup>29</sup> Finally, the delegates rejected a proposal that would have permitted the initiative to be used to call constitutional conventions.<sup>30</sup>

Ultimately, the voters approved the amendment to adopt the statutory initiative, the constitutional initiative, and the referendum by a vote of 312,592 to 231,312.<sup>31</sup>

*The Constitutional Initiative in Ohio*<sup>32</sup>

The history of constitutional revision in Ohio has involved an expansion of the tools that are available for amending the constitution. As a result of the 1912 Constitutional Convention, constitutional amendments may now be proposed by a state constitutional convention, by a 60 percent vote of both branches of the General Assembly, and by a constitutional initiative. The most popular of the methods of proposing amendments has been proposals by the General Assembly. Regardless of the method used to propose amendments, no amendment is made to the Ohio Constitution unless approved by more than 50 percent of the voters voting on the proposed amendment.

The proponents of direct democracy had high hopes, and the constitutional initiative was used several times in the decade following the convention, most often in ten initiatives directly or indirectly involving liquor. But the results were disappointing, with voters approving only four of 17 proposed constitutional initiatives in ten-year period from 1912 to 1922.<sup>33</sup>

Beginning in the mid-1920s, the constitutional initiative fell into disuse, but it appears that the constitutional initiative has been making a comeback since the 1970s, although the number of approved constitutional initiatives is still relatively low. And in the last 25 years, the constitutional initiative has been used to adopt eight amendments to the Ohio Constitution on term limits (three amendments), a soft drink excise tax, same-sex marriage, the minimum wage, casino gambling, and healthcare.

Constitutional Initiatives on the Ohio Ballot by Decade – 1913 to 2016

	Pass	Fail	Total
1913 – 1919	4	10	14
1920s	0	5	5
1930s	3	5	8
1940s	2	0	2
1950s	0	1	1
1960s	0	1	1
1970s	1	10	11
1980S	0	7	7
1990S	4	2	6
2000S	3	8	11
2010-2016	1	2	3
Total	18	51	69

## *Constitutional Initiatives in Ohio – Results, Margins of Victory, and Voter Turnout*

The Ohio Constitution has been amended 124 times since 1913; 106 of these amendments have been proposed by the General Assembly and 18 have been proposed by initiative. The breakdown that follows shows that the voters have approved 68.8 percent of the amendments proposed by the General Assembly but only 26.1 percent of the amendments proposed by the initiative.

### Proposed Amendments – 1913 to 2015

	Initiative Petition	General Assembly	Total
Approved	18	106	124
Rejected	51	48	99
Total	69	154	223
Percent Approved	26.1	68.8	55.6

Amendments proposed by the General Assembly, by initiative, and by constitutional conventions must receive more than 50 percent of the vote on the issue to be approved.<sup>34</sup> Of the 18 amendments proposed by initiative, the approval vote was less than 55 percent on only five occasions. The only initiated amendment approved during the last 75 years with less than a 55 percent approval by the voters was the approval of casino gambling in 2009 by a 53 percent vote.<sup>35</sup>

Voter turnout on proposed initiated amendments (as compared to the turnout on other ballot items) has been high, and in the last 40 years, seven of the ten approved amendments proposed by initiative received at least 90 percent of the vote received on the higher turnout items on the ballot, with the only exceptions being the three amendments in 1992 on term limits, each of which had a turnout of 87 percent of the vote received on the higher turnout items on the ballot.<sup>36</sup>

### *The Ohio Statutory Initiative in a National Context*<sup>37</sup>

#### Supplementary Petitions

There are 24 states with some form of initiative; 21 have the statutory initiative and 18 have the constitutional initiative.<sup>38</sup> Of the 18 states with a constitutional initiative, 15 also have the statutory initiative (with Florida, Illinois, and Mississippi having only the constitutional initiative). Of the 21 states with the statutory initiative, 15 also have the constitutional initiative; six states (Alaska, Idaho, Maine, Utah, Washington, and Wyoming) have only the statutory initiative.

Of the 21 states with the statutory initiative, six states, including Ohio, have the indirect statutory initiative. Two of these states – Utah and Washington – have both the direct and indirect statutory initiative but not the constitutional initiative.<sup>39</sup> Ohio is one of four states (along with Massachusetts, Michigan, and Nevada) that have both an indirect statutory initiative and a constitutional initiative.

Four of the remaining states – Ohio, Michigan, Massachusetts, and Nevada – have only an indirect statutory initiative in which the issue’s proponents must first submit their proposed statute to the state legislature. In these states, the proponents can take the matter to the ballot if the legislature fails to adopt the proposed statute. In Michigan and Nevada, the issue goes directly to the ballot if the legislature fails to act without the collection of additional signatures.<sup>40</sup> In Massachusetts, there is a modest additional signature requirement of .5 percent of the votes in the last gubernatorial election (in addition to the three percent required initially). In Ohio, the proponents of the original statute must file a supplementary petition with signatures of three percent of the vote in the last gubernatorial election.

The final two remaining states – Utah and Washington – have both a direct and indirect statutory initiative. In Utah, the initial signature requirement for direct statutory initiatives is ten percent of the votes for the office of president in the most recent presidential election. For the indirect statutory initiative, the proponents need only obtain signatures of five percent of the votes in the last presidential election, but they must get an additional five percent on a supplementary petition if the legislature does not adopt the proposed statute. In Washington, there is both a direct and indirect statutory initiative, and they both require the same number of signatures. In Washington, the proponents may put a proposed statute on the ballot without first presenting it to the legislature. Alternatively, the proponents may first present the proposed statute to the legislature and, if the legislature fails to adopt the proposed statute, the matter is automatically put on the ballot without the need to obtain additional signatures. The below chart summarizes the policies of states with the statutory initiative.

As this review demonstrates, Ohio is the only state that requires the collection of a substantial number of additional signatures on a supplementary petition as the exclusive way of placing a statutory initiative on the ballot.

Signature Requirements for the Statutory Initiative<sup>41</sup>

State	Signatures Required	Direct/Indirect and Signature
Alaska	10 percent of votes in last general election	Direct initiative only
Arizona	10 percent of votes for governor	Direct initiative only
Arkansas	8 percent of votes for governor	Direct initiative only
California	5 percent of votes for governor	Direct initiative only
Colorado	5 percent of votes for secretary of state	Direct initiative only
Idaho	6 percent of registered voters	Direct initiative only
Maine	10 percent of votes for governor	Direct initiative only
Massachusetts	3 percent of votes for governor	Indirect; additional .5 percent additional signatures to get to the ballot
Michigan	8 percent of vote for governor	Indirect; no additional signatures
Missouri	5 percent of vote for governor	Direct initiative only

Montana	5 percent of vote for governor	Direct initiative only
Nebraska	10 percent of vote in last general election	Direct initiative only
Nevada	5 percent of vote for governor	Indirect; no additional
North Dakota	2 percent of general population	Direct initiative only
Ohio	3 percent of votes for governor	Indirect; additional 3 percent to get to the ballot
Oklahoma	8 percent of votes for governor	Direct initiative only
Oregon	8 percent of votes for governor	Direct initiative only
Utah	10 percent of votes for governor (direct); 5 percent (indirect)	Additional 5 percent of votes for governor if using indirect
Washington	8 percent of voters for governor (direct and indirect)	Automatically to the ballot if using indirect
Wyoming	15 percent of votes in last general election	Direct initiative only

### Safe Harbor

To strengthen the statutory initiative, ten of the 21 states with the statutory initiative have a safe harbor provision that limits the ability of state legislatures to amend or repeal the initiated statutes approved by the voters.

### Limitations on the Power of the Legislature to Amend or Repeal Initiated Statutes

State	Actions that may be Taken by the Legislature
Alaska	No repeal within two years; amendment by majority vote any time
Arizona	3/4 vote to amend; amending legislation must “further the purpose” of the measure; legislature may not repeal an initiative
Arkansas	2/3 vote of the members of each house to amend or repeal
California	No amendment or repeal of an initiative statute by the legislature unless the initiative specifically permits it
Michigan	3/4 vote to amend or repeal
Nebraska	2/3 vote required to amend or repeal
Nevada	No amendment or repeal within three years of enactment
North Dakota	2/3 vote required to amend or repeal within seven years of effective date
Washington	2/3 vote required to amend or repeal within two years of enactment
Wyoming	No repeal within two years of effective date; amendment by majority vote anytime

### *The Ohio Constitutional Initiative in a National Context*<sup>42</sup>

Overwhelmingly, states require only a simple majority vote for the approval of constitutional amendments, and only two states – Florida and New Hampshire – have true across-the-board supermajority requirements. Florida does not have a statutory initiative but requires a 60 percent vote for legislatively-proposed amendments, for amendments proposed by initiative, and for

amendments put directly on the ballot by constitutional revision commissions under Florida's unique policy. Florida also requires a two-thirds vote on new taxes. New Hampshire, which also does not have a statutory initiative, requires a two-thirds vote for the approval of proposed amendments.<sup>43</sup> One state, Colorado, now requires a 55 percent vote but only on amendments proposed by initiative.

Aside from Florida and New Hampshire, three states with the constitutional initiative – Illinois, Nebraska, and Oregon – make limited use of supermajority requirements by requiring a percentage of votes at the election. Three states without the constitutional initiative – Minnesota, Tennessee, and Wyoming – require a majority of those voting at the election.

With one exception, the 18 states that have the constitutional initiative have the same percentage requirement for voter approval for both initiated and legislatively-proposed amendments. The only exception is Colorado, which on November 8, 2016, increased the percentage requirement on initiated amendments only from 50 percent to 55 percent.

One state, Nevada, requires approval by the voters at two consecutive general elections in even-numbered years.<sup>44</sup>

### *The Preference for the Constitutional Initiative in Ohio*

Ohio is one of only 14 states that have both the statutory initiative and a direct constitutional initiative, but Ohioans strongly prefer to use the constitutional initiative. Since 1912, there have been 81 initiatives presented to Ohio voters, of which 69 were constitutional initiatives and 12 were statutory initiatives. Thus, approximately 85 percent of all Ohio ballot initiatives are constitutional initiatives. Among the other states that have both the statutory and the direct constitutional initiative, some states have only 25 percent of petitioners using the constitutional initiative, and overall approximately 52 percent of initiated proposals in these states were constitutional initiatives.<sup>45</sup>

Although there is no authoritative explanation why Ohio is an outlier among the states that have both the statutory and constitutional initiative, the academic literature suggests that the cause is the existence of a demanding supplementary petition requirement (with a short time available to obtain additional signatures) and the absence of protection against legislative interference with initiated statutes.<sup>46</sup>

## **Amendments, Proposed Amendments, and Other Review**

### *Summary of Post-1912 Changes in the Initiative*

Since 1912, there have been ten proposed amendments to revise the provisions in Article II on the initiative and the referendum, and the voters approved six of them. Two of the amendments approved in 1918 and 1953 involved only the referendum; one approved in 2015 involved only the constitutional initiative. The other three amendments approved in 1971, 1978 and 2008,

addressed the procedures for gathering signatures and placing proposals on the ballot and affected both the statutory and constitutional initiative.

### *Review of Approved Amendments*

In 1918, voters approved an initiated amendment to Article II, Section 1 that would allow the ratification of federal constitutional amendments to be subjected to the referendum. This provision was then used to reject the state's ratification of the Eighteenth Amendment (establishing prohibition), but the United States Supreme Court in *Hawke v. Smith*, 253 U.S. 221 (1920), rejected this use of the referendum.

In 1953, voters approved a General Assembly-proposed amendment to repeal the referendum language in Section 1 that had been found unconstitutional in *Hawke*.

In 1971, the voters approved a General Assembly-proposed amendment to Section 1g to eliminate the requirement that all proposed amendments be mailed to electors, instead requiring notice by publication for five weeks in newspapers of general circulation. The amendment also eliminated the requirement that signers of initiative, supplementary, or referendum petitions place on such petitions the ward and precinct in which their voting residence is located.<sup>47</sup>

In 1978, voters approved a General Assembly-proposed amendment to Section 1g to expand the role of the ballot board (which had been created in 1974)<sup>48</sup> to amendments proposed by initiative. The amendment also reduced the number of times proposed initiatives must be advertised preceding the election, and aligned the requirements for circulating and signing initiative petitions with those for candidate petitions.<sup>49</sup> This proposal was based, in part, on recommendations from the Ohio Constitutional Revision Commission.<sup>50</sup>

In 2008 the voters approved a General Assembly-proposed amendment to revise sections 1a, 1b, 1c, and 1g to make changes in filing deadlines. The amendment required that a proposed initiated law or amendment be considered at the next general election if petitions are filed 125 days before the election (as contrasted to the prior 90-day deadline). It also established deadlines for boards of elections to determine the validity of petitions. Finally, with regard to legal challenges, the amendment gave the Ohio Supreme Court original and exclusive jurisdiction over challenges to petitions and signatures, and established expedited deadlines for court decisions.<sup>51</sup>

In 2015, the voters approved a General Assembly-proposed amendment that placed obstacles in the way of proposed initiated amendments that would create monopolies, determine tax rates, or confer special benefits not generally available to others.<sup>52</sup>

### *Review of Rejected Constitutional Amendments*

There have been four unsuccessful efforts to alter the initiative. Three involved attempts to use the constitutional initiative to alter the initiative itself and one involved an attempt by the General Assembly.

In 1915, the voters rejected a proposed initiated “Stability Amendment” supported by the liquor interests that would have created a six-year bar on proposing constitutional amendments that had been defeated twice.<sup>53</sup>

In 1923, the voters rejected an amendment proposed by the General Assembly that would have altered the requirement that proposed laws and amendments together with the arguments and explanations be mailed to each elector. The rejected amendment would have permitted the publication of this information.<sup>54</sup>

In 1939, Herbert S. Bigelow surfaced again and was the moving force behind a proposed amendment to substitute a fixed number of 50,000 signatures gathered at large to place a proposed statute on the ballot (without any requirement of a supplementary petition) and 100,000 signatures gathered at large to place a constitutional amendment on the ballot, thus eliminating the percentage requirement for signatures as well as the geographic distribution requirement.<sup>55</sup> The voters rejected this proposal by more than a 3:1 margin.<sup>56</sup>

And in 1976, the voters rejected an initiated amendment proposed by Ohioans for Utility Reform sought to “simplify” the initiative process by substituting a fixed number of 150,000 signatures to place a proposed law on the ballot (without any requirement of a supplementary petition) and 250,000 signatures to place a proposed constitutional amendment on the ballot. The proposal would have also eliminated the geographic distribution requirement. It would also have eliminated the provision of Section 1e barring the use of the statutory initiative to pass certain property tax matters.<sup>57</sup>

### *1970s Commission Proposals*

In 1974, the voters approved a General Assembly-proposed amendment, based on a 1973 recommendation from the Ohio Constitutional Revision Commission (1970s Commission), to create the ballot board and simplify the preparation of ballot language and information for voters about amendments proposed by the General Assembly but not those proposed by initiative.<sup>58</sup>

In 1975, the 1970s Commission made a far-ranging proposal to change both the constitutional and statutory initiative (including the elimination of the geographic distribution requirement)<sup>59</sup> and move the provisions on the initiative and referendum in Article II to a new Article XIV.<sup>60</sup> The General Assembly, however, put a more modest proposal on the ballot, but not until 1978, when the voters approved it.

### *Facilitating Legislation*

To strengthen the initiative and referendum, the delegates made the initiative “self-executing.”<sup>61</sup> But the delegates were also aware of the possible need to supplement the constitution provisions, and they gave the General Assembly the power to enact legislation to facilitate, but not limit or restrict, their operation.<sup>62</sup>

Under the “facilitating” provisions of the Ohio Revised Code, the proponent of an initiated constitutional amendment or law must first submit a written petition to the attorney general signed by 1,000 Ohio qualified electors.<sup>63</sup> The petition must include the full text of the proposed amendment or law as well as a summary of it.<sup>64</sup> The attorney general then reviews the submission and determines whether the summary is a “fair and truthful statement” of the proposal.<sup>65</sup> This review by the attorney general, which must be completed within ten days of receipt of the petition,<sup>66</sup> is non-substantive. Thus, it does not contemplate the attorney general addressing either the wisdom of the proposed amendment or law or whether, if approved by the voters, it would be constitutional.

## **Litigation Involving the Statutory and Constitutional Initiatives**

### *Pre-Election Judicial Review*

The Supreme Court of Ohio has rejected the availability of pre-election judicial review of the merits of ballot proposals. *See State ex rel. Cramer v. Brown*, 7 Ohio St.3d 5, 454 N.E.2d 1321 (1983) (“It is well-settled that this court will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved, such claim being premature.”). Nonetheless, the court has provided pre-election review to remove from the ballot General Assembly-proposed constitutional amendments that violated the “one amendment” rule of Article XVI, Section 1. *See Roahrig v. Brown*, 30 Ohio St.2d 82, 282 N.E.2d 584 (1972).

### *One Amendment/Separate Vote Requirement*

The 1851 constitution included a one amendment, separate vote requirement under which constitutional amendments proposed by the General Assembly (as contrasted to those proposed by constitutional conventions) had to be submitted to the voters in such a way as to permit a vote “on each amendment, separately.”<sup>67</sup> This requirement was not included in the language adopting the constitutional initiative in 1912, but in 1978 the voters amended the constitution to provide that ballot language, including the presentation of amendments to be voted upon separately, was “subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution \* \* \* .”<sup>68</sup>

The Ohio Supreme Court has not decided whether the 1978 amendment extended the one amendment, separate vote requirement to initiated amendments, but in *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, the court held that state law “imposes a similar requirement on citizen-initiated proposed constitutional amendments \* \* \* .”<sup>69</sup> The court then equated the constitutional and statutory requirements, stating that “[b]ecause this [statutory] separate-petition requirement is comparable to the separate-vote requirement for legislatively initiated constitutional amendments under Section 1, Article XVI of the Ohio Constitution, our precedent construing the constitutional provision is instructive in construing the statutory requirement.”<sup>70</sup> The court then held that the ballot board had acted inappropriately in dividing a proposed amendment concerning healthcare into two separate amendments.<sup>71</sup>

### *Statutory Initiative*

In *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, \_\_\_ Ohio St.3d \_\_\_, 2016-Ohio-5377, \_\_\_ N.E.3d \_\_\_, the court exercised original jurisdiction to invalidate enough signatures based on “overcounting” to keep a proposed initiated statute off the ballot. In a concurring opinion, Justice Judith L. French described the case as “highlight[ing] the unworkable timeline that Article II, Sections 1b and 1g impose and the need to amend it.”

There has not been significant litigation concerning the indirect statutory initiative, although the Ohio Supreme Court has emphasized that Section 1e only relates to the statutory initiative process and not to the initiation of constitutional amendments. *See Thrailkill v. Smith*, 106 Ohio St. 1, 138 N.E. 532 (1922) (holding that Section 1e does not prevent use of the initiative in proposing an amendment to the constitution, which authorizes legislation providing for classification of property for the purpose of levying different rates of taxation).

The Ohio Court of Appeals has held that Section 1e does not prevent the initial use of the statutory initiative to propose otherwise-proscribed tax measures to the General Assembly. *See State ex rel. Durell v. Celebrezze*, 63 Ohio App.2d 125, 409 N.E.2d 1044, 1049-50 (1979).

### **Presentations and Resources Considered**

#### *Coglianesse Presentation*

On June 13, 2013, Richard N. Coglianesse, principal assistant attorney general, provided a broad overview of the role of the attorney general concerning the initiative and the referendum. Coglianesse identified possible technical changes to the Revised Code and the constitution, including dividing Article II into paragraphs, defining appropriations in Section 1d relating to the referendum, and including an expiration date for the attorney general’s “fair and truthful” certification of summaries of proposed initiatives.

#### *Schuster Presentation*

On July 7, 2013, Betsy Luper Schuster, who was, at that time, chief elections counsel for the secretary of state, provided an overview of the initiative and referendum and the ballot board based on information from the secretary of state’s website as well as an historical document listing ballot issues since 1912.

#### *Steinglass Presentations*

On August 6, 2013, Steven H. Steinglass, Senior Policy Advisor, presented an overview of the initiative and the referendum, including remarks related to the ability of the General Assembly to repeal initiated statutes, the existence of ways to prevent “non-constitutional” issues from being initiated as constitutional provisions, the signature requirements (including the geographic

distribution requirement), the use of supermajority requirements for voter approval, and the absence of a time limit on the petition circulation period.

On June 12, 2014, Mr. Steinglass presented to the committee on the use of the constitutional initiative throughout the country, including a discussion of issues concerning the statutory initiative.

#### *Thompson Presentation*

On September 12, 2013, Maurice A. Thompson, Executive Director of the 1851 Center for Constitutional Law, advanced the case for preserving and/or strengthening the initiative and referendum in Ohio. Thompson argued the initiative process gives Ohioans the capacity to act independently of the executive and legislative branches, further asserting the initiative and referendum advances public education and serves as a check on government. Commenting on proposals to reduce access to the initiative and referendum, he argued that driving up costs will foreclose participation by average grass-roots volunteers. With respect to the statutory initiative, Mr. Thompson urged reducing the number of signatures required for initiated statutes, preventing the legislature from amending or eliminating an initiated statute for a period of time or requiring a supermajority vote to do so, prohibiting the referendum of an initiated statute, and removing the requirement of a supplementary petition for the statutory initiative.

#### *McTigue Presentation*

On October 13, 2013, Donald J. McTigue, an attorney with McTigue & McGinnis LLS, opined that the current initiative and referendum should not be curtailed or made more difficult to exercise. More specifically, he identified burdens placed on the initiative and referendum by the General Assembly, including what he characterized as unintended consequences of the 2008 amendments to Article II.

#### *Subsequent Presentations by McTigue and Thompson*

On October 9, 2014, both McTigue and Thompson addressed questions posed by the committee, specifically whether the statutory initiative process could be strengthened by limiting the General Assembly's ability to repeal or amend an initiated statute during the five-year period after its adoption, and whether the process could be strengthened by undoing some of the impediments the General Assembly has placed on the initiative and referendum.

Mr. McTigue noted in some cases only a constitutional amendment will satisfy the goal of the petitioners. In addition, he expressed concern about revisions to the process that were adopted in 2008. He asserted those two requirements, working together, make it impossible to meet the 125-day requirement before an election. Thus, a proposed statute presented to the General Assembly prior to the beginning of its January session could not get on the ballot until November of the following year.

Mr. Thompson advocated a six-year, rather than a five-year, period during which the General Assembly may not repeal or amend an initiated statute, even with a two-thirds vote. He also pointed out ways the legislature could maneuver to defeat an initiative by delaying consideration or by making changes that adversely affect the proponents' effort.

### *Tillman Presentation*

On October 10, 2013, Scott Tillman, national field director from Citizens in Charge, an organization advocating the protection of the initiative and referendum process, emphasized the importance of keeping the initiative and referendum process open and available to citizens. He suggested the experience of other states could be a model for encouraging use of the statutory initiative, explaining that Michigan requires a 75 percent vote to repeal an initiated law, while Montana prevents legislative changes for three years.

### *Cain Presentation*

On December 12, 2013, Bruce Cain, professor of political science at Stanford University, presented to the committee via teleconference. Prof. Cain focused on three main topics with regard to the initiative process: 1) Assuring there is a clear idea of what the initiative is trying to fix; 2) Outlining the reasons proponents choose the initiative process as opposed to the legislative process; and 3) Distinguishing what is harmless in the constitution versus real issues that need to be changed.

Prof. Cain outlined several differences between California's and Ohio's processes. He described that there is an industry in California for the purpose of getting initiatives on the ballot. Because so many initiatives are making it to the ballot, California voters are passing fewer and fewer of them each year. He noted that the Ohio General Assembly has the ability to amend or repeal statutory sections, while the California General Assembly does not have that power, a situation that has led to using the initiative process in California as a way to check what the legislature is doing.

Prof. Cain said the California initiative process is not transparent, explaining that the people who finance the campaign arrange to have the initiative written and the general public either accepts or rejects the proposed language. Regarding how to keep subject matter that should not be in the constitution from being placed in the constitution, Prof. Cain suggested a subject matter restriction on initiatives.

### *Dinan Presentation*

On February 13, 2014, John Dinan, professor of politics and international affairs at Wake Forest University, provided the full Commission an overview of state constitutions and recent state constitutional developments. Regarding the initiative and referendum process, Prof. Dinan said, beginning in the late 20<sup>th</sup> century, the citizen's initiative process allowed the inclusion in the constitution of provisions that were blocked or otherwise unobtainable in the legislature on topics such as minimum wage and casino gambling. He said that all states have a process for

legislatively-referred constitutional amendments, but some states require that process to occur through a bare majority of the legislature in a single session before being submitted to the voters, while other states require a two-thirds supermajority approval in the legislature, sometimes even in consecutive sessions, before being submitted to the voters. He added some states also require approval of a majority of voters voting in that particular election, not just on that question, or may require approval by a certain percentage of voters, such as 60 percent or two-thirds.

He said, of the 18 states that have the constitutional initiative procedure, the requirements vary widely. He said some states require the same number of signatures on petitions for a statutory measure as the proponents would need for a constitutional measure. He said one state, Florida, requires a constitutional commission to convene every 20 years, and allows the commission to submit proposed amendments directly to the people.

Prof. Dinan noted that the debate about what belongs in a constitution and whether policy matters should be in the constitution is a debate that has occurred for as long as constitutional revision has taken place. He said the debate occurs on two levels, the first being whether it is, substantively, a good policy and the second being whether it is a policy deserving of inclusion in the constitution.

#### *Rosenfield Presentation*

On July 10, 2014, Peg Rosenfield, elections specialist for the League of Women Voters of Ohio, described the difficulties of citizen-based statutory initiative campaigns that have limited funding and rely on volunteers. Specifically, Ms. Rosenfeld noted the difficulty in meeting the 44-county geographic distribution requirement, as well as the difficulty of undertaking two signature drives, one initially, and one for the supplementary petition after the legislature fails to act. She recommended amending the indirect statutory initiative to reduce the county geographic distribution requirement to 22 or 33 counties, to introduce a direct statutory initiative with a four or five percent signature requirement, and a protection from legislative amendments only during any immediate lame duck session.

#### *Kuruc Presentation*

On December 14, 2014, Carolyn Kuruc, senior elections counsel to the secretary of state, presented on the role of the ballot board in placing issues on the statewide ballot. She reviewed the referendum, the constitutional initiative, the statutory initiative, and General Assembly-proposed amendments.

#### *Yost Presentation*

On May 14, 2015, the committee received a presentation by Dave Yost, Ohio Auditor of State, regarding the involvement of special interest groups with the Ohio initiative process. Mr. Yost said he is critical of the way the Ohio initiative process has been hijacked by business interests, suggesting a constitutional revision that would prevent the constitution from being used to confer

a benefit, either directly or indirectly. He said any interest conferred by the constitution must be available to all people who are similarly situated.

Mr. Yost emphasized a need to limit the people's path to amendment, rather than the legislature's ability to amend, because the legislature is not currently responsible for proposing problematic amendments in the constitution. He said the legislative process protects against the General Assembly proposing resolutions that have these same kinds of problems. Quoting Theodore Roosevelt, he remarked that the constitution should not be somebody's paycheck. Mr. Yost said the constitution has been hijacked by a powerful few for their own purposes.

### *McTigue Presentations*

On December 15, 2016 and January 12, 2017, Attorney Donald J. McTigue again appeared before the committee to present his comments regarding the redraft of the initiative and referendum sections of the constitution.

In December 2016, Mr. McTigue recommended that the initiated constitutional amendment petition process should stay the same in terms of when the ballot issue is submitted to voters, primarily because both general elections are well attended by voters, and sometimes proponents need to get the issue before the voters sooner rather than later. He said there is no reason to change the constitution in this regard because that issue has not been the source of problems in terms of timing or the processing of petitions. In addition, he said, the voters should have the same right as the General Assembly to determine at which election a petition should be submitted.

Mr. McTigue continued that the current constitution provides for a ten-day cure period after the Ohio Supreme Court determines the signatures are not sufficient. He said that provision is important and should be retained, explaining that petition efforts often do not get underway until after an extended process of building a coalition and getting agreement to the text of the petition. He said being able to have the additional time is important because proponents can fall short in getting the exact number of signatures needed from various counties. Mr. McTigue said having that time also reduces the impetus to challenge the petition in court. He said keeping that measure would necessitate reworking the deadlines that are in the redraft. He said the ten-day cure period is especially important with regard to referendum petitions, since referendum proponents have only 90 days to get their signatures. So, he said, at a minimum, the committee should consider restoring the ten-day cure period for referendum petitions.

Mr. McTigue also recommended that the committee address the standards for ballot language to be followed by the ballot board under Article XVI. He said ballot language has been a source of contention over the years, and that is where games are played. He suggested amending Article XVI to include a provision relating to the ballot board prescribing ballot language. He said he did not provide language for this concept because Article XVI was not part of the redraft.

Mr. McTigue said his biggest complaint is that the General Assembly passes laws that do not facilitate the process but rather restrict the right of citizens to propose initiated amendments,

laws, and referenda. He said it is important to address a specific law requiring that, in addition to filing the petition, a proponent must simultaneously file a full electronic copy and sign a verification that it is a true copy. He said the problem with this requirement is that it adds expense because proponents have to scan everything. He said there may be 20,000 part petitions, but every page must be scanned and submitted electronically, which is an expensive process.

In January 2017, Mr. McTigue clarified four different terms describing different written documents: the summary, the ballot title, the ballot language, and the explanation.

He described the ballot language as being what voters see when they go into the voting booth, and that the ballot title is the heading that appears above the ballot language. He said the ballot language and ballot title are not on the petition, and that, by statute, the secretary of state decides the title. He said, by constitutional provision, the ballot board decides the ballot language.

Mr. McTigue said the summary is a statutory creature, and is connected with the requirement of getting 1,000 signatures. He said, by statute, proponents must have a summary to submit to the attorney general, who then determines whether the summary is fair and truthful. If that requirement is met, the proponents have to print on the face of the petition that it includes certification by the attorney general. He said there is a statutory process for challenging that in the Supreme Court. If the ballot language and title is to be moved to the front of the process, he suggested that the ballot language and title can essentially take the place of the summary. He said the proponents still would have to get 1,000 signatures, but instead of a summary they would be proposing the ballot title and the ballot language, and submitting them to the ballot board, rather than to the attorney general. He said the ballot board can disregard the summary if it wishes. He said there are standards the Supreme Court has developed for what makes ballot language fair and accurate, adding if there is to be a summary up front, make it the ballot language and title, and say that is what has to be proposed by the proponents with 1,000 signatures before circulating the main petition. He said he proposes that there then be a short period where it could be challenged if someone does not like it, the court then makes a decision, and that is what gets printed on the face of the petition. He said his draft replaces the summary with the ballot language, and adds the date of certification. He said that is the primary difference between the current draft and what he did.

Commenting on the staff edits to the draft, Mr. McTigue said there is no reason to go to the attorney general. He said there is also no need for a 300 word argument or explanation. He said he would recommend getting rid of the summary requirement and require submission of proposed ballot language instead. He said he would recommend keeping the requirement that the ballot board prescribe the ballot language. He also suggested adding some tight time frames for filing a challenge with the Ohio Supreme Court. He said the one subject/separate vote requirement is purely statutory, and because that determination is made up front by statute, it should be rolled into that same process. Mr. McTigue said the draft should reinstate a ten-day cure period in the situation in which the initial petition as certified by the secretary of state has insufficient signatures.

### *Henkener Presentation*

On December 15, 2016, the committee heard from Ann Henkener, of the League of Women Voters of Ohio. Ms. Henkener said she agrees with Mr. McTigue's recommendations, noting her experience with constitutional amendments has come in the context of redistricting reform. She said there is no reason to make the constitutional amendment process more difficult. She said it is difficult right now to get something on the ballot. She said one way to improve that situation would be to lower the number of signatures required. She noted that only California and Florida exceed Ohio in the number of petition signatures needed. She said some states have a higher percentage but a smaller population, so there is no comparison. She said a 55 percent supermajority requirement is unreasonable, but if it is adopted it should also apply to the General Assembly. She also disagreed that placement of citizen's initiatives on the ballot should be limited to certain years.

Regarding initiated statutes, Ms. Henkener said increasing the number of signatures from three to five percent defeats the benefit of having a safe harbor because knowing the legislature cannot change the statute for three to five years is not enough incentive for proponents to justify having to get so many signatures. She suggested an improvement would be to have a longer safe harbor period along with the ability to go back to the voters if a change needs to be made.

Ms. Henkener said her views on the ballot board are consistent with those of Mr. McTigue, noting her experience in working on a redistricting reform proposal in which the board rejected the ballot language at the end of a long and expensive petition gathering process. She said she was alarmed to see an article in the *New York Times* that described lobbyists meeting with secretaries of state across the country to try to affect ballot language. She said she looks at ballot language as something the secretary of state and the ballot boards should perform as part of their duty to serve voters, rather than something they do in their political party capacity. She said ballot language should not be prejudicial, or used to sway the voters, but rather a way to indicate to voters what the issue is. She said a five-member board eliminates the problem of the deadlock, but that also makes it partisan, adding the partisan nature of the secretary of state influences the partisan nature of the ballot board.

Ms. Henkener said she supports Mr. McTigue's observations about timing. She said under the current system, if someone disagrees with the ballot language, there is one chance to get the Ohio Supreme Court to review the challenge and then the ballot language comes back to the same people on the ballot board and there is no further recourse. She said this must be done at least 75 days before the election, and the board traditionally meets in August. She said by the time they meet, there is time for only one appeal.

Ms. Henkener said she would like to change the composition of the ballot board, but said she is unsure what arrangement would be an improvement. She said there could be a requirement of an equal number of persons on the board, but then there is a deadlock. She said that issue has been raised with regard to the formation of a redistricting commission. She said the decision regarding the ballot language should go up front so that proponents know where they stand. She said the bar is pretty high for petitioners to prove there is a problem with the ballot language as

provided by the ballot board. She said she would recommend lowering the standard so that the board would be more sensitive toward neutral language.

Ms. Henkener said moving the ballot board review to the beginning of the process would not resolve all of the problems for proponents. She said she would like to be able to submit the language to the ballot board, allowing petitioners to get a first crack at drafting the language that is on the ballot. She said she would like for the proponents to submit language that has to be seriously considered, and that language should prevail unless there is something wrong with it.

### *Turcer Presentation*

On December 15, 2016, Catherine Turcer, policy analyst with Common Cause Ohio, appeared before the committee. She directed the committee to data compiled by the Ballot Initiative Strategy Center indicating how different states approach the preparation of ballot language. She commented that it is extremely difficult for proponents to collect sufficient signatures, and it is disappointing when the effort falls apart at the end, as occurred with a redistricting reform effort in which she was involved. She said she would like the ballot board review to be moved to the front to address these problems early in the process. She said this gives time for some litigation and discussion. She noted there are nine states where the proponent creates the title and the summary. She said proponents should have first crack at drafting the language.

### **Discussion and Consideration**

The recommendations expressed in this report represent the culmination of nearly five years of committee review and discussion. Members of the committee had numerous discussions among themselves and with presenters concerning the initiative and the role of the citizenry in state government. A complete review of the presentations and the comments and suggestions of committee members may be found in the meeting minutes.

From these discussions, the committee concluded that it would recommend: (a) making the statutory initiative more user-friendly; (b) calibrating the process to encourage citizens to use the initiated statute and limit the use of initiated constitutional amendments for topics that typically are contained in a constitution; (c) creating a procedure for avoiding gender-inappropriate language in initiated laws and amendments; (d) making the constitutional provisions on the initiative more transparent, more easily understood; (e) establishing a constitutional foundation under some aspects of the current initiative practice; and (f) delegating to the General Assembly the authority to adopt modern electronic methods for making the initiative processes more efficient.

### *Purpose of State Constitutions*

At the outset of its review of the initiative, members of the committee were concerned that many constitutional provisions proposed by initiative did not seem appropriate for a state constitution. The inclusion in the constitution of issues more appropriate for the Ohio Revised Code was seen as contributing to the burgeoning length of the Ohio Constitution (now at approximately 56,800

words, the tenth longest in the nation) and as making it more difficult for the General Assembly to legislate in areas that are most properly in their purview.

There was also a consensus among committee members that state constitutions, like their federal counterpart, should establish the basic framework of government, including the relationship of the three branches of government to one another, the relationship between the state and local government, and the relationship between the citizenry and the government (*i.e.*, the bill of rights and voting). Members of the committee also recognized that state constitutions in Ohio and throughout the country contain far more detail than the federal counterpart on such items as education, state debt, and taxation.

In addition, committee members expressed concern that wealthy special interests have used and have increasingly sought to use the constitutional initiative to embed their business models in the constitution. In some cases, these initiated constitutional amendments have sought to create monopolies that are virtually impervious to alteration or repeal.

Although the constitutional initiative has not been used frequently in Ohio, members of the committee recognized that the constitutional initiative has been part of the state's machinery of government for 105 years, and that its presence reflects the primacy of voters in the political and electoral process. Thus, members of the committee were reluctant to recommend any proposal that would deprive Ohio voters of their right to initiate constitutional amendments.

#### *Limitations on Amendments*

In considering how to address these concerns, the committee initially asked whether there should be a limitation on what is appropriate for a constitutional amendment as opposed to a statute, and if so, what that limitation should be. The committee discussed whether there might be ways to protect the constitution from being co-opted by special interests for personal profit as well as ways to encourage citizens wishing to change the law to use the statutory initiative process rather than try to amend the constitution. In relation to the monopoly issue, the committee's discussion contributed to the approval of Issue 2 on the November 2015 ballot, a General Assembly-proposed measure that requires a constitutional initiative creating a monopoly, determining a tax rate, or conferring special benefits to be presented to voters as two separate questions.

#### *Strengthening the Statutory Initiative*

A threshold question for the committee was why Ohio petitioners overwhelmingly chose the constitutional initiative over the statutory initiative. Relying on presentations by legal practitioners and interested parties, staff research, and committee discussions, the committee concluded that citizens generally prefer the constitutional initiative to the statutory initiative process because of the permanence provided by success at the polls. Additionally, the use of the statutory initiative, despite its lower signature requirement, was more burdensome because of the supplementary petition and the fact that the results of a successful statutory initiative could easily be reversed by the General Assembly, thus nullifying the significant effort and expense

undertaken by statutory initiative proponents. The committee also learned that the time frame applicable to the statutory initiative process created a difficult barrier for proponents.

After reviewing the experience in Ohio and comparing it with the experiences of other states, the committee adopted a proposal to strengthen the statutory initiative in the hope that a stronger statutory initiative would give those who wanted to use the initiative process an incentive to attempt to achieve their goals through the initiation of statutory, not constitutional, change. Thus, the strengthening of the statutory initiative became the principal substantive goal of the committee, though the proposal also imposes some greater difficulties on the use of the constitutional initiative and addresses other changes designed to modernize this portion of the constitution.

More specifically, the committee decided to recommend a five-year protected period, or “safe harbor,” during which the General Assembly could only amend or repeal an initiated statute with a two-thirds vote. The committee also wished to eliminate the supplementary petition requirement, feeling that increasing the signature requirement from three percent to five percent provided sufficient protection so that a supplementary petition would not be needed. The committee also relied on the apparently unintended effect of the 2008 amendment that gave statutory initiative proponents approximately two months to collect the supplementary signatures. Based on its decision to eliminate the supplementary petition, the committee understood the need to add language allowing the General Assembly to provide a procedure for proponents to withdraw a proposed initiated statute if, for whatever reason, they elect to not take the issue to the ballot.

### *Constitutional Initiative*

The committee also believed it was important to make corresponding changes to the constitutional initiative process. One goal in this area was to increase the standard for proponents to obtain passage at the polls since currently only a simple majority is required to both approve initiated statutes as well as initiated constitutional amendments. Because voter turnout is lower in odd-numbered year elections, the committee was concerned that allowing a constitutional initiative to be presented to voters during odd-numbered years, and requiring only a simple majority for passage, has had the result of constitutional amendments being adopted by a smaller percentage of voters than is desirable for an amendment to the state’s foundational document. For example, a constitutional initiative placed on the November 2015 ballot could have been approved by 1,631,024 votes, or 21.7 percent of registered voters. Conversely, a constitutional initiative placed on the November 2016 ballot could have been approved by 2,809,428, or 35.7 percent of registered voters. Thus, the committee agreed that appropriate attention to the significance of amending the constitution requires a procedure that increases both voter turnout and the percentage of voter approval. The committee agreed on a recommendation requiring constitutional initiatives to be placed on the ballot only in even-numbered years, and a passage rate of at least 55 percent.

### *Timing*

Another goal in reforming the process was to move the ballot board review to the beginning of the process rather than at the end, as is current procedure. The committee heard testimony on this issue indicating that proponents sometimes expend many thousands of dollars to mount a signature-gathering campaign only to find, at the end of the process, that the ballot board rejects their ballot language and thus effectively requires them to start over. The committee concluded that this simple change would make the process more fair without significantly altering the important role of the ballot board.

### *Constitutional Foundation*

In attempting to review all of the provisions concerning the initiative and referendum, the committee discovered that there was no explicit constitutional authorization for the requirement that an initial petition with 1,000 signatures be filed and that the attorney general determine whether the summary was “fair and truthful.” The statutory authority for this requirement was the current “facilitating” language in Article II, Section 1g, but the committee felt it more appropriate for this requirement to be addressed directly in the constitution.

### *Transparency*

Early on, it became evident that the organization of the original constitutional sections created difficulties for those wishing to use the initiative and referendum process. In addition, some of the language was confusing, especially language dealing with timelines. In the process of its own review, the committee became acutely aware of the problems the average citizen – who, after all, is the person the 1912 Constitutional Convention intended to use the process – faces in attempting to understand and use the initiative and referendum sections. Thus, the committee decided that redrafting these sections would be an important part of its mission to modernize the process. The resulting reorganization and redrafting is intended to make the process more user-friendly and easier to understand. To further modernize, the committee agreed it was important to include a requirement that initiatives and referenda include gender-neutral language, where appropriate.

### *Technology*

The committee concluded that advances in technology may be considered to have rendered obsolete newspaper publication requirements in the original language. Wishing to give the General Assembly the ability to keep up with developing trends, the committee decided to recommend language allowing the General Assembly to enact laws to modernize the publication process through the use of electronic media.

### *Signature Requirement*

During its deliberations on the statutory initiative, the committee took a hard look at the signature requirement. At one point, it considered reducing the number of required counties

from 44 to 22 (or from 50 percent to 25 percent) of Ohio counties, based on the concern that obtaining sufficient signatures from such a large number of counties is an obstacle for proponents of an initiated statute, particularly for grass-roots groups relying on volunteers to collect signatures. However, the committee rejected this approach as being inconsistent with the Ohio’s historic commitment to having broad-based support for initiatives and as sending the wrong message to residents of communities with low populations. The committee also concluded that the source of the hardship to petitioners of gathering signatures was more likely related to the supplementary petition requirement rather than to the geographic distribution requirement. Thus, the committee concluded that raising the initial percentage from three to five percent and eliminating the supplementary petition requirement of an additional three percent could alleviate some of the concerns about meeting the existing geographic distribution requirement. Therefore, the committee opted not to recommend a change to the geographic distribution requirement.

The committee also recognized one way to encourage use of the statutory initiative would be to adjust the percentage requirement for petition signatures. Committee members noted that Ohio has a low initial signature requirement of three percent, thus possibly accommodating a goal of petitioners to encourage the General Assembly to act on an issue that is of concern to voters.

Also with regard to signature requirements, the committee considered whether the supplemental petition process, with its additional signature requirement, could be eliminated or modified on the basis that the supplemental petition presents a barrier for proponents of an initiated statute. Committee members expressed a concern that if the supplemental petition requirement were eliminated without raising the percentage requirement for the initial petition, it could defeat the purpose of having an indirect, as opposed to a direct, statutory initiative process because it would be too easy for proponents to circumvent legislative participation. At the same time, all members recognized that the supplemental petition signature requirements, together with the short time frame allotted to proponents for obtaining supplemental petition signatures, presents an insurmountable obstacle for citizen groups wishing to initiate laws, and that removing this obstacle could help to encourage use of the statutory initiative.

Committee members ultimately agreed that, if the percentage requirement of the initial petition were raised from three percent to five percent, the supplemental petition could be eliminated, thus balancing the goal of encouraging use of the statutory initiative with that of allowing the General Assembly the option of addressing issues of citizen concern before an initiated statute would go on the ballot.

*Section-by-Section Review of Proposed Revisions*

Article II (Proposed Provisions)

New Provision	Title	Summary/Commentary [Source/Destination]
Section 1	Legislative Power	<ul style="list-style-type: none"> <li>Continues to provide that the legislative power of the state is vested in the General</li> </ul>

		<p>Assembly but the people reserve the power to propose laws and amendments and to reject laws.</p> <ul style="list-style-type: none"> <li>• Language on self-executing and on power of General Assembly to enact facilitating legislation taken from current 1g.</li> </ul>
Section 1a	Initiative to Amend the Constitution	<ul style="list-style-type: none"> <li>• Permits the use of the initiative to amend the constitution and describes the process to be followed.</li> <li>• Adds language from the Revised Code requiring an initial petition and giving the attorney general power to make “fair and truthful” determination.</li> <li>• Requires use of gender-neutral language</li> <li>• Requires early action by ballot board regarding title, explanation, ballot language.</li> <li>• Requires 55 percent votes for approval</li> <li>• Limits vote to general elections in even-numbered years.</li> </ul>
Section 1b	Initiative to Enact Laws	<ul style="list-style-type: none"> <li>• Permits the use of the initiative to adopt statutes and describes the process to be followed.</li> <li>• Adds language from the Revised Code requiring initial petition and giving the attorney general power to make “fair and truthful” determination.</li> <li>• Requires use of gender-neutral language.</li> <li>• Requires early action by ballot board regarding title, explanation, ballot language.</li> <li>• Clarifies dates for submission.</li> <li>• Increases signatures from 3 percent to 5 percent.</li> <li>• Eliminates the supplementary petition.</li> <li>• Creates a five-year safe harbor for initiated laws.</li> </ul>
Section 1c	Referendum to Laws	<ul style="list-style-type: none"> <li>• Permits the use of the referendum to challenge laws passed by the General Assembly.</li> <li>• Adds language from the Revised Code requiring initial petition and giving the attorney general power to make “fair and truthful” determination.</li> <li>• Requires early action by ballot board regarding title, explanation, ballot language.</li> </ul>

		<ul style="list-style-type: none"> <li>• Moves provision barring the use of the referendum to challenge laws providing for tax levies and emergency laws to Section 17.</li> </ul>
Section 1d	Petition Requirements	<ul style="list-style-type: none"> <li>• Describes the process for collecting signatures.</li> <li>• Provision taken from current 1g.</li> <li>• Provision on laws not subject referendum moved to Section 17.</li> </ul>
Section 1e	Verifying and Challenging Petitions	<ul style="list-style-type: none"> <li>• Describes the process for verifying and challenging petitions and signatures.</li> <li>• Provides periods to cure insufficient signatures.</li> <li>• Calculates time limits from time of action rather than backwards from time of election.</li> <li>• Provides the Ohio Supreme Court with original and exclusive jurisdiction.</li> <li>• Provisions generally taken from current 1g.</li> <li>• Provision in current Section 1e imposing limits on the use of the initiative moved to Section 1i.</li> </ul>
Section 1f	Explanation and Publication of Ballot Issue	<ul style="list-style-type: none"> <li>• Provisions re preparation of true copies of proposed laws and amendments and challenged laws.</li> <li>• Provisions re preparation of explanation</li> <li>• Provisions taken from current 1g.</li> <li>• Provision permitting the General Assembly to prescribe electronic publication.</li> <li>• Provision in current 1f guaranteeing initiative and referendum to people of municipalities moved 1i.</li> </ul>
Section 1g	Placing on the Ballot	<ul style="list-style-type: none"> <li>• Describes the process for prescribing ballot language and preparing ballots.</li> <li>• Requires ballot language to be prescribed in the same manner as issues submitted by the General Assembly.</li> <li>• Provisions taken from current 1g.</li> </ul>
Section 1h	Limitation of Use	<ul style="list-style-type: none"> <li>• Bars the use of the statutory initiative to adopt laws that classify property for tax purposes and authorize a single tax on land.</li> <li>• Limits the use of the constitutional initiative to create monopolies, to determine tax rates, and to confer special benefits.</li> <li>• Provision from current 1e.</li> </ul>

Section 1i	Application to Municipalities	<ul style="list-style-type: none"> <li>• Guarantees the right of the initiative and referendum to the people of each municipality.</li> <li>• Provision moved from current 1f.</li> </ul>
Section 15(G)	How Bills Shall Be Passed	<ul style="list-style-type: none"> <li>• Describes the constitutional requirements for passing bills.</li> <li>• Describes the procedures for adopting emergency law.</li> <li>• Taken from current 1d.</li> </ul>
Section 17	Effective Date of Laws	<ul style="list-style-type: none"> <li>• Bars the use of the referendum to challenge laws providing for tax levies and emergency laws.</li> <li>• Provision taken from current 1d.</li> </ul>

## Conclusion

The Constitutional Revision and Updating Committee concludes that Article II, Sections 1 to 1i, 15(G) and 17, of the Ohio Constitution should be revised to strengthen the statutory initiative, to make the constitutional initiative slightly more difficult to use, and to make the initiative process more transparent and user-friendly. These revisions would change the statutory initiative petition signature percentage requirement; eliminate the supplementary petition; limit the ability of the General Assembly to alter or repeal initiated statutes for a period of five years; increase the approval percentage for initiated constitutional amendments to 55 percent; limit constitutional initiatives to general election ballots in even-numbered years; eliminate the use of inappropriate gender-specific language; permit the use of electronic means to gather signatures and verify them; and make other technical changes in the affected provisions. No substantive recommendations are made for the referendum or for the right of the people of municipalities to use the initiative and referendum.

## Date Issued

After formal consideration by the Constitutional Revision and Updating Committee on April 13, 2017, and May 11, 2017, the committee voted to issue this report and recommendation on May 11, 2017.

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## Endnotes

<sup>1</sup> In addition to other resources cited, this report and recommendation also contains information found in Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* 215 (2nd prtg. 2011), and Steven H. Steinglass, *Constitutional Revision: Ohio Style*, 77 Ohio St. L. J. 281 (2016).

<sup>2</sup> Isaac F. Patterson, *The Constitutions of Ohio*, 121 (Cleveland: Arthur H. Clark Co. 1912).

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<sup>3</sup> On September 3, 1912, Ohio voters approved the initiative and referendum (proposed Amendment No. 6) by a vote of 312,592 to 231,312. At the same election, voters approved 34 of the 42 amendments proposed by the convention.

<sup>4</sup> R.C. 3519.01(A).

<sup>5</sup> Ohio Const. art. II, § 1g

<sup>6</sup> *Id.*

<sup>7</sup> See Sec’y of State, Governor’s Race Percentage Chart: Votes for Office of Governor: November 4, 2014, <https://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/percentage.aspx> (last visited Apr. 6, 2017).

<sup>8</sup> Ohio Const. art. II, § 1b.

<sup>9</sup> *Id.*

<sup>10</sup> The requirement that a petition with the requisite number of approved signatures must be filed at least 125 days prior to the general election results in a filing deadline between June 30 and July 6, depending on the date of the general election. See, e.g., Ohio Sec’y of State, *2017 Ohio Elections Calendar* (Nov. 2016), [https://www.sos.state.oh.us/sos/upload/publications/election/2017ElectionCalendar\\_Letter.pdf](https://www.sos.state.oh.us/sos/upload/publications/election/2017ElectionCalendar_Letter.pdf)

<sup>11</sup> Ohio Const. art. II, § 1b.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Article II, Section 1e was amended November 3, 2015, as a result of the passage of Issue 2. Issue 2 proposed to amend Section 1e to add prohibitions against the use of the constitution to grant a monopoly or other exclusive business interest that is not available to similarly situated persons or nonpublic entities. In addition to adding the restrictions on such activities, the amendment reorganized Section 1e to create subsections (A), (B), and (C), with the original language of the section now being identified as subsection (A).

<sup>16</sup> The three laws that were adopted as a result of a statutory initiative involved old age pensions (1933), colored oleomargarine (1959), and smoking (2006). The voters approved each of these by a substantial majority.

<sup>17</sup> Twelve statutory initiatives have gone to the voters after rejection by the General Assembly. This list of ballot measures, however, does not fully describe the use and attempted use of the statutory initiative because the state does not keep records of petitions that did not make it to the ballot for whatever reason. Nonetheless, in 1913, the General Assembly approved two statutes proposed by initiative: H.B. No. 1 (relative to regulating newspapers and publication of nothing but the truth), and H.B. No. 2 (providing for the removal of certain officers).

<sup>18</sup> See, e.g., Ohio Sec’y of State, *2017 Ohio Elections Calendar* (Nov. 2016), [https://www.sos.state.oh.us/sos/upload/publications/election/2017ElectionCalendar\\_Letter.pdf](https://www.sos.state.oh.us/sos/upload/publications/election/2017ElectionCalendar_Letter.pdf)

<sup>19</sup> Ohio Const. art. II, § 1b.

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<sup>20</sup> Ohio Const. art. II, § 1b. This has only happened once. See *State ex rel. Greenlund v. Fulton*, 99 Ohio St. 168, 124 N.E. 172, 177 (1919) (rejecting an initiated amendment on the classification of property for taxation because it received fewer affirmative votes than a conflicting legislatively-proposed amendment).

<sup>21</sup> Ohio Const. art. II, § 1e(B)(2).

<sup>22</sup> Under Ohio Const. art. XVI, § 3 (amended 1912), a provision adopted as part of the 1851 constitution, Ohio voters are asked every 20 years whether they want a state constitutional convention to be held. The voters approved constitutional convention calls in 1871 and 1910, but they have rejected the call every 20 years since 1932.

<sup>23</sup> See Hoyt Landon Warner, *Progressivism in Ohio 1897–1917*, at 295 (1964).

<sup>24</sup> See Cleveland-Marshall Coll. of Law Library, *Ohio Constitution – Law and History: Calls for Conventions*, <http://guides.law.csuohio.edu/ohioconstitution/callsconventions> (last updated Mar. 10, 2017).

<sup>25</sup> See Warner, *supra*, note 23 at 318–19.

<sup>26</sup> See Lloyd L. Sponholtz, *The 1912 Constitutional Convention in Ohio: The Call-Up and Nonpartisan Selection of Delegates*, 79 Ohio Hist. 209, 212 (1970).

<sup>27</sup> See Warner, *supra*, note 23 at 319; see also Lloyd L. Sponholtz, *Progressivism in Microcosm: An Analysis of the Political Forces at Work in the Ohio Constitutional Convention of 1912*, at 148 (1969) (unpublished Ph.D. dissertation, University of Pittsburgh) (reviewing roll call votes).

<sup>28</sup> See Hoyt Landon Warner, *Ohio’s Constitutional Convention of 1912*, 61 Ohio St. Archeological & Hist. Q. 11, 17 (1952).

<sup>29</sup> See Herbert S. Bigelow, *New Constitution for Ohio: An Explanation of the Work of Ohio’s Fourth Constitutional Convention* 14–15, H.R. Doc. No. 62-863 (1912) (discussing the “resourcefulness of the enemy” and an “attack that had failed” in explaining why the proponents of the initiative and referendum did not vote against the constitutional provision barring the use of the indirect statutory initiative to adopt the single tax).

<sup>30</sup> See *2 Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1368 (1912).

<sup>31</sup> See Cleveland-Marshall Coll. of Law Library, *Ohio Constitution – Law and History: Table of Proposed Amendments*, <http://guides.law.csuohio.edu/ohioconstitution/ohioconstitutionamendmentstable> (last updated Mar. 10, 2017).

<sup>32</sup> This portion of the report and recommendation focuses only on the constitutional initiative because there has been so little use made of the statutory initiative.

<sup>33</sup> Of the four initiated amendments that the voters approved during this period, two never went into effect. A proposal on the classification of property for taxation received fewer affirmative votes than a General Assembly-proposed amendment. See *Greenlund v. Fulton*, *supra*, note 20 at 177 (rejecting an initiated amendment because it received fewer affirmative votes than a conflicting legislatively-proposed amendment). And an amendment to subject the legislative ratification of federal constitutional amendments to the referendum was struck down by the Supreme Court in *Hawke v. Smith*, 253 U.S. 221 (1920). The two initiated amendments that became part of the constitution involved home rule/liquor in 1914 and the manufacture of liquor in 1918.

<sup>34</sup> Prior to the 1912 Convention, amendments proposed by the General Assembly had to receive more than 50 percent of the vote at the election (not on the issue), thus making constitutional revision difficult. Indeed, prior to 1912, Ohio voters approved only 11 of the 37 amendments proposed by the General Assembly, but 19 of the rejected amendments received more affirmative than negative votes. See Steinglass, *Constitutional Revision: Ohio*

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*Style, supra*, note 1, at 309-10. The 1912 Convention proposed and the voters approved the elimination of this supermajority requirement, thus permitting legislatively-proposed amendments to be approved when they receive 50 percent or more votes on the issue. *Id.*

<sup>35</sup> See Steven H. Steinglass, *Approved Initiated Amendments – Ohio Voting Percentages* (Nov. 3, 2016) (on file with the Ohio Constitutional Modernization Commission).

<sup>36</sup> *See id.*

<sup>37</sup> Because no substantive changes are proposed in either the operation of the referendum or the use of the initiative by the people of municipalities, these devices are not discussed.

<sup>38</sup> Two states – Massachusetts and Mississippi – have the indirect constitutional initiative, under which the state legislature may place competing constitutional amendments on the ballot.

<sup>39</sup> Two states – Utah and Washington – have both the direct and indirect statutory initiative. California had both the direct and indirect statutory initiative from 1912 to 1966, when the voters repealed the seldom-used indirect statutory initiative.

<sup>40</sup> See Mich. Const. art. II, §9; Nev. Const. art. 19, § 2(3).

<sup>41</sup> Adapted from M. Dane Water, *Initiative and Referendum Almanac* 28-29 (2003).

<sup>42</sup> The information in this section is taken from Steven H. Steinglass, *Supermajority Requirements Nationally* (Nov. 3, 2016) (on file with the Ohio Constitutional Modernization Commission).

<sup>43</sup> Prior to 1964, New Hampshire only permitted amendments to be proposed by constitutional conventions, and the state had 13 conventions between 1850 and 1984. *See id.*

<sup>44</sup> See Steven H. Steinglass, *Double Assent and the Nevada Experience* (Nov. 3, 2016) (on file with the Ohio Constitutional Modernization Commission).

<sup>45</sup> See Jennie Drage Bowser, *Use of the Statutory Initiative vs. the Constitutional Initiative* (Feb. 6, 2014) (on file with the Ohio Constitutional Modernization Commission).

<sup>46</sup> *Id.*

<sup>47</sup> See Ohio Const. art. II, § 1g (amended 1971).

<sup>48</sup> *See id.* art. XVI, § 1 (amended 1974).

<sup>49</sup> *See id.* art. II, § 1g (amended 1978).

<sup>50</sup> See Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution: Final Report 343–70* (June 30, 1977) [hereinafter OCRC Final Report], <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> .

<sup>51</sup> See Ohio Const. art. II, § 1g (amended 2008).

<sup>52</sup> See *Ohio Initiated Monopolies Amendment, Issue 2 (2015)*, Ballotpedia, [https://ballotpedia.org/Ohio\\_Initiated\\_Monopolies\\_Amendment\\_Issue\\_2\\_\(2015\)](https://ballotpedia.org/Ohio_Initiated_Monopolies_Amendment_Issue_2_(2015)) (last visited Apr. 11, 2017); see also Steinglass, *Constitutional Revision: Ohio Style, supra*, note 1, at 326-29.

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<sup>53</sup> See Steinglass, *Constitutional Revision: Ohio Style*, *supra*, note 1, at 315.

<sup>54</sup> See *Ohio Publication of Proposed Amendments and Statutes, Amendment 3 (1923)*, Ballotpedia, [https://ballotpedia.org/Ohio Publication of Proposed Amendments and Statutes, Amendment 3 \(1923\)](https://ballotpedia.org/Ohio_Publication_of_Proposed_Amendments_and_Statutes,_Amendment_3_(1923)) (last visited Apr. 11, 2017).

<sup>55</sup> See *Ohio Initiative and Referendum System, Amendment 3 (1939)*, Ballotpedia, [https://ballotpedia.org/Ohio Initiative and Referendum System, Amendment 3 \(1939\)](https://ballotpedia.org/Ohio_Initiative_and_Referendum_System,_Amendment_3_(1939)) (last visited Apr. 11, 2017).

<sup>56</sup> See *id.*

<sup>57</sup> See *Ohio Initiative & Referendum Procedures, Amendment 7 (1976)*, Ballotpedia, [https://ballotpedia.org/Ohio Initiative %26 Referendum Procedures, Amendment 7 \(1976\)](https://ballotpedia.org/Ohio_Initiative_%26_Referendum_Procedures,_Amendment_7_(1976)) (last visited Apr. 11, 2017).

<sup>58</sup> See Ohio Const. art. XVI, § 1 (amended 1974); see also OCRC Final Report, *supra*, note 50, at 188–91.

<sup>59</sup> See OCRC Final Report, *supra*, note 50, at 25, 343–70. The 1970s Commission recommendation to eliminate the geographic distribution requirement was based, at least in part, on concerns about whether it was consistent with the “one man one vote requirement.” See *id.* at 368 – 69.

<sup>60</sup> See *id.* at 188-191.

<sup>61</sup> Ohio Const. art. II, § 1g (“The foregoing provisions of this section shall be self-executing, except as herein otherwise provided.”).

<sup>62</sup> *Id.* (“Laws may be passed to facilitate their operation but in no way limiting or restricting either such provisions or the powers herein reserved.”).

<sup>63</sup> Ohio Rev. Code Ann. § 3519.01(A) (West Supp. 2015).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* see also *Schaller v. Rogers*, 2008-Ohio-4464, at ¶¶ 13–16 (10<sup>th</sup> Dist. Sept. 4, 2008) (describing the development of these facilitating provisions, beginning in 1929, and reviewing the evolution of the statutory provisions requiring those proposing a constitutional amendment to submit a petition to the attorney general for a fair and truthful determination).

<sup>66</sup> Ohio Rev. Code Ann. § 3519.01(A)(West Supp. 2015).

<sup>67</sup> Ohio Const. art. XVI, § 1 (1851) (“When more than one amendment shall be submitted at the same time, they shall be so submitted, as to enable the electors to vote on each amendment, separately.”).

<sup>68</sup> Ohio Const. art. II, § 1g (amended 1978) (“The ballot language shall be prescribed by the ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution.”).

<sup>69</sup> *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, at 415-16 (quoting R.C. 3519.01(A)).

<sup>70</sup> *Id.* at 416.

<sup>71</sup> *Id.* at 416-17.

**ARTICLE II, SECTIONS 1 THROUGH 1g****Section 1 – In Whom Power Vested**

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the 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; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

**Section 1a – Initiative and Referendum to Amend Constitution**

The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors.”

**Section 1b – Initiative and Referendum to Enact Laws**

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election

occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

### **Section 1c – Referendum to Challenge Laws Enacted by General Assembly**

The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. 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. 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 one hundred twenty-five 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.

### **Section 1d – Emergency Laws; 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. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

### **Section 1e – Powers; Limitation of Use**

(A) The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

(B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows:

“Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?”

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an

initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

### **Section 1f – Power of Municipalities**

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

### **Section 1g – Petition Requirements and Preparation; Submission; Ballot Language; By Ohio Ballot Board**

Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days

before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section 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.

**ARTICLE II**

**Section 1.    *[Legislative Power]***

(A) The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves the power of the initiative and referendum, as set forth in this article. The limitations expressed in the constitution on the power of the General Assembly to enact laws shall be deemed limitations on the power of the people to enact laws.

(B) The provisions of this article concerning the initiative and referendum 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 preserved.

**Section 1a.   *[Initiative to Amend the Constitution]***

(A) The people reserve the power to propose an amendment to the constitution, independent of the General Assembly, and may do so by filing with the attorney general an initial initiative petition proposing an amendment to the constitution. The initial petition shall be signed by one thousand or more electors.

(B) The initial initiative petition submitted to the attorney general shall contain the full text of only one proposed constitutional amendment and a summary that contains a fair and truthful statement of it. The proponents may also submit, at their discretion, a suggested title, a suggested explanation of the constitutional amendment, and suggested ballot language. Where appropriate, the proposed constitutional amendment and the summary shall contain gender-neutral language. The petition shall have printed across the top: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors” and shall set forth the full text of the proposed amendment.

(1) The attorney general shall examine the summary to determine whether it is a fair and truthful statement of the proposed constitutional amendment, and shall examine the proposed constitutional amendment and summary to determine whether they contain appropriate gender-neutral language.

(2) If the attorney general determines that the summary is a fair and truthful statement of the proposed constitutional amendment and that the proposed amendment and summary contain appropriate gender-neutral language, the attorney general shall so notify the proponents, and shall certify the petition and forward the petition and the summary, along with the suggested title, suggested explanation, and suggested ballot language, if applicable, to the ballot board.

(3) If the attorney general determines that the summary is not a fair and truthful statement of the proposed constitutional amendment or that the proposed constitutional amendment or summary does not contain appropriate gender-neutral language, the attorney general shall advise the proponents of the basis for this determination and return the petition and the summary to the proponents for revision and resubmission, if they elect to do so.

(C) Upon receiving the certified petition and summary, and, if applicable, the suggested title, the suggested explanation, and the suggested ballot language from the attorney general, the Ohio ballot board shall, within fourteen days:

(1) Determine whether the petition contains only one proposed constitutional amendment. If the ballot board determines that the petition contains only one proposed constitutional amendment, the board shall certify its approval to the attorney general, who then files the petition with the secretary of state. If the ballot board determines that the petition contains more than one proposed constitutional amendment, the board shall divide the

initiative petition into individual petitions each containing only one proposed constitutional amendment and certify its approval to the attorney general. If the board so divides an initiative petition and so certifies its approval to the attorney general, the proponents shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the ballot board's division of the petition. The proponents may, at their discretion, also resubmit a suggested title, explanation, and ballot language for each individual petition. The attorney general then shall review the resubmission or resubmissions as provided in this article.

(2) Prescribe the title and ballot language. The prescribed title and ballot language shall be printed on the face of the initiative petition proposing the constitutional amendment, along with the date they were prescribed by the board, prior to circulation of the initiative petition. No other summary of the proposed amendment shall be required to be printed on the initiative petition.

(3) Prepare the explanation of the proposed amendment.

(D) Upon completion of review and certification as described in divisions B and C of this section, proponents may circulate the petition.

(E) The petition shall be required to bear the signatures of ten percent or more of the electors of the state, including five percent or more of the electors from each of one-half or more of the counties as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(F) Upon obtaining the required signatures, proponents shall submit the petition and signatures to the secretary of state for verification. Proponents of an initiative petition to propose an amendment may submit the petition to the secretary of state at any time, but the petition must be

submitted to the secretary of state before the first day of June in an even-numbered year for the proposed amendment to appear on the ballot that year.

(G) Upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed amendment for the approval or rejection of the electors at the next general election held in an even-numbered year.

(H) If the proposed amendment to the constitution is approved by at least 55 percent of the electors voting on the issue, it shall take effect thirty days after it is approved.

(I) If conflicting proposed amendments to the constitution are approved at the same election by at least 55 percent of the electors voting for the proposed amendments, the one receiving the highest number of affirmative votes shall be the amendment to the constitution.

(J) An amendment that the electors approve shall be published by the secretary of state.

(K) Proponents who are aggrieved by the determinations of the attorney general, the ballot board, or the secretary of state under this section may challenge the determination in the Supreme Court of Ohio. The Supreme Court shall have exclusive, original jurisdiction in all such challenges.

**Section 1b.    *[Initiative to Enact Laws]***

(A) The people reserve the power to propose a law, independent of the General Assembly, and may do so by filing with the attorney general an initial initiative petition proposing a law to the General Assembly. The petition shall be signed by one thousand or more electors.

(B) The initial initiative petition submitted to the attorney general shall contain the full text of the proposed law and a summary of it that contains a fair and truthful statement of the proposed law. The proponents may also submit, at their discretion, a suggested title, a suggested explanation of the proposed law, and suggested ballot language. The proposed law shall contain only one subject. Where appropriate, the proposed law shall contain gender-neutral language. The

petition shall have printed across the top: “Law Proposed by Initiative Petition First to be Submitted to the General Assembly” and shall set forth the full text of the proposed law.

(1) The attorney general shall examine the summary to determine whether the summary is a fair and truthful statement of the proposed law and whether the summary contains appropriate gender-neutral language.

(2) If the attorney general determines the summary is a fair and truthful statement of the proposed law and that appropriate gender-neutral language has been used, the attorney general shall so notify the proponents, and shall certify the petition and forward it and the summary, along with the suggested title, suggested explanation, and suggested ballot language, if applicable, to the ballot board.

(3) If the attorney general determines the summary is not a fair and truthful statement of the proposed law or determines the proposed law does not contain appropriate gender-neutral language, the attorney general shall advise the proponents of the basis for this determination and return the proposed law or the summary to the proponents for revision and resubmission, if they elect to do so.

(C) Upon receiving the certified petition and summary, and, if applicable, the suggested title, suggested explanation, and suggested ballot language from the attorney general, the Ohio ballot board shall, within fourteen days:

(1) Determine whether the petition contains only one proposed law. If the ballot board determines that the petition contains only one proposed law, the board shall certify its approval to the attorney general, who then files the petition with the secretary of state. If the ballot board determines that the petition contains more than one proposed law, the board shall divide the initiative petition into individual petitions each containing only one

proposed law and certify their approval to the attorney general. If the board so divides an initiative petition and so certifies its approval to the attorney general, the proponents shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the ballot board's division of the petition. The proponents may, at their discretion, also resubmit a suggested title, explanation, and ballot language for each individual petition. The attorney general then shall review the resubmissions as provided in this article.

(2) Prescribe the title and ballot language. The prescribed title and ballot language shall be printed on the face of the initiative petition proposing the law, along with the date they were prescribed by the board, prior to circulation of the initiative petition. No other summary of the proposed law shall be required to be printed on the initiative petition.

(3) Prepare the explanation of the proposed law.

(D) Upon completion of review and certification as described in divisions B and C of this section, proponents may circulate the petition.

(E) The petition shall be required to bear the signatures of five percent or more of the electors of the state, including two and one-half percent or more of the electors from each of one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(F) Upon obtaining the required signatures, proponents shall submit the petition and signatures to the secretary of state for verification. Proponents of an initiative to propose a law to the General Assembly may do so by filing the initiative petition with the secretary of state at any time, but the petition must be filed with the secretary of state before the first day of February for the proposed law to be submitted to the voters at the general election that year. A proposed law filed

with the secretary of state after the first day of February shall be submitted to the voters the general election in the following year.

(G) Upon receipt of the petition, the secretary of state shall transmit a copy of the petition and full text of the proposed law to the General Assembly. If the proposed law is passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum under Section 1c of this article.

(H) If before the first day of June immediately following the filing of the petition the General Assembly does not pass the proposed law in the form as filed with the secretary of state, and the petition is not withdrawn as provided by law, and, upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed law for the approval or rejection of the electors at the next general election.

(I) If the proposed law is approved by a majority of the electors voting on the issue, it shall take effect thirty days after the election at which it was approved in lieu of any amended form of the law that may have been passed by the General Assembly.

(J) If conflicting proposed laws are approved at the same election by a majority of the total number of votes cast for each of the proposed laws, the one receiving the highest number of affirmative votes shall be the law.

(K) A law proposed by initiative petition and approved by the electors shall not be subject to veto by the governor.

(L) A law proposed by initiative petition and approved by the electors shall be published by the secretary of state.

(M) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for five years after its effective

date, unless upon the affirmative vote of two-thirds of all members elected to each branch of the general assembly, and further approved by the governor or the General Assembly as specified in Article II, Section 16.

(N) Proponents who are aggrieved by the determinations of the attorney general, the ballot board, or the secretary of state under this section may challenge the determination in the Supreme Court of Ohio. The Supreme Court shall have exclusive, original jurisdiction in all such challenges.

**Section 1c. [Referendum to Challenge Laws]**

(A) The people reserve the power through the referendum to challenge a law, section of law, or item in a law appropriating money, and may do so at any time within ninety days after the law has been filed by the governor in the office of the secretary of state, by filing with the secretary of state an initial referendum petition signed by one thousand or more electors.

(B) The initial referendum petition shall contain the full text of the law, section of law, or item in a law appropriating money being challenged and a summary that contains a fair and truthful statement of the law being challenged. The challengers may also submit, at their discretion, a suggested title, a suggested explanation of the law being challenged, and suggested ballot language. The petition shall have printed across the top: "Referendum Petition to Challenge a Law Enacted by the General Assembly to be Submitted to the Electors" and shall set forth the full text of the law being challenged. (C) The secretary of state shall verify the number of signatures and compare the law being challenged with the law on file with the office of the secretary of state. If the petition is correct, the secretary of state shall so certify and shall file the petition with the attorney general.

(D) Within ten days of receiving the petition challenging a law, section of law, or item in a law appropriating money,

(1) The attorney general shall examine the summary to determine whether the summary is a fair and truthful statement of the law being challenged

(2) If the attorney general determines the summary is a fair and truthful statement of the law being challenged, the attorney general shall so notify the challengers, and shall certify the referendum petition and forward the petition and the summary, along with the suggested title, suggested explanation, and suggested ballot language, if applicable, to the ballot board.

(3) If the attorney general determines the summary is not a fair and truthful statement of the law being challenged, the attorney general shall advise the challengers of the basis for this determination and return the petition or the summary to the challengers for revision and resubmission, if they elect to do so

(E) Upon receiving the certified petition and summary, and, if applicable, the suggested title, the suggested explanation, and the suggested ballot language from the attorney general, the Ohio ballot board shall, within fourteen days:

(1) Prescribe the title and ballot language. The prescribed ballot title and language shall be printed on the face of the referendum petition challenging the law, section of law, or item in a law appropriating money being challenged along with the date they were prescribed by the board. No other summary of the proposed amendment shall be required to be printed on the initiative petition.

(2) Prepare the explanation of the proposed referendum.

(F) Upon completion of review and certification as described in divisions C, D and E of this section, proponents may circulate the petition.

(G) The petition shall be required to bear the signatures of six percent or more of the electors of the state, including three percent or more of the electors from each of one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(H) Upon verifying the requirements of the petition as provided in this article, the secretary of state shall submit the challenge for the approval or rejection of the electors, by referendum vote, at the next primary or general election occurring sixty days or more after the process for verifying and challenging the requirements of the petition and signatures on the petition is complete.

(I) If a law, section of law, or item in a law appropriating money subjected to a challenge by referendum is approved by a majority of the electors voting on the issue, it shall go into effect thirty days after the election at which it is approved.

(J) If a referendum petition is filed challenging any section of law or item in a law appropriating money, the remainder of the law that is not being challenged shall not be prevented or delayed from going into effect.

(K) A law providing for a tax levy, a law providing appropriation for current expenses of the state government and state institutions, or an emergency law necessary for the immediate preservation of the public peace, health, or safety, as determined under Section 15(G) of this article, shall not be subject to challenge by referendum.

(L) Challengers who are aggrieved by the determinations of the attorney general, the ballot board, or the secretary of state under this section may challenge the determination in the Supreme Court of Ohio. The Supreme Court shall have exclusive, original jurisdiction in all such challenges.

**Section 1d. *[Petition Requirements]***

(A) An initiative or referendum petition filed under this article may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the proposed constitutional amendment, proposed law, or the challenged law, section of law, or item in a law appropriating money, to be submitted to the electors, as well as a full and correct copy of the summary approved by the attorney general.

(B) Each person who signs an initiative or referendum petition shall sign in ink and only for the person individually, and shall provide the person's residential address and the date the person signed the petition. The General Assembly may prescribe by law for the collection of electronic signatures in addition to or in lieu of petitions signed in ink.

(C) Each separate part of an initiative or referendum petition shall contain a statement of the person who circulated the part, as may be required by law, indicating that the circulator witnessed the affixing of every signature to the part. The General Assembly may prescribe by law for the witnessing of electronic signatures presented in addition to or in lieu of petitions signed in ink.

(D) In determining the sufficiency of the signatures required for an initiative or referendum petition, the secretary of state shall consider only the signatures of persons who are electors.

**Section 1e. *[Verifying and Challenging Petitions]***

(A) Within thirty days following the filing of an initiative or referendum petition, the secretary of state shall verify the validity or invalidity and sufficiency or insufficiency of the petition and the signatures on the petition pursuant to the requirements of this article. If the secretary of state determines that the petition contains insufficient valid signatures overall or with respect to the minimum number of counties as required by this article, the proponents shall be provided ten

additional days to file a supplemental petition with valid signatures to cure the deficiency. If additional signatures are filed, the secretary of state shall determine their validity and sufficiency within ten days following the filing of the additional signatures.

(B) The Supreme Court of Ohio shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the validity, invalidity, sufficiency or insufficiency of an initiative or referendum petition and the signatures on such petition.

(C) A challenge to the secretary of state's determination of validity, invalidity, sufficiency or insufficiency of the initiative or referendum petition and the signatures on such petition shall be filed with the Supreme Court within seven days after the secretary of state's determination. The Supreme Court shall hear and rule on a challenge within fourteen days after the filing of the challenge with the court. If the Supreme Court does not rule on the challenge within fourteen days after the filing of the challenge to the petition or the signatures, the petition and signatures shall be deemed to be valid and sufficient in all respects.

(D) If the Supreme Court determines the signatures are insufficient, additional signatures to the petition may be filed with the secretary of state within ten days following the Supreme Court's ruling. If additional signatures are filed, the secretary of state shall determine their validity and sufficiency within ten days following the filing of the additional signatures.

(E) A challenge to the secretary of state's determination as to the validity, invalidity, sufficiency or insufficiency of the additional signatures shall be filed with the Supreme Court within seven days of the secretary of state's determination. The Supreme Court shall hear and rule on any challenges to the additional signatures within fourteen days of the filing of the challenge with the court. If the Supreme Court does not rule on the challenge within fourteen days of the filing of

the challenge, the petition and signatures shall be deemed to be valid and sufficient in all respects.

(F) The filing of further signatures and challenges to petitions and signatures shall be not be permitted following the Supreme Court's determination as to the sufficiency of the additional signatures.

(G) The approval of a proposed amendment to the constitution or a proposed law, submitted by initiative petition and approved by a majority of the electors voting on the issue, shall not be held unconstitutional on account of the insufficiency of the petitions proposing the issue. The rejection of a law, section of law, or item in a law appropriating money, challenged in a referendum petition and rejected by a majority of the electors voting on the issue, shall not be held invalid on account of the insufficiency of the petitions initiating the challenge.

**Section 1f. *[Explanation and Publication of Ballot Issue]***

(A) A true copy of all laws or amendments to the constitution proposed by initiative, or any law, section of law, or item in a law appropriating money being challenged by referendum petition, shall be prepared by the \*\*\*secretary of state. The proponents or challengers may prepare and file with the secretary of state an argument for the proposed laws or proposed constitutional amendments or against any challenged law, section of law, or item in a law appropriating money. The person or persons who prepare the argument for any proposed law or proposed amendment to the constitution shall be named in the petition. The person or persons who prepare the argument against any law, section, or item submitted to the electors by referendum shall be named in the petition.

(B) The person or persons who prepare the argument for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law or amendment submitted by

petition, shall be named by the General Assembly, if in session, and, if not in session, then by the governor.

(C) An argument or explanation prepared under this article shall each be three hundred words or less, but such word count shall not include the identification of the person or persons preparing the arguments or explanations.

(D) The full text of the proposed amendment to the constitution, the proposed law, or the law, section of law, or item in a law appropriating money, together with the title, the ballot language, the explanation, and the arguments for and against each shall be published once a week for three consecutive weeks preceding the election in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly may prescribe by law for the electronic publication of the items required by this section in addition to or in lieu of newspaper publication.

**Section 1g. *[Placing on the Ballot]***

(A) The secretary of state shall place on the ballot language for submission to the electors for a vote on an amendment to the constitution proposed by initiative petition, on a law proposed by initiative petition, and on a law, section of law, or item in a law appropriating money challenged by referendum petition.

(B) The ballot language shall be prescribed by the Ohio ballot board in the same manner and under the same terms and conditions as apply to proposed amendments submitted by the General Assembly under Article XVI, Section 1 of this constitution.

(C) The secretary of state shall cause the ballots to be prepared to permit an affirmative or negative vote on each proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money.

(D) The style of all constitutional amendments submitted by an initiative petition shall be: “Be it Resolved by the People of the State of Ohio.” The style of all laws submitted by initiative petition shall be: “Be it Enacted by the People of the State of Ohio.”

**Section 1h. [Limitation of Use]**

(A) The power of the initiative shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation on the property or of authorizing the levy of any single tax on land, land values, or land sites at a higher rate or by a different rule than is or may be applied to improvements on the land or to personal property.

(B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) Prior to circulation, a constitutional amendment to be proposed by initiative petition shall be presented to the ballot board and if, in the opinion of the ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows: "Shall the petitioner, in violation of division (B)(1) of Section 1h of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?"

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by at least 55 percent of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by at least 55 percent of the electors voting on it, then the constitutional amendment shall not take effect.

(C) The Supreme Court shall have original and exclusive jurisdiction in any action that relates to this section.

**Section 1i.** *[Application to Municipalities]*

The powers of the initiative and referendum are reserved to the people of each municipality, as provided by law, on questions which a municipality may be authorized by law to control by legislative action.

**Section 15.** *[How Bills Shall Be Passed]*

\* \* \*

(G) An emergency law, necessary for the immediate preservation of the public peace, health, or safety, must receive upon a yea and nay vote the affirmative vote of two-thirds of all members elected to each branch of the General Assembly. The reason for the emergency shall be set forth in a separate section of the law, which shall be passed only upon an affirmative yea and vote, upon a separate roll call thereon, of two-thirds of all members elected to each branch of the General Assembly. When votes are required to be taken by a yea and nay vote under this section, the names of the members voting for and against the bill and the reason for the emergency shall be entered upon the journal.

**Section 17.** *[Effective Date of Laws]*(A) Except as otherwise provided in this section, a law passed by the General Assembly and signed by the governor, shall go into effect ninety days

after the governor files it with the secretary of state, or in a case in which a veto of the governor is overridden ninety days after the presiding officer of the second house to exercise the veto files it with the secretary of state. In cases in which a bill becomes law because the governor has not signed it within the time limitation and requirements specified in Article II, Section 16, the law shall go effect as if the governor had signed it within the specified time limitation.

(B) A law passed by the General Assembly and signed by the governor providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into effect when filed by the governor with the secretary of state, or in a case in which a veto of the governor is overridden ninety days after the presiding officer of the second house to exercise the veto files it with the secretary of state. In cases in which a bill becomes law because the governor has not signed it within the time limitation and requirements specified in Article II, Section 16, the law shall go effect as if the governor had signed it within the specified time limitation.

(C) 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 one hundred twenty-five 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.

(V10b) (5-3-2017)

# **Appendix 2**

## **Constitutional Revision and Updating Committee**

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### **Minutes of the Committee**

## **Minutes of the Committee**

NOTE: In the early years of the Commission, committee records were kept on an ad hoc basis by various individuals assisting the Commission. Unfortunately, this left committee records, in particular, in a haphazard state. After the hiring of permanent staff in 2014, committee records were regularly kept and put into a standardized format. In addition, staff revised early committee minutes, where available, to put them into the standardized format and to correct any errors or omission discovered during the process. Both the original and revised minutes have been retained with the full files of the Commission; however, the revised minutes have been endorsed as the official record of the committee and are the only documents included here.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MAY 9, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:32 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Asher, Beckett, Cafaro, Murray, Obhof, Readler, and Walinski in attendance.

#### **Approval of Minutes:**

This being the first meeting of the committee, there were no minutes to approve.

#### **Discussion:**

Chair Mulvihill discussed how the committee should be run, whether members should communicate outside of regular meetings, and how such communication should be handled. He pointed out that conference calls might violate open meeting requirements. Chair Mulvihill commented that the time constraints on the various committees and their members would make finishing all committee duties difficult without some work outside of regularly-scheduled committee meeting times. Committee member Richard Walinski mentioned that recommendations on compliance with open meetings requirements were forthcoming. Representative Dennis Murray said that phone calls likely would not comply with open meeting requirements, but that emails would be acceptable provided that they avoided voting or making group decisions outside of the regularly-scheduled meetings.

Chair Mulvihill commented that the committee has the fewest pages of the constitution to deal with but that they cover a very tough topic in the amendment and referendum process. He suggested bringing witnesses from other states to discuss the systems in place around the country. Rep. Murray suggested that other witnesses might include groups which had gone

through the process in Ohio recently, as well as witnesses from the National Conference of State Legislatures (NCSL), which he and Senator Capri Cafaro then explained for the benefit of the public members. Chair Mulvihill recognized Senior Policy Advisor Steven H. Steinglass, who suggested that some of Ohio's constitutional officers such as the secretary of state, or members of the ballot board and other election officials may be useful witnesses. Mr. Steinglass also offered to create a reading list for the committee.

Mr. Walinski asked how many amendments had been on the ballot in Ohio since 1980, and Mr. Steinglass offered to bring statistics on the use of the initiative, referendum, and amendment processes in general in Ohio. Committee member Janet Abaray and Mr. Walinski discussed the contents of the materials provided by the Colloquium on the Constitutional Modernization Commission, and Mr. Steinglass reiterated his intention to provide statistics to the committee.

Chair Mulvihill suggested that the committee should try to define the scope of its task. Vice-chair Charles Kurfess suggested that Ohioans who have experienced the amendment process may be able to identify problems and the committee should solicit suggestions from those people. Chair Mulvihill said the committee would invite the secretary of state and the Ohio Ballot Board to speak at the committee's next meeting, and could also invite members of the public to testify at future meetings. Ms. Abaray suggested looking at relevant law review articles, which Chair Mulvihill said the reading list Mr. Steinglass was preparing and any material provided by NCSL should cover that.

Mr. Walinski and Chair Mulvihill discussed which parts of the constitution are to be covered by the committee. Chair Mulvihill said that supplemental petitions are a possible topic for discussion, and that public notice provisions could be examined. Senator Larry Obhof suggested that when the committee finds instances of confusing or unnecessarily wordy language, the committee should work to simplify that language.

Chair Mulvihill discussed issues relating to future meetings of the Committee.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 11:52 a.m.

**Approval:**

The minutes of the May 09, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the June 13, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JUNE 13, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:26 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Asher, Beckett, Murray, Obhof, Readler, and Walinski in attendance.

#### **Approval of Minutes:**

The minutes of the May 9, 2013 meeting of the committee were reviewed and approved.

#### **Presentation and Discussion:**

Chair Mulvihill recognized Richard Coglienese, principal assistant attorney general, Office of Ohio Attorney General Mike DeWine. Mr. Coglienese presented a broad overview of the attorney general's role in the referendum and initiative process, as well as describing more general technicalities outside his office related to that process.

Next, Senator Larry Obhof discussed the legislative changes to the referendum and initiative process resulting from the recently-signed Senate Bill 47 in the 130<sup>th</sup> General Assembly for the benefit of the committee.

Committee members then asked questions regarding the referendum and initiative process. Representative Dennis Murray and Chair Mulvihill questioned the subjectivity of the signature verification process and suggested looking into technologies like computer programs that could be used to verify. Mr. Coglienese answered the committee's questions regarding technicalities and wording in the referendum and initiative process.

Chair Mulvihill asked the witness if he would be able to furnish Ohio Supreme Court case law related to the signature verification process for candidate nominations, referendums, and initiatives.

Chair Mulvihill and Senior Policy Advisor Steven H. Steinglass suggested future witnesses who might present to the committee, specifically the secretary of state.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:41 p.m.

**Approval:**

The minutes of the June 13, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the July 10, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
WEDNESDAY, JULY 10, 2013

#### **Call to Order:**

Committee member Herb Asher, acting as chair on behalf of Chair Dennis Mulvihill, called the meeting of the Constitutional Revision and Updating Committee to order at 12:26 p.m.

#### **Members Present:**

A quorum was present with committee members Abaray, Asher, Beckett, Obhof, Readler, and Walinski in attendance.

#### **Approval of Minutes:**

The minutes of the June 13, 2013 meeting of the committee were reviewed and approved.

#### **Presentations and Discussion:**

Mr. Asher recognized Ms. Betsy Luper Schuster, chief elections counsel for the Office of Ohio Secretary of State John Husted. Ms. Schuster presented to the committee a broad overview of the secretary of state's role in the three procedures for putting an issue on the ballot: referendum, constitutional amendment (either initiated by the citizenry or proposed by a joint resolution of the General Assembly), and initiated statute.

Ms. Schuster provided statistics to highlight the likelihood of passage for each procedure, with data from 1912 to present. She said constitutional amendments proposed by the General Assembly are the most commonly utilized tool and usually pass, with 153 proposed, 102 approved, and 51 unapproved. She said there have been 72 proposed citizen-initiated constitutional amendments, with 19 approved and 53 unapproved. She said citizen-initiated statutes are least likely to pass, with 15 proposed, five approved, and ten unapproved.

Ms. Schuster noted the difficulty in measuring the success of the referendum, depending on what side of the issue one falls, but that only 11 have been proposed, with two approved, and nine

unapproved. She said, since Secretary Husted took office in 2011, 21 ballot issues have been filed with his office, 12 of which have been certified and only two have appeared on the ballot.

The committee asked questions regarding the referendum and initiative process. A question was asked to the witness on whether any case law exists to govern items included in the state operating budget that do not include an appropriation, providing the abortion language included in House Bill 59 of the 130<sup>th</sup> General Assembly as an example. Ms. Schuster responded that, previously, the law stated that anything intertwined with an appropriation was not subject to referendum, but under current law, only the appropriation takes immediate effect and is not subject to referendum, thereby allowing language not identified as such to be subject to referendum.

Committee member Chad Readler asked the witness if there are things that cause friction in the process that the committee should consider. Ms. Schuster answered that the inconsistencies between the various processes cause delay, such as different definitions for calendar versus business days. The committee welcomed the submission of formal recommendations on this issue from the secretary of state.

Mr. Asher then recognized Rick Robol, a member of the Ohio Delegation of the Independent Voters. Mr. Robol provided two suggestions: 1) the implementation of an open primary system paid for by political parties as opposed to Ohio taxpayers; and 2) that “independent” voters be classified as such, instead of the currently used term, “unaffiliated.” At the request of Mr. Readler, Mr. Robol agreed to provide written testimony at a later date, including a comparison of other states that have implemented the open primary policy.

Mr. Beckett suggested that Mr. Robol’s testimony might be more appropriate for the Bill of Rights and Voting Committee.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 1:18 p.m.

**Approval:**

The minutes of the July 10, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the August 8, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, AUGUST 8, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 9:11 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Asher, Beckett, Murray, and Obhof in attendance.

#### **Approval of Minutes:**

The minutes of the July 10, 2013 meeting of the committee were reviewed and approved.

#### **Presentations and Discussion:**

Chair Mulvihill began the committee by thanking committee member Roger Beckett and his interns for the analysis provided to the committee.

Chair Mulvihill recognized Senior Policy Advisor Steven H. Steinglass, who presented a brief overview of the referendum, initiated constitutional amendment, and initiated statute processes in Ohio as compared to other states.

The committee asked questions regarding the referendum and initiative process. A question was posed as to whether the committee members had the sense that, while the use of ballot initiative is low, the threatened use thereof is higher. The 2010 Humane Society ballot initiative and subsequent compromise that resulted was cited as an example of a credible threat.

Chair Mulvihill raised the issue of whether the committee should curtail the people's ability to initiate statutes or referenda, calling upon the committee to consider whether the initiative and

referendum power is good or bad, and whether it achieves the intended goal of facilitating democracy.

Mr. Steinglass pointed out that statutes adopted by the General Assembly in response to the statutory initiative often do not indicate their origin, and that the Legislative Service Commission does not appear to have this information. Thus, he said it is hard for the public to gauge the efficiency of the statutory initiative.

Mr. Steinglass discussed some of the competing theories for creating a more robust citizen initiative process for statutes, which could include a method of bypassing the legislature altogether, thus removing some of the incentives to initiate amendments.

Chair Mulvihill asked whether there are any procedural limitations on the legislature that would prevent the General Assembly from simply repealing a citizen-initiated statute. Mr. Steinglass said there are currently none, but that possible procedures could include the imposing a ten-year limitation, requiring a super-majority vote in the legislature to repeal, and the built-in protections that the electorate holds in the re-election of their representatives.

The committee discussed whether there were possible limitations on what is appropriate for constitutional amendments versus statutes. The question was asked whether there were ways to prevent non-constitutional issues from being initiated. Possibilities were suggested, including a review process by the General Assembly or by a court. The 2009 Casino Initiative was cited as an example of a constitutional amendment that was proper under the constitution even though it would have been more appropriate as a statute.

Another issue raised was how to protect the rights of the people from wealthy special interests, such as out-of-state organizations that funnel money into Ohio, from pushing initiatives. A possible approach would be to include limitations on the items or topics that can be proposed by initiative amendments. An example cited is Article II, Section 1e, which restricts the use of the initiative and referendum from being used to pass a law authorizing items relating to taxes.

Committee members discussed signature requirements for ballot initiatives. Currently, Ohio law requires ten percent of the number of votes cast in the last gubernatorial election. Mr. Kurfess urged the committee to review the appropriate methods of signature collection, geographic collection restrictions by county, and the preclusion of payment for signature collection.

Mr. Steinglass said once on the ballot, a constitutional amendment must pass by a majority of the votes cast on the amendment. Some states require a super majority, and Ohio is one of only two states with no time limit on the circulation period.

Upon Chair Mulvihill's request, recommendations were made for the following organizations to attend the October hearing: the League of Women Voters, the organizations behind three major initiatives in recent years, and the lawyers involved in the initiative process, healthcare, casinos, and Issue 2 (repeal of Senate Bill 5 from the 129<sup>th</sup> General Assembly). Other suggested organizations included We Are Ohio, the Ohio Round Table, and both sides involved in the casino initiative.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 10:15 a.m.

**Approval:**

The minutes of the August 8, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the September 12, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, SEPTEMBER 12, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 9:15 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill and committee members Abaray, Asher, Beckett, Murray, Obhof, Readler, and Walinski in attendance.

#### **Approval of Minutes:**

The minutes of the August 8, 2013 meeting of the committee were reviewed and approved.

#### **Presentations and Discussion:**

Chair Mulvihill recognized Maurice A. Thompson, executive director of the 1851 Center for Constitutional Law.

Mr. Thompson's presentation centered on proposed alterations to the Ohio Constitution's initiative and referendum processes. Mr. Thompson stated that, "access to I&R gives Ohioans the capacity to behave as civic adults, rather than the children of legislators and other public officials." Mr. Thompson continued that the initiative and referendum process advances civic involvement and adds an additional check on government actions. Mr. Thompson also warned against efforts to reduce access to the initiative and referendum process through raising signature requirements and shortening petition circulation times. He then suggested improvements to the initiative and referendum process, including restricting tax increases to the November ballot. Mr. Thompson added that the General Assembly has too much access to the constitutional amendment process. Mr. Thompson also expressed concern with the initiated statute, specifically, its high cost, short time frame, and low passage rate.

Chair Mulvihill asked Mr. Thompson if there are specific constitutional amendments he thinks are cumbersome. Mr. Thompson responded that the language regarding property lines specifically related to the Ohio casino sections should be examined as an example of cumbersome constitutional language.

Committee member Janet Abaray inquired about the fiduciary interests of a group that would advocate for or against a specific constitutional amendment. Mr. Thompson verified that interests from outside the state may invest in those efforts.

The committee asked the witness numerous questions regarding the referendum and initiative process, which Mr. Thompson answered. Chair Mulvihill asked Mr. Thompson to provide an electronic copy of his testimony to be distributed to the committee.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 10:20 a.m.

**Approval:**

The minutes of the September 12, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the October 10, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, OCTOBER 10, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 9:02 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Asher, Cafaro, Murray, and Obhof in attendance.

#### **Approval of Minutes:**

The minutes of the September 12, 2013 meeting of the committee were reviewed and approved.

#### **Presentations and Discussion:**

Chair Mulvihill recognized Attorney Donald J. McTigue of McTigue & McGinnis, LLC. Mr. McTigue focused on four themes: legislative burdens placed on the initiative and referendum process, improving constitutional language to forestall legislative burdens, correcting unintended consequences from a 2008 constitutional amendment, and clarifying certain existing initiative and referendum requirements.

Mr. McTigue stated that the General Assembly had placed, "undue burdens on the exercise of the rights of citizen initiative and referendum." Mr. McTigue argued that the attorney general's certification process for the referendum is burdensome to the citizen's ability to collect petitions in a short amount of time. He also argued against the Form 15 requirements, the electronic copy requirement, numbering requirements, the index requirement, and various other requirements enacted by the General Assembly through Senate Bill 47 in the 130<sup>th</sup> General Assembly. Mr. McTigue asserted there were many unintended consequences from 2008's amendments related

to timeframes and deadlines, as well as to the jurisdiction of the Ohio Supreme Court and the overlap of petition challenge periods.

Mr. McTigue emphasized that Ohio citizens consistently choose constitutional amendments over initiated statutes. He spoke to the legislature's ability to change a law and nullify any petition a citizen's initiated statute proposed. Mr. McTigue stated that improvements could be made by increasing petition timeframes, adding more than one amendment or law on a petition, clarifying legislative definitions, and other technical clarifications. Mr. McTigue said the General Assembly should "facilitate and not restrict" a citizen's right to exercise the initiative and referendum.

Representative Dennis Murray asked Mr. McTigue about legal precedent challenging restrictions on the right to use the initiative and referendum process. Mr. McTigue replied that there is not much case law on that topic.

Chair Mulvihill and Mr. Kurfess wondered about the cost of these processes. Mr. McTigue replied that the cost is in the millions of dollars.

Both committee member Herb Asher and Rep. Murray requested that Mr. McTigue provide redline copies of suggested changes, which he agreed to do.

Mr. Asher asked whether Mr. McTigue advocates a revision that would prohibit the legislature from altering the initiated statute process. Mr. McTigue agreed.

Chair Mulvihill recognized Scott J. Tillman, national field director for Citizens in Charge, described as a national advocacy organization for the protection and expansion of state initiative and referendum processes.

Mr. Tillman focused on Ohio's initiative and referendum processes, covering four areas: initiated statutes versus amendments, other state examples, First Amendment concerns, and Ohio's referendum process.

The committee asked Mr. Tillman numerous questions regarding the referendum and initiative process that were answered by Mr. Tillman.

Chair Mulvihill suggested that Senator Bill Seitz could be asked to present to the committee, and committee members agreed. Senior Policy Advisor Steven H. Steinglass was tapped to help facilitate that request.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 10:15 a.m.

**Approval:**

The minutes of the October 10, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the November 14, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 14, 2013

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Asher, Beckett, Murray, Obhof, and Walinski in attendance.

#### **Approval of Minutes:**

The minutes of the October 10, 2013 meeting of the committee were reviewed and approved.

#### **Discussion:**

Chair Mulvihill led the committee in a discussion as to the future direction of the committee in terms of recommendations for changing or modifying the initiative and referendum process. Chair Mulvihill noted some committee members had indicated that the committee had not heard from anyone who suggested limiting citizens' ability to engage in direct democracy, suggesting it would be helpful to hear from someone who could offer that perspective.

Chair Mulvihill noted the concern of many people that it seems to be easier to amend the constitution than it does to initiate laws. Some members of the committee expressed that the committee should propose a modification of the constitution to encourage citizens to initiate laws rather than constitutional amendments. The committee has discussed options for accomplishing this goal, with no one advocating change as yet.

Mr. Kurfess indicated a preference that the committee evaluate Article II, Section 26, addressing uniformity of the laws. Chair Mulvihill indicated the committee's mandate does not include this

provision, which, instead has been assigned to the Legislative Branch and Executive Branch Committee.

Chair Mulvihill emphasized that no one on the committee expressed that it would be appropriate to interfere with the prerogative citizens currently enjoy in Ohio with respect to initiatives and referenda. He emphasized that committee members simply expressed a desire to hear both sides of the argument.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned.

**Approval:**

The minutes of the November 14, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the December 12, 2013 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, DECEMBER 12, 2013

#### **Call to Order:**

Vice-chair Charles Kurfess called the meeting of the Constitutional Revision and Updating Committee to order at 12:30 p.m.

#### **Members Present:**

A quorum was present with Vice-chair Kurfess and committee members Abaray, Asher, Beckett, Cafaro, Murray, Obhof, Readler, and Walinski in attendance.

#### **Approval of Minutes:**

The minutes of the November 14, 2013 meeting of the committee were reviewed and approved.

#### **Presentation and Discussion:**

Vice-chair Kurfess recognized Bruce Cain, professor of political science at Stanford University, who presented to the committee via teleconference.

Prof. Cain focused on three main topics with regard to the initiative process: 1) Assuring there is a clear idea of what the initiative is trying to fix; 2) Outlining the reasons proponents choose the initiative process as opposed to the legislative process; and 3) Distinguishing what is harmless in the constitution versus real issues that need to be changed.

Prof. Cain outlined several differences between California's and Ohio's processes. He described that there is an industry in California for the purpose of getting initiatives on the ballot. Because so many initiatives are making it to the ballot, California voters are passing fewer and fewer of them each year. He noted that the Ohio General Assembly has the ability to amend or repeal statutory sections, while the California General Assembly does not have that power, a situation

that has led to using the initiative process in California as a way to check what the legislature is doing.

Prof. Cain said the California initiative process is not transparent, explaining that the people who finance the campaign have the initiative written and the general public has to take it or leave it. Prof. Cain said he believes the legislature should have the ability to change the statute, which would curb the number of initiatives being proposed in California.

Committee member Richard Walinski asked why California's Constitutional Modernization Committee abandoned in the 1990's. Prof. Cain explained that, originally, the governor assembled the committee to look at fiscal policy, but the more the committee looked into the initiative process it forced a change of the composition in the committee and the committee died.

Senator Capri Cafaro asked about California's threshold requirements for proposing an initiative. Prof. Cain explained the threshold for signatures is different depending on whether the initiative is for a fiscal policy or not.

Mr. Walinski inquired about whether allowing the legislature to present an alternative to a proposed initiative has produced good results in the two states that utilize that process. Prof. Cain said in both of those states there has never been an alternative presented and it does not seem to be a system yielding any results.

Vice-chair Kurfess asked if Prof. Cain has suggestions for how to keep subject matter that should not be in the constitution out of the constitution, wondering how to encourage the use of the statutory initiative for those issues. Prof. Cain answered he would suggest a subject matter restriction on initiatives.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:14 p.m.

**Approval:**

The minutes of the December 12, 2013 meeting of the Constitutional Revision and Updating Committee were approved at the February 13, 2014 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, FEBRUARY 13, 2014

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 12:43 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill and committee members Asher, Beckett, Curtin, Obhof, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the December 12, 2013 meeting of the committee were reviewed and approved.

#### **Presentation and Discussion:**

Chair Mulvihill began the meeting by providing an overview of the work the committee had done during the previous year to new members.

Committee members then discussed updating ballot initiative notification requirements to include electronic options and encouraging the use of initiated statutes in lieu of initiated constitutional amendments. The committee also discussed the possibility of providing a legislative check to constitutional amendment ballot initiatives.

Chair Mulvihill recognized John Dinan, professor of political science at Wake Forest University, who was present to respond to questions asked by committee members.

Prof. Dinan discussed with the committee the voting requirements for successful passage of ballot initiatives, the legislative authority for overturning statutory ballot initiatives, and the mandates, requirements, and authority of constitutional conventions and commissions.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:15 p.m.

**Approval:**

The minutes of the February 13, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the March 13, 2014 meeting of the committee.

*/s/ Dennis P. Mulvihill*  
Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 13, 2014

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Asher, Beckett, Curtin, Obhof, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the February 13, 2014 meeting of the committee were reviewed and approved.

#### **Discussion:**

Chair Mulvihill began the meeting by reviewing for the new members the work that had been done previously, as well as providing quick overview of the agenda items. The committee discussed whether there was a desire to change the geographic diversity requirement contained in Article II, Section 1g with regard to petitions. Section 1g requires the initiative proponents to account for urban and rural areas of the state, in order to build a broad-based consensus. Although this was a major concern at the 1912 Convention, the committee did not see a need to overturn the wisdom of that convention. Thus, committee members were not in favor or did not think that topic was worthy of further discussion.

The committee also discussed updating the petition process to allow online or electronic signatures and notices. The committee expressed an interest in continuing that discussion at future meetings.

Senior Policy Advisor Steven H. Steinglass provided assistance to the committee's discussion of various options to encourage citizens in the initiative process to take the statutory route as opposed to the amendment route, particularly in those circumstances where the initiated law is

not worthy of constitutional approbation. Data presented to the committee suggests that, in recent years, few Ohioans are attempting initiated statutes, and almost all initiatives are for constitutional amendments.

Committee member Roger Beckett, in consultation with Mr. Steinglass, put together two large spread sheets containing the results of all proposed constitutional amendments since 1912. Chair Mulvihill noted the data helped the committee to reach some conclusions, including rejecting a revision that would require not just a majority vote to pass an initiative or referendum, but also would require a certain percentage of votes in that election to be cast either for or against the proposal. Chair Mulvihill noted this concept was born out of the concern that there has been a substantial drop-off in most elections concerning initiative and referendum ballot issues. However, Chair Mulvihill noted the data did not support that concern; instead reflecting that there has not been much drop-off when it comes to initiative and referendum issues in recent decades.

Committee members expressed concern that the supplemental petition section (Article II, Section 1b) is both poorly drafted and an impediment to those who might otherwise choose the initiated statute route. The committee held a separate discussion concerning the idea to impose constitutional protections for initiated statutes, such as preventing the General Assembly from rewriting or repealing any such statute for a period of time, and/or only with a super majority of votes.

The committee also discussed increasing the percentage of favorable votes necessary to pass a constitutional amendment from a simple majority to something more. No specific proposal was discussed, but the topic was addressed in general terms. Committee members noted the argument behind the discussion to increase the threshold recognizes that it is constitutionally desirable to encourage initiated statutes, and keep the amendments to a meaningful minimum. Further, committee members observed that the founding document should not be so easily amended in the current political climate where moneyed interests seem to have an easier time getting proposals on the ballot than true grass-roots coalitions of citizens.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned.

**Approval:**

The minutes of the March 13, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the April 10, 2014 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, APRIL 10, 2014

#### **Call to Order:**

Vice-chair Charles Kurfess called the meeting of the Constitutional Revision and Updating Committee to order at 12:35 p.m.

#### **Members Present:**

A quorum was present with Vice-chair Kurfess and committee members Abaray, Asher, Curtin, Obhof, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the previous meeting were approved.

#### **Discussion:**

Vice-chair Kurfess recognized Senior Policy Advisor Steven H. Steinglass to present a memorandum on strengthening Ohio's statutory initiative.

Representative Mike Curtin proposed that the committee pursue two paths. He said the first path would seek to encourage the use of the statutory initiative by reducing the geographic requirement for signatures from 44 counties to 22 counties, and by requiring a two-thirds vote in the legislature for a period of five years to change or repeal an initiated statute. He said the second path would seek to reduce the use of constitutional amendments by increasing the signature requirement from ten to fifteen percent.

With the assistance of Mr. Steinglass, the committee discussed options to encourage the use of initiated statutes over the use of constitutional amendments.

Through a motion by Rep. Curtin, seconded by committee member Mark Wagoner, the committee unanimously voted (six to zero) to request that the Ohio Legislative Service Commission draft amendments that would reduce the geographic signature requirement from 44

counties to 22 counties, and would require a two-thirds vote from the legislature for a period of five years to change or repeal an initiated statute.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:45 p.m.

**Approval:**

The minutes of the April 10, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the May 8, 2014 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MAY 8, 2014

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 1:35 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess and committee members Abaray, Asher, Becket, and Curtin in attendance.

#### **Approval of Minutes:**

The minutes of the April 10, 2014 meeting of the committee were reviewed and approved.

#### **Discussion:**

The minutes from the previous meeting were read and Vice-chair Kurfess recommended revisions be made to include the discussion from the previous meeting regarding competing ballot language for constitutional amendments through the General Assembly.

Senior Policy Advisor Steven H. Steinglass presented on the initiated statute process and how proposed revisions by the committee compared to procedures in other states.

The committee discussed the goal of encouraging the use of initiated statutes over constitutional amendments. The committee considered reducing the geographic requirement from 44 to 22 counties for initiated statutes, creating a five-year protection period during which a two-thirds vote of the General Assembly would be required to change initiated statutes, and adjusting the supplemental petition process for initiated statutes.

The committee further discussed allowing the General Assembly to create competing ballot language for constitutional amendments, increasing the vote requirements to pass constitutional

amendments, requiring that a constitutional amendment pass in two subsequent elections, and adjusting the timing and deadlines of the constitutional amendment process.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 3:00 p.m.

**Approval:**

The minutes of the May 8, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the June 12, 2014 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JUNE 12, 2014

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 9:45 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess and committee members Abaray, Asher, Batchelder, Curtin, Obhof, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the May 8, 2014 meeting of the committee were reviewed and approved.

#### **Discussion:**

The amended minutes from the April 10, 2014 meeting, as requested by Vice-chair Kurfess at the May 8, 2014 meeting, were read and approved without objection.

The committee discussed the Legislative Service Commission draft joint resolution intended to reduce the geographic requirement for initiated statutes from 44 to 22 counties and to create a five-year time period in which initiated statutes would require a two-thirds vote by the legislature to modify. The committee also considered adjusting the supplemental petition requirements for initiated statutes, clarifying language in lines 1, 21, and 127 of the draft, as well as adding an additional requirement that legislative changes must "further the purpose" of initiated statutes.

Senior Policy Advisor Steven H. Steinglass presented on the initiated statute process and how proposed revisions by the committee compared to procedures in other states.

The committee discussed whether to send individual recommendations to the full Commission or whether it would be better to send a comprehensive package of recommendations.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 11:15 a.m.

**Approval:**

The minutes of the June 12, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the July 10, 2014 meeting of the committee.

*/s/ Dennis P. Mulvihill*

Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JULY 10, 2014

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 10:20 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess and committee members Abaray, Asher, Batchelder, Beckett, Curtin, Obhof, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the June 12, 2014 meeting of the committee were reviewed and approved.

#### **Presentations and Discussion:**

Chair Mulvihill recognized Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, who presented on signature requirements for initiated statutes, the supplemental petition process for initiated statutes, and a proposal for an indirect and direct process for initiated statutes in Ohio. Ms. Rosenfield addressed questions from committee members on these topics.

Senior Policy Advisor Steven H. Steinglass presented on the initiated statute process in Ohio, describing how proposed revisions by the committee compared to procedures in other states. Mr. Steinglass recommended the committee look at the timing of statutory initiatives in Ohio and the feasibility of completing the requirements in a single year.

The committee discussed the Legislative Service Commission draft joint resolution to reduce the geographic requirement for initiated statutes from 44 to 22 counties and to create a five-year time period in which initiated statutes would require a two-thirds vote by the legislature for

modification. The committee considered whether to add a requirement that legislative changes must “further the purpose” of initiated statutes.

The committee unanimously agreed that it would submit a comprehensive package of recommendations to the full Commission, rather than sending individual recommendations.

In relation to constitutional amendments, the committee discussed requiring an initiated constitutional amendment to pass in two subsequent elections, requiring a super majority vote for passage, increasing the signature requirement from 44 to 66 counties, and creating a mechanism for the General Assembly to put competing amendment language on the ballot.

The committee discussed the importance of reaching a resolution on reapportionment reform prior to sending a comprehensive package of recommendations to the full Commission.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 11:55 a.m.

**Approval:**

The minutes of the July 10, 2014 meeting of the Constitutional Revision and Updating Committee were approved at the October 9, 2014 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISIONS AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, OCTOBER 9, 2014

#### **Call to Order:**

Chair Mulvihill called the meeting of the Constitutional Revisions and Updating Committee to order at 1:10 p.m.

#### **Members Present:**

A quorum was present with committee members Mulvihill, Kurfess, Asher, Batchelder, Curtin, Jacobson, Obhof, and Sawyer in attendance.

#### **Approval of Minutes:**

The committee approved the minutes of the July 10, 2014 meeting.

#### **Topics Discussed:**

Chairman Mulvihill began the meeting by explaining there has been some concern expressed that the Ohio Constitution is being cluttered with things that more appropriately belong in statutes. Don McTigue and Maurice Thompson were invited to today's meeting to discuss proposals for changing the constitutional provisions relating to citizen initiative and referenda processes.

Both speakers responded to the following questions presented to them by the committee prior to the meeting:

- (1) Should the constitution be amended to increase the percentage of affirmative votes required to approve constitutional amendments proposed by initiative or by the General Assembly? Should the same percentage be required for both?
  
- (2) Should the constitution be amended to strengthen the direct statutory initiative by prohibiting the General Assembly from repealing or amending a statute adopted by initiative during the five year period after its adoption other than by a two-thirds vote?

(3) Should the constitution be amended to alter the timetable for presenting amendments to the voters in such a way as to permit the General Assembly to propose an alternative to an amendment that is being proposed to the voters by initiative?

(4) Should the constitution be amended to undo some of the impediments the GA has placed on the Initiative and Referendum processes over the years?

(5) Is there anything else the committee ought to be considering as it evaluates the constitutional side of the Initiative and Referendum processes?

Don McTigue, of the law firm of McTigue & McGinnis, LLC, presented first. His responses to the questions are contained in the materials he provided prior to his presentation. Mr. McTigue commented that he has clients who want to go the constitutional route because they have a loose coalition that will fall apart if it takes too long to get a provision enacted. Senator Obhof commented that the Ohio Constitution is a foundational document that ideally should not be amended by groups lacking the long-term commitment to whatever issue is sought to be put in the constitution. If a coalition cannot stay together, isn't that a sign that a provision doesn't belong in the constitution? Mr. McTigue replied that it is hard to sustain an effort over a longer period.

Mr. McTigue was asked about the potential for legal action if the legislature must wait five to ten years before addressing a statutory initiative. Doesn't any legal action have to be consistent with the purpose of the initiated provision? Mr. McTigue said this period of repose creates litigation, although it is a good idea. Senator Sawyer asked whether the period of repose interferes with the legislative prerogative.

Maurice Thompson, of the 1851 Center for Constitutional Law discussed modifications to Article II, Section 1b of the Ohio Constitution to make the initiated statute process easier for citizens and planned to submit these modifications to the committee in writing at a later time. He said that the Initiative and Referendum procedure is a product of the Progressive Movement. Mr. Thompson said he favors it because it serves to limit government by creating a fourth branch: the people. This makes average citizens "civic adults." It is a more direct form of government/democracy that rejects paternalism and the view that voters can't do something for themselves because they will make mistakes. Mr. Thompson indicated that there is no need for a strong gatekeeper for this process because voters actually turn down a majority of initiated amendments. He favors placing constitutional amendment initiatives on the ballot in November only, so that the maximum number of voters will weigh in.

### **Adjournment:**

With no further business, the committee adjourned at 2:30 p.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- McTigue remarks
- Thompson remarks

**Approval:**

These minutes of the October 9, 2014 meeting of the Constitutional Revisions and Updating Committee were approved at the December 11, 2014 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISIONS AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, DECEMBER 11, 2014

#### **Call to Order:**

Chair Mulvihill called the meeting of the Constitutional Revisions and Updating Committee to order at 2:25 p.m.

#### **Members Present:**

A quorum was present with committee members Mulvihill, Abaray, Wagoner, Curtin, Readler, and Asher in attendance.

#### **Approval of Minutes:**

The committee approved the minutes of the October 9, 2014 meeting.

#### **Topics Discussed:**

Carrie Kuruc, elections counsel for Secretary of State Jon Husted, presented on the role of the Ohio Ballot Board in getting issues on the statewide ballot.

#### *Referendum*

Ms. Kuruc indicated the most direct method of getting an issue on statewide ballot is through a referendum. Matters not subject to referendum include tax levies, appropriations for current expenses, and emergency laws.

Ms. Kuruc indicated the first step in the process is to submit a written petition signed by 1,000 registered voters to the Secretary of State along with the full text of the law and a summary of the law or section of the law to be referred, with a copy to the Attorney General. Within 10 days the Secretary of State forwards the signatures to county boards of elections to confirm the signatures are valid, and the Attorney General determines if the summary is a fair and truthful representation of the law. If the petition meets both requirements the petition is certified. If it fails to meet the test, the petitioners can begin again.

She then stated that the total number of signatures on the petition must equal at least six percent of the total vote cast for the office of governor at the last gubernatorial election, and come from at least 44 of the 88 Ohio counties. From each of these 44 counties, there must be signatures equal to at least three percent of the total vote cast for the office of governor in that county at the last gubernatorial election.

The petition must be filed with the Secretary of State within 90 days after the law or section of the law to be referred, has been filed with the Secretary of State by the Governor.

The referendum will only appear on the general election ballot, and the law will not go into effect unless approved by a majority of the voters.

#### *Citizen Initiated Constitutional Amendment*

Ms. Kuruc noted that for a citizen initiated constitutional amendment the process is the same as for a referendum except the Attorney General certifies the signatures and the total number of signatures on the petition must equal at least ten percent of the total vote cast for the office of governor at the last gubernatorial election, and come from at least 44 of the 88 Ohio counties. From each of these 44 counties, there must be signatures equal to at least five percent of the total vote cast for the office of governor in that county at the last gubernatorial election.

The petition must be filed with the Secretary of State not later than 125 days prior to the general election at which the proposed constitutional amendment is to be on the ballot.

Any amendment approved by the majority of the voters will become effective 30 days after the election.

#### *Initiated Statute*

The initiated statute is the most complicated of the options. The process is the same as for a referendum and citizen-initiated constitutional amendment except the total number of signatures on the petition must equal at least three percent of the total vote cast for the office of governor at the last gubernatorial election, and come from at least 44 of the 88 Ohio counties. From each of these 44 counties, there must be signatures equal to at least one and one-half percent of the total vote cast for the office of governor in that county at the last gubernatorial election.

The petition must be filed with the Secretary of State not less than ten days prior to the commencement of any session of the Ohio General Assembly, which is the first Monday in January.

Any law approved by the majority of the voters will become effective 30 days after the election.

#### *General Assembly Initiated Constitutional Amendment*

The most commonly used method is General Assembly initiated constitutional amendment. Either branch of the General Assembly may propose amendments to the Ohio Constitution, and are typically proposed by joint resolution. A three-fifths vote in favor of the joint resolution in both chambers is required for its passage.

If a majority of the voters approve the amendment, it becomes part of the Constitution.

Of these different ways of getting issues on the ballot, the General Assembly initiated constitutional amendment is the most common. Between 1913 and 2014, 154 amendments were proposed using this method, with 103 being approved.

The citizen initiated constitutional amendment is also common but not as successful. During the same time period 72 amendments were proposed with only 19 being approved.

The referendum is the least common method with 11 being proposed. In 2 cases the law took effect.

The initiated statute is rare and most often fails. There have been 15 proposed with only five being approved.

### *Committee Discussion*

At the conclusion of Ms. Kuruc's presentation committee members asked questions, made suggestions, and held discussion on several issues related to this topic.

Rep. Curtin said the way the referendum has been structured is that if a group is seeking to overturn an enactment, and they submit the required number of valid signatures, then it is a yes vote to uphold the enactment and a no vote to overturn the enactment. To what extent does the General Assembly have the ability to reverse that with a yes vote meaning no and a no vote meaning yes? Ms. Kuruc replied she was unsure of this.

Committee member Wagoner stated the citizen initiated constitutional amendment process is the same as for a referendum except the Attorney General certifies the signatures instead of the Secretary of State. He asked why this was different. Ms. Kuruc clarified that the actual verification is done at the county boards of elections, and noted that the petition filing process is statutory; the Secretary of State cannot change it.

Committee member Abaray asked if it is possible to change the requirement that ballot issues be publicized in newspapers given the current technologies available. Ms. Kuruc replied this is a legal requirement. She also noted that to publicize the referendum issue for SB5 in the 129<sup>th</sup> General Assembly the cost was over \$2.1 million for publication in newspapers.

Committee member Asher suggested that perhaps the ballot language and explanation could be mailed with the absentee ballot application, and asked if there had been any discussion in the Secretary of State's office about doing that. Ms. Kuruc replied she wasn't aware but would ask.

Ms. Abaray observed that the Constitution requires publication in this particular manner, so unless the Constitution is changed, using technology or US postal mailings would not be permitted. She asked if there were any statistics available as to the effectiveness of the current publication requirement. Ms. Kuruc said the Secretary of State has some data available.

Committee member Readler commented it seems that most of the initiated amendments are from the General Assembly, not citizens. Rep. Curtin explained the reason may be that citizens are more interested in the high-profile provisions.

Rep. Curtin suggested that Ms. Kuruc's ask the Secretary of State if the Secretary has recommendations for this Commission on areas where the ballot board has failed to optimize since the 1970s, when the Ohio Constitutional Revision Commission recommendations created the ballot board. What have we learned from history? Are there lessons on how we can further guard against gamesmanship in how we present issues to the public? Is there a way for the Secretary of State to give us recommendations based on the history of the ballot board: lessons learned or suggestions for improvements? How can we better present neutral language to the voters?

Steve Steinglass, Policy Advisor to the Commission, commented that this committee might want to take a look at the Secretary of State's timeline to see if there are any issues or problems in the current order of events. He said it has been argued there is some issue with timing (see McTigue and Thompson testimony from October 9, 2014) and we could ask the Secretary of State to comment. If timing is a determinant, we can request more information from Mr. McTigue. Prof. Steinglass stated that gathering petitions and publicizing information should be modernized.

**Adjournment:**

With no further business, the committee adjourned at 3:30 p.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- Prepared remarks of Carrie Kuruc
- Biographical sketch of Carrie Kuruc

**Approval:**

These minutes of the December 11, 2014 meeting of the Constitutional Revisions and Updating Committee were approved at the April 9, 2015 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, APRIL 9, 2015

#### **Call to Order:**

Chair Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 2:30 p.m.

#### **Members Present:**

A quorum was present with committee members Mulvihill, Kurfess, Abaray, Cupp, Macon, Obhof, Readler, and Wagoner in attendance.

#### **Approval of Minutes:**

The committee approved the minutes of the December 11, 2014 meeting.

#### **Committee Discussion:**

This was the first meeting of the Constitutional Revision and Updating Committee in 2015, so the Chair recognized and welcomed the committee's two new members, Representative Cupp and Dr. Macon.

Senior Policy Advisor Steven H. Steinglass provided information about subject matter limitations on constitutional initiatives, which place restrictions on which constitutional items may be changed or added by the initiative process. He noted that Ohio is one of 16 states with direct constitutional initiatives. Few states have explicit subject matter limitations on their constitutional initiatives. Dean Steinglass found only three: Massachusetts, Mississippi, and Illinois. Examples of subject matter limitations in these states include the bill of rights, the employee and retirement system, and modifications to the initiative process.

In contrast, statutory initiatives typically have many subject matter limitations. Dean Steinglass noted that at a previous meeting Professor Bruce Cain briefly referenced a constitutional problem with subject matter limitations on initiatives. Although there has been litigation concerning the validity of subject matter limitations on constitutional initiatives, Dean Steinglass stated that the leading opinions have upheld their use.

Committee member Abaray added that another past presenter had informed the committee that, when he works with clients on potential constitutional initiatives, he consistently uses a “trump card” provision. This “trump card” provision states that, if the initiative is in conflict with other provisions of the constitution, the initiative position will always control. Ms. Abaray stated her disapproval of these “trump card” provisions, primarily because most voters will not appreciate their significance.

Ms. Abaray then asked whether it would be appropriate for the committee to recommend a restriction against “trump card” provisions in initiated amendments. Dean Steinglass stated that there is always the potential for two amendments on the same topic, and, in those situations, the one with the greater number of votes prevails.

Ms. Abaray then clarified her concern, which is that the “trump card” provision prioritizes the initiative amendment at the expense of previous amendments. Dean Steinglass believes the courts would need to decide which amendment prevails, and that they would likely try to reconcile the two provisions of the constitution. However, his initial reaction is that the second amendment would trump the first. There are other provisions in the constitution that include “trump card” provisions, including Article II, Section 34(a), which deals with minimum wage.

Chair Mulvihill commented that, as was heard in the full Commission meeting earlier in the day, when Richard Saphire presented on the report and recommendation for Article I, Section 2, there is a constitutional prohibition on the General Assembly from granting special privileges and immunities. However, he noted that Ohio has begun to see constitutional initiatives that grant special privileges to certain individuals, such as casino owners and marijuana growers. He also expressed his concern that other states have done nothing to address this problem.

Dean Steinglass commented that a subject matter limitation on privilege would certainly be possible to create. The overarching consideration, however, is whether such a provision would be good policy.

Vice-Chair Kurfess stated his belief that the limitation should go even further. He said he preferred a limitation that would state that neither by initiative nor by act of legislature could a provision be placed before voters to grant a right or privilege or protection not extended to all similarly-situated individuals or entities. He believes the legislature should not have the right to extend privilege either. Vice-Chair Kurfess stated that he would suggest an amendment that would preclude the public vote on any such granting of privileges or rights or protections.

Senator Obhof said that this suggested amendment may be problematic. If the constitution includes language that privileges a certain group, Sen. Obhof is not sure that adding “notwithstanding any other provision” would circumvent that issue. Vice-Chair Kurfess responded that an anti-privilege provision could be worded so that any measure that says “notwithstanding” would not apply. The anti-privilege provision could require two votes, one to repeal and the other to consider the substitute. Dean Steinglass suggested that pre-election review of proposed constitutional amendments might address this issue.

Committee member Wagoner then asked whether future generations would be able to remove the anti-privilege provision. Dean Steinglass replied that the provision could be removed in the future. It is problematic to have a provision that cannot be removed from the constitution.

Chair Mulvihill then focused the committee on a central issue: how to direct people to the statutory initiative process as opposed to the constitutional initiative process. He is in favor of an amendment that would not permit individuals to grant special privileges to other groups. He also agrees that there has been some co-opting of the process for private interests to enrich themselves under the cover of something that might be popular. Dean Steinglass agreed to research what other states have done to minimize privilege in the initiative process.

Committee member Readler said he understands that Ohio is one of the easiest states in which to pass a constitutional amendment. He believes this is true particularly because 34 states have no initiative process. Dean Steinglass observed that “easy” and “the most avenues” are not necessarily equivalent. The ease of the initiative process is impacted by other factors, like the culture, industry, and expectations that exist in the state.

Another subject matter limitation that Dean Steinglass mentioned revolves around the distinction between a constitutional revision and a constitutional amendment. He stated that a significant number of states do not use these terms interchangeably. In those states, a constitutional revision is a thorough, fundamental change to the constitution, whereas an amendment is a narrow, precise change. The typical pattern in these states is that the initiative process may not be used for constitutional revision, but may be used for constitutional amendments.

Ms. Abaray asked whether the committee could look through the minutes of previous meetings and find what presenter Maurice Thompson said about the “trump card” provision. She believes he may have been the speaker that used that language, and that it may be grounds for a limitation on the initiative process. Dean Steinglass stated that the “trump card” language was also in the draft “right to work” provision, provided earlier that day for consideration by the Coordinating Committee, and that he would be able to find it.

Chair Mulvihill restated his concern about individuals using the initiative process for personal gain. He said he believes that prohibiting privilege-granting initiatives may address the problems the committee set out to solve without changing the mechanics of the process with which Ohioans are familiar. He would like to explore this topic in future meetings. Mr. Wagoner agreed the topic is worth exploring.

Vice-Chair Kurfess stated that Ohioans are unlikely to approve a ballot measure that limits their own ability to amend the constitution. However, he believes voters might agree to limit a certain purpose behind amending the constitution, like granting privilege. Chair Mulvihill agreed that this type of amendment should be considered further. The committee is interested in encouraging Ohioans to use the statutory initiative process, and Chair Mulvihill believes this may be a way to achieve that goal.

Dean Steinglass noted that staff could write a memo regarding the topics on which the committee may want to take a position. He also reminded the committee that there are some technical problems in the constitution that the committee may want to address. The committee could make recommendations with respect to the clarity of the provision fairly soon.

Ms. Abaray asked whether Article I, Section 2 has any bearing on the anti-privilege provision that the committee is contemplating. Chair Mulvihill does not believe that the topics in front of this committee have any bearing on Article I, Section 2, and Dean Steinglass agreed.

Executive Director Steven C. Hollon then introduced a report by the National Conference of State Legislatures (“NCSL”). The report is titled “Initiative and Referendum in the 21st Century,” and it was created by the NCSL Initiative and Referendum Task Force. Director Hollon presented this report to the committee as a reference document. It covers topics and concerns that the committee may want to draw upon as it discusses the Ohio initiative and referendum process.

Counsel to the Commission Shari L. O’Neill then discussed the utility of the task force recommendations contained in the NCSL Report. These task force recommendations are taken from the full NCSL Report, which was provided to the committee electronically.

Ms. O’Neill listed the types of recommendations contained in the report, including:

- General recommendations regarding the initiative process
- Recommendations for involving the legislature in the initiative process
- Recommendations relating to the subject matter of initiatives
- Recommendations for improving the drafting and certification phase
- Recommendations about the signature gathering phase
- Recommendations for improving voter education
- Recommendations for requiring financial disclosure
- Recommendations for enhancing the voting process

She noted that some of these topics have already been taken up by the committee, and that she is currently reviewing statutory law and the record of the committee’s activities in order to note which of these recommendations are already part of Ohio law or have been discussed by the committee.

Ms. O’Neill noted that one possible area of interest for the committee might be “The Drafting and Certification Phase,” addressed particularly in Task Force Recommendations 4.1 and 4.4. These provisions contain procedural recommendations that impose a review process on proposed initiative language. The language would be reviewed by either the legislature or an agency in order to improve technical format and content, and would provide the opportunity for public challenge of technical matters. Ms. O’Neill believes these procedures could enhance the initiative process and might help avoid the addition of language that lacks clarity, contains drafting errors, or fails to conform to the existing format of the constitution.

Chair Mulvihill then polled the committee members about the direction of future committee meetings. Vice-Chair Kurfess said he favors a constitutional provision that protects against special rights and privileges, and asked that staff draft such a provision to see what it might look like. He stated that there should be a limitation on consideration regardless of the source of privilege. Chair Mulvihill agreed and said a draft by the staff may help facilitate future discussion. Vice-Chair Kurfess would also like to continue the discussion about discouraging constitutional amendments. He is also interested in discussing the requirement that initiatives relate to a single subject, and a requirement prohibiting statutes from becoming effective subject to a popular vote.

Dean Steinglass explained Vice-Chair Kurfess's reference, saying that Article II, Section 26 was interpreted to permit the General Assembly to approve something subject to the approval of the voters. It essentially is a plebiscite and most states, including Ohio, don't use this. Chair Mulvihill noted that that provision was not assigned to this committee.

Vice-Chair Kurfess asked whether the single subject provision applies to initiated statutes. Rep. Cupp indicated that any limitation on the General Assembly is also a limitation on initiated statutes.

Vice-Chair Kurfess then wondered whether the committee should inform the full Commission that it is interested in encouraging statutory amendments instead of constitutional amendments. The Commission may have insight into whether the committee is headed in the right direction.

Ms. Abaray asked whether the committee was close to proposing some amendments to the full Commission. Chair Mulvihill responded that the committee was not close. Ms. Abaray then suggested that gender neutral language should be included in the standard format of the constitution.

Mr. Readler commented that NCSL Task Force Recommendation 8.2, which recommends a higher vote threshold for constitutional amendments than for statutory amendments, might be one area the committee has already addressed.

Chair Mulvihill said the committee has had recommendations about streamlining the process, for example, Article II, Section 1b, which is extremely difficult to read. He said that, from a technical standpoint, the committee could work to make that section and similar sections clearer. Chair Mulvihill noted that technical changes are an easier topic for recommendations than the philosophical topics the committee has discussed previously.

Dean Steinglass asked whether the committee would be interested in addressing pre-election substantive review. He suggested that such a process would eliminate patently unconstitutional initiatives from the process. Additionally, voters in many states cannot initiate a convention, and Dean Steinglass wonders if that is missing in Ohio. He also wondered whether the single amendment rule would prevent the committee from truly modernizing the constitution because it contributes to clutter, and whether a separate ballot item must be created for every change that is proposed.

### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 4:00 p.m.

### **Attachments:**

- Notice
- Agenda
- Roll call sheet

**Approval:**

The minutes of the April 9, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the May 14, 2015 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-Chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MAY 14, 2015

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 3:10 p.m.

#### **Members Present:**

A quorum was present with committee members Chair Dennis Mulvihill, Vice Chair Charles Kurfess, Sen. Larry Obhof, Roger Beckett, Rep. Bob Cupp, Janet Abaray, and Chad Readler in attendance. Rep. Mike Curtin attended as a guest of the committee.

#### **Approval of Minutes:**

The committee approved the minutes of the April 9, 2015 meeting.

#### **Presentation:**

*Limitation on Initiative Petition – No Special Interest*

*Dave Yost  
Ohio Auditor of State*

The committee received a presentation by Dave Yost, Ohio Auditor of State, regarding the involvement of special interest groups with the Ohio initiative process.

Mr. Yost said he spoke at a January 30, 2015 Associated Press Legislative Forum, where he said he was critical of the way the Ohio initiative process has been hijacked. Since then, he said he has had many conversations on this topic, and has drafted language for an amendment. He said two current events have made this topic more pressing: the marijuana initiative proposal and the discussion in this committee about this issue at its last meeting. He identified the draft language he has provided as a concept document that is subject to editing, and is being offered as a place to begin the debate.

Mr. Yost said the first challenge in drafting language is the nature of the prohibition, with the idea being to avoid policy questions and try to avoid allowing the constitution to be used to confer a benefit, either directly or indirectly. He said any interest conferred by the constitution must be available to all people who are similarly situated.

Mr. Yost also indicated that his draft language doesn't attempt to prevent the use of "trump card" language, such as the phrase "notwithstanding any other provision in the constitution" being used to prevent anyone from altering or removing a constitutional amendment. He said it would be problematic to try to prevent that kind of language, and instead he proposes that the process, and not the prohibition, be the solution.

Mr. Yost said the emphasis of his proposal is to limit the people's path to amendment, rather than the legislature's, since the legislature is not currently responsible for proposing problematic amendments in the constitution. He said the legislative process protects against the General Assembly proposing resolutions that have these same kinds of problems. Quoting Theodore Roosevelt, he remarked that the constitution should not be somebody's paycheck. Mr. Yost said the constitution has been hijacked by a powerful few for their own purposes.

Mr. Yost then invited questions from committee members. Committee member Janet Abaray asked, if the legislature cannot pass a statute that only benefits a person or small group, why that isn't also a rule for the constitution. Mr. Yost asked Senior Policy Advisor Steven H. Steinglass to comment. Mr. Steinglass said the reason is there are requirements that statutes be uniform. He said there is use of the words "special privilege" in Article I, Section 2, and that this phrase has a unique meaning. Mr. Steinglass said he is not sure we have an overriding constitutional provision that bars the state from making money available to a single beneficiary.

Committee member Sen. Larry Obhof commented that, whether it is called a cartel, oligopoly, or monopoly, he shares the concern expressed by Mr. Yost.

Vice Chair Charles Kurfess said the issue of limiting initiatives is problematic, specifically raising the question of how the public might react if this becomes a ballot issue. He said the difficulty is the perception that a restriction on the initiative process would not be favored if the public thinks it is unfair that the legislature retains an ability to grant monopolies.

Mr. Yost said he shares Vice Chair Kurfess's concern. He said he would make the political arguments to the voters. He said no problems have arisen with the legislature doing this, so that he became convinced that limiting the restriction to the initiative process would be a measure that would be narrowly tailored to the situation we have experienced here in Ohio. Vice Chair Kurfess commented that, as a former legislator, he is not as concerned about tying the hands of the legislature.

Chair Mulvihill recognized Rep. Mike Curtin, who said he agrees with Sen. Obhof that there are economic interests that are looking at this issue, and that the General Assembly has a moral obligation to act, and act soon. Rep. Curtin said he addressed the House Democratic Caucus on this issue, after the caucus had heard from ResponsibleOhio about the issue. He said the response in the caucus was that if there is a real motivation to liberalize marijuana, it could be done through initiated statute, and that the only reason the proponents want it in the constitution

is to make money. Rep. Curtin said the proposed initiative will set precedent for what is yet to come, and it is not about marijuana.

Mr. Yost said he consulted with Rep. Curtin in forming his ideas. He asked the committee whether, given the Commission rules, it would be possible to get something in front of the legislature by August for putting an issue on the ballot. Chair Mulvihill said no, that is not possible given the rules, and how often the committee meets. He added the Commission's charge is to take a comprehensive view of the constitution, to hear from all sides, and not to respond to immediate political circumstances. He said the General Assembly can take this immediately to the voters, but that this committee could not meet the time frame for getting it on the ballot.

Committee member Roger Beckett said that for many months the committee has been talking about this concern, and now the committee is beginning to see some extreme examples of the problem it has been discussing. He said the committee can continue to discuss the issue to encourage people to use the initiated statute route and steer them away from the initiated amendment route. He said that Mr. Yost's proposal would be a strong improvement to the process. Mr. Beckett said he would encourage legislative members on the Commission to not look at the Commission as a barrier, but as an advisory body, and that the Commission is not meant to stop issues from going forward.

Sen. Obhof asked about the issue of stopping the "trump card" language. Sen. Obhof said it was his understanding Mr. Yost does not advocate trying to prevent that language but asked whether the proposal Mr. Yost outlined takes care of that problem. Mr. Yost said he has discussed the issue with Mr. Steinglass.

Ms. Abaray asked whether any monopoly provisions have been challenged on an equal protection ground by other states, regarding casinos, for example. Committee member Chad Readler commented that equal protection usually applies in other arenas, not economic interest. Mr. Readler said he hopes the legislature will take up the issue. Executive Director Steven C. Hollon suggested that this committee meets next month, and that speakers could be lined up to address this topic. Chair Mulvihill agreed that this would be a good idea.

Committee member Rep. Bob Cupp asked whether there is a mechanism by which one could go through the proposed amendments to the constitution and decide which ones may fit into this issue, to help with the deliberations. He said, for example, there is an amendment that allows the sale of bonds for clean coal, and wondered whether this topic relates to that issue. Dean Steinglass said that it would be possible to take a look at the constitution, and that such a review would be easier to do on what has been approved than on what hasn't been. Mr. Steinglass said the coal example was a result of a constitutional amendment proposed by the General Assembly. Rep. Cupp said that may be true, but wondered whether the same principle would apply if it were suggested by initiative rather than by resolution.

Mr. Yost said the coal initiative would pass muster unless constructed to single out certain people to receive money or a benefit.

Mr. Steinglass commented on the "gateway language," meaning the "trump card" or "notwithstanding" type of provision. He said a goal in this area is to keep it short and simple.

Part of that equation is asking whether the additional language provides some additional degree of protection. Mr. Steinglass said one of the things that the constitution contains is schedules, which could be used to deal with some of the issues.

Chair Mulvihill asked whether other states have begun to see this type of use of the initiative process. Mr. Steinglass said he has not located anything, but mentioned that Rhode Island may have had an experience with this.

Vice Chair Kurfess commented that the legislature is limited, but the General Assembly could propose a constitutional amendment to do through the constitution that which they are precluded from doing by statute. He said it should not be the goal to tamper with that.

Rep. Cupp said that the experience is that the General Assembly has been very restrained in doing these sorts of things. He said, in the past, the initiative process was more difficult without modern technology. The situation with the General Assembly isn't going to change, but it is now easier for citizens to get something on the ballot.

Ms. Abaray asked whether the committee is trying to look specifically at terminology. Chair Mulvihill said the committee is still working on the concept, and could discuss language next time. He then thanked Mr. Yost for his presentation.

Chair Mulvihill then asked the committee whether it wanted a general discussion on language. Vice Chair Kurfess asked whether staff could consider some language and come up with some alternatives. He said the committee could be going on parallel paths with the legislature, and that what the committee does can be supportive of the legislature.

Rep. Curtin said that these comments were well-taken. He continued that he has had discussions with colleagues on both sides of the aisle in the House, and that a majority of both parties is looking to this committee for some refined language. He said the process is not occurring right now in the General Assembly. He suggested that, to the extent the staff can continue to consult, it should refine what it believes is the best language, and that this would be well received by both houses. Rep. Curtin complimented Dean Steinglass as a tremendous resource for the process.

Chair Mulvihill asked whether it makes sense to propose the same limitation on the General Assembly that would be applied to the citizen's initiated amendment process, remarking that if this type of provision isn't appropriate in the constitution, it doesn't matter how it got there.

Ms. Abaray noted an example that was raised, a tax issue, by which the General Assembly might want to encourage a certain industry. She said if such a provision is thoughtfully brought up by the legislature it might be different from a provision that only benefits a small group.

Sen. Obhof said he agrees with Mr. Yost, and that the issue isn't something the committee needs to decide today. He said he would like to hear from witnesses who might like to comment on the issue.

Chair Mulvihill then recognized Scott Tillman from the audience. Mr. Tillman said he works with the Citizens in Charge Foundation and appeared before the committee on a previous occasion in October 2013. Mr. Tillman said the legislature should be bound by the same restrictions as are applied to the citizens. He said the initiative process is a tool for the citizens

when the legislature will not do what they want. He said the initiative gives the people the same voice as the legislature. He said passing an initiated amendment is not a given, is not easy to do, and needs many signatures. He said the constitutional amendment route is preferred because it is too easy for the General Assembly to gut a statute.

Rep. Curtin said that it is a practical political problem to advance an amendment to prevent the public from granting monopolies but still allow the legislature to do so. He said applying a restriction to both would not obviate the legislature's ability down the road to ask for an exception to the monopoly; in fact, the General Assembly has done this over and over again in relation to the \$750,000.00 debt limit. Rep. Curtin said he assumes that, should voters pass an amendment disallowing monopolies, the General Assembly could pass a resolution to remove it.

Chair Mulvihill then proposed that the committee seek commentary from the other side of the issue, and directed staff to assist in locating interested parties, as well as in working on language for a proposed amendment. Chair Mulvihill asked for input from anyone on the committee who has language to propose.

### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 4:00 p.m.

### **Attachments:**

- Notice
- Agenda
- Roll call sheet

### **Approval:**

The minutes of the May 14, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the June 11, 2015 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-Chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JUNE 11, 2015

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:10 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Cupp, Macon, Obhof, Sykes, and Wagoner in attendance.

#### **Approval of Minutes:**

The committee approved the minutes of the May 14, 2015 meeting.

#### **Committee Discussion:**

Chair Mulvihill began the meeting by stating that the committee is tasked with considering long term constitutional issues, and is not interested in infringing citizens' ability to bring initiated statutes. He said the committee currently is addressing whether the initiative process should allow specific people to be benefited. This has been an ongoing discussion of the committee for the last two years and the committee will continue to consider it. He said the constitution should not be amended in a quick, or less-than thoughtful, or thorough manner. He stated for clarification that the committee is not looking at just the marijuana legalization effort. He then invited Senior Policy Advisor Steven H. Steinglass to outline the history of the issue and discuss a working proposal that the committee had requested for changing the initiative process to prohibit the use of the process for the creation of monopolies.

Mr. Steinglass first said he would like to underscore that the initiative is part of the DNA of Ohio and has been for 100 years. He said the fear of many is that the bad experiences that have occurred in California may come to Ohio. In California, the initiative process has moved budgetary considerations to the voters in an unorganized way, creating problems for the state.

Also in the background of the discussion about the initiative process is the history of the casino amendment, in which voters approved a provision that, by its length and detail, was more suggestive of a statute. Mr. Steinglass said the committee has looked at numerous ways to respect the history of the initiative yet to also bring it under control. At the April 9, 2015 committee meeting, he presented a memorandum on limitations on the constitutional initiative in other states, noting that most states do not have substantive limitations.

Mr. Steinglass said the committee's discussion about the use of limitations was robust, and it turned to the question of how that particular approach related to the pending special interest for marijuana growing facilities, a discussion that was picked up by the media. The next month, at the May 14, 2015 meeting, Auditor of State Dave Yost made a specific proposal.

Mr. Steinglass directed the committee's attention to the working proposal in the packet. He prepared this version, which is similar, but not identical, to Auditor Yost's proposal. Mr. Steinglass said the amendment proposed in his draft limits the constitutional initiative, but it does not prevent the General Assembly from proposing an amendment. It also does not preclude the General Assembly from adopting a statute. Mr. Steinglass explained that the goal was not to handcuff the state's normal processes. He said division A of the proposal broadly defines the use of the constitutional initiative and those who cannot benefit. It also requires that individuals, or entities, not be treated differently. He continued, saying division B tries to give some force to A by requiring a review of the substance and prohibits a monopoly amendment from going on the ballot, but it must be explicit, noting that in some ways this review is analogous to the single amendment rule review by the Secretary of State. Mr. Steinglass said he thinks the provision should explicitly state that the proposed amendment does not go on the ballot if the Secretary of State finds that it creates a monopoly. He noted that this portion of the proposal deviates from the auditor's version in that it does not require two votes before a monopoly can be permitted. Since drafting that version he has determined that it would strengthen the proposal to add a paragraph that incorporates the auditor's plan.

Mr. Steinglass additionally noted that the proposal is a work in progress and raised, as an example, the process for determining whether a proposed amendment creates a monopoly. He said it seems like bad policy to require a proponent to get thousands of signatures only to be told the proposed amendment violates the anti-monopoly provision. He added that the determination is similar to a single amendment issue but that it is a legal determination. His proposal would bring that inquiry forward in the process and give it to the attorney general, incorporating it in the fair and truthful review. He said that change is not reflected in the draft before the committee, but that it could be added in a new draft. Mr. Steinglass said division C of the proposal deals with conflict and timing. Typically, when two amendments are both approved and they conflict, the Ohio Constitution addresses that issue and provides that the measure receiving the most affirmative votes prevails. He said this has happened only once in 100 years. He observed that the complexity of this issue is whether there is a conflict and whether the severability option applies. He described what could happen in two scenarios. In the first scenario, if the ResponsibleOhio marijuana legalization proposal gets more votes, it becomes law, and there will be severability. In the second scenario, if the anti-monopoly proposal gets more votes, it becomes law with division C providing that the severability provision in the ResponsibleOhio

proposal is trumped. Mr. Steinglass emphasized that this is a draft. He then invited questions from the committee.

Committee member Mark Wagoner asked whether federal antitrust laws come into play as states are immune from those laws if the state provides active supervision of the activity. Mr. Steinglass said there is a recent case out of North Carolina in the U.S. Supreme Court, *North Carolina Bd. of Dental Examiners v. Federal Trade Comm.*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1101 (2015). He said he believes there would be enough state supervision that there would not be an antitrust problem. Mr. Wagoner said the North Carolina case was pretty clear on this, and that his understanding is that federal antitrust law would still trump the state constitution, adding that the FTC would still have a role in deciding whether this is anti-competitive behavior. Mr. Steinglass said his understanding is that federal law in this area defers to what the state is doing, and that requires analysis of what kind of supervision the state is providing in this particular area.

Vice-chair Charles Kurfess said his present inclination is not to limit this provision to proposed amendments submitted by initiative. He said if a contemplated amendment is inconsistent with public policy it should be prevented regardless of its origin. He said the legislature has broad authority to determine classifications to which legislation would or would not apply. He prefers the monopoly to be prohibited regardless of how it comes about. Mr. Steinglass answered that, typically, provisions immunizing the constitution from amendment by the legislature are disfavored, and adding that, at the federal level, there is a strong policy argument against it. He said in this instance the proposal to tie the hands of the General Assembly would entrench something in the constitution.

Representative Kathleen Clyde, a Commission member and present as a guest of the committee, expressed her concern that the provision is drafted more broadly than just as an anti-monopoly provision. She said the current version of the proposed provision is not just about creating or giving a monopoly, but includes economic interest, privileges, and other terms. She said she is concerned that other constitutional amendments dealing with important rights issues, worker issues, and protecting certain groups, would be prohibited or be able to be struck down by this very broad language. She asked Mr. Steinglass to talk about the broad language and what the thinking was behind that. He agreed it is broad and could interfere with other activities. He does not think this will interfere with employee union rights or other types of provisions. Rep. Clyde maintained that the proposed provision is too broad, saying it would be advisable to take more time with this because it interferes with the citizen's right. Mr. Steinglass said of the 18 states that have the constitutional initiative, none has an anti-monopoly provision. He said none of his colleagues around the country could identify a state facing a similar question, so Ohio may be the only state grappling with this issue.

Representative Bob Cupp said the draft is directed to private or nonpublic entities, calling it a "closed clause" under traditional constitutional and statutory interpretation. He asked whether, if the provision is designed to affect only private enterprise, it is advisable to insert "other" to indicate that this is a classification or a type, as opposed to a closed listing. Mr. Steinglass said the word "other" was there but that he does not know why it was or whether it created problems. He said this was an interesting question that perhaps should be re-examined.

Chair Mulvihill asked whether there are any other states in which groups are coming forward to enshrine their own interest in their states' constitutions. Mr. Steinglass said there are no states that prohibit such proposals, but whether there have been attempts to establish monopolies is a harder question. He continued, saying there are 100 casino issues proposed, but to the best of his knowledge the 18 states having the initiative do not prohibit or approve the kind of use to which Ohio's constitution is being put.

Mr. Kurfess said his initial thought was that the committee should be talking only about an economic interest. Mr. Steinglass said some of those phrases have to be looked at with care because it may be ambiguous whether or not something is an economic interest.

Bethany Sanders, deputy legal counsel and policy advisor for the Ohio Senate Democratic Caucus, appeared on behalf of Senator Joe Schiavoni. She read a letter from Sen. Schiavoni addressed to Chair Mulvihill, Mr. Kurfess, and the committee, in which he indicated that the amendment language as proposed by Mr. Steinglass is too broad, using phrases such as "may" and "directly or indirectly," and that the phrase "similarly situated" has a history that may affect how it is interpreted. Sen. Schiavoni wrote that he advocated avoiding the use of the "notwithstanding" trump card in a proposed amendment, and noted the importance of respecting citizens who undertake the initiative process. Sen. Schiavoni added that statutory language in the Revised Code could be utilized as a guide to evaluating an amendment, and that statutory provisions requiring review by the attorney general and the ballot board, could be adapted to allow review of whether a proposal would operate to create a monopoly. Finally, Sen. Schiavoni addressed his concerns about the timing of the discussion, and that hasty action to amend the constitution could have unknown consequences. He said he agrees with Chair Mulvihill that the role of the Commission is to consider what is best for the constitution over many years, rather than to respond to issues of the moment.

Chair Mulvihill then recognized Ian James, executive director of ResponsibleOhio, to speak about the organization's marijuana legalization initiative proposal. Mr. James said the initiative process was adopted due to abuse of rights by the legislature. He said until now we have avoided taking away this right, but that is what is now being proposed, and that taking such an action is ill-conceived. Mr. James said for eighteen years the statehouse has refused to address the issue of medical marijuana, and noted that criminalization has not eliminated the availability of marijuana, but made it easier for drug dealers to market to children because they do not care about the age of the buyer. He said the consequences of drug prosecution are extreme and complex. Comparing the ResponsibleOhio proposal to the repeal of alcohol prohibition, he said the proposed measure would create local control, just like alcohol laws, and would make it illegal to sell marijuana to persons under 21. He said the group's plan protects business, protects young people, creates jobs, and injects money into the state economy. He said the majority of Ohioans should decide an issue that the statehouse has refused to address.

Mr. James said it is immoral to prevent legalization because, in doing so, you defend drug dealers and support an underground economy. He said the cartel running the marijuana industry now is about cash, not conscience. He said it is immoral to prevent patients from obtaining access to medical marijuana.

Mr. James said politicians trust voters enough to elect them, but do not trust voters to deal with this issue. He said it is not a new idea to limit the initiative process, noting that voters have rejected 74 percent of all citizen initiatives. He said it is insulting to suggest that changes to the initiative process are needed because voters are gullible; they are not. Mr. James said only 25 percent of Ohio voters want to make it harder to amend the constitution. As evidenced by casinos and bond sales, leaving in place the ability of the statehouse politicians to create monopolies takes rights from voters and puts control in the hands of the rich and powerful. Mr. James said after casinos were approved, a local special interest demanded that the casino be moved from the Arena District to the West Side of Columbus. He elaborated that those special interests had statehouse access and were able to move it along without giving voters the reasons. He said voters should have full transparency about who is getting the money.

Mr. James said this action is being taken because the statehouse has refused to address the need for marijuana legalization. In 1997, HB 33 attempted to provide medical marijuana to children with epilepsy. He said that bill languished in committee, but the General Assembly easily enacted a bill that created a state rock song. He continued saying there is more compassion in the General Assembly for a rock song than for children with epilepsy. He said the system of amending the constitution has worked well; it is counterproductive to suggest voters need to be protected.

Mr. James then addressed questions from the committee. Representative Emilia Sykes asked whether there is any situation in which Mr. James could support some type of limitation on the initiative. He replied saying the slippery slope is opening this door, and asked where that would end. He reiterated that he believes in the voters, and that, right or wrong, they should make the decision.

Rep. Cupp said the proposed amendment does not do anything to change the statutory initiative law, and that ResponsibleOhio could still put this issue before the voters seeking their approval of the law as a statute. Mr. James countered that, if only a statute is involved, the General Assembly could change it.

Rep. Cupp said one right conveyed would be an economic monopoly. He noted that Mr. James has proposed specific growing zones which are tied to real estate, and there is a lot of money in marijuana. He asked if it is moral to enshrine something in the state constitution to make a few individuals fabulously wealthy. Mr. James replied he believes the group Rep. Cupp is referring to is "Better for Ohio." Mr. James said ResponsibleOhio has proposed 10 facilities. Should the General Assembly legalize marijuana, then licenses will be auctioned off, and the people will have no say about it as those decisions are made behind closed doors. Mr. James said the question is who pays for that campaign to be sure voters get a chance to vote on it. He said under the ResponsibleOhio plan, the proposed grow facilities have to abide by the law, and the group's proposal requires the state to regulate, test, and tax marijuana. Rep. Cupp asked whether, under the proposal, the state can regulate the price. Mr. James replied affirmatively.

Mr. Kurfess said he does not have full understanding about the various proposals but asked whether the ResponsibleOhio proposal would be precluded if Ohio had the anti-monopoly

provision that is being discussed. Mr. James said yes, it would. Mr. Kurfess then asked whether the proposal grants an economic interest, and Mr. James agreed that it does, but that the measure proposes licenses, taxes, and regulation, just as the state does with commercial egg farms. Mr. Kurfess followed by asking whether the language of the proposal presumes to grant an interest by name, to which James said yes. Mr. Kurfess asked how the interests are identified, and Mr. James said they are identified by land.

Chair Mulvihill asked if the group could still legalize marijuana without creating an economic benefit for specific growers. Mr. James said that in order to get legalization passed, going back to 1997, there has been little to no interest in moving it forward. He said the reason is now escalated because other states have legalized it. Chair Mulvihill clarified his question by asking whether the group could still amend the constitution of the state of Ohio to legalize it without giving an economic interest to a few people. Mr. James answered that the reality is who pays for that campaign. He said his group has seen other efforts, and they are very expensive, time consuming, detailed, and difficult. He said there is economic interest here, and legalization will generate billions for the state. Chair Mulvihill asked if Mr. James was saying that the people who promote the measure have to be incentivized. Mr. James said limiting voters' right to make the decision is not the approach. He said without creating an economic incentive, it would still be possible to place the issue before the voters, but in reality you would not have that happen nor would it pass.

Chair Mulvihill posed a hypothetical question about a constitutional provision that would create a pharmaceutical network, making one distributor of prescription drugs the only retailer in the state, and asking whether Mr. James would agree that such a plan would be a good idea. Mr. James said presumably yes, if the voters want that and that he believes in the voters.

Representative Michael Curtin, a Commission member and present as a guest of the committee, said before the ResponsibleOhio plan, some members of the General Assembly were aware two years ago of an initiative by green energy entrepreneurs. He said many people are in favor of green energy, but this group began circulating petitions proposing a constitutional initiative that would require the state to issue \$1.3 billion in green energy bonds, with the proceeds to be distributed by this group whose names were unknown. He said the group wanted a constitutional right to get their hands on \$1.3 billion dollars of state-issued bond proceeds that they would distribute themselves. He said that idea followed the casino initiative and now ResponsibleOhio is trying to obtain a similar benefit. He said the discussion began 15 months ago in light of proposals seeking to establish special monopolies. His question to Mr. James was whether it is a legitimate exercise of state authority to have a provision that would prevent the green energy scenario.

Mr. James answered that citizens have a right to petition the government. He said Rep. Curtin is correct about "if approved by the voters" but, the petition about green energy never saw the ballot box.

Mr. Wagoner commented that the committee is grappling with whether to extend antitrust immunity to private entities. He said in the private sector this would not be permitted, and said

there may be a way to limit this in a much more focused way. He said there could potentially be a middle ground, and that maybe the committee could work on some of the language.

Mr. Steinglass said, in response to Rep. Curtin's question, that limitations on the initiative have been seen by some as a first amendment issue, but courts have consistently rejected such claims.

The discussion having come to a conclusion, Chair Mulvihill noted that the committee will reconvene in September.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:40 p.m.

**Approval:**

The minutes of the June 11, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the September 10, 2015 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, SEPTEMBER 10, 2015

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:08 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Macon, Readler, Sykes, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the June 11, 2015 meeting of the committee were approved.

#### **Presentations:**

*“Update on Status of Anti-Monopoly Ballot Initiative”*

*Steven C. Hollon*  
*Executive Director*

Executive Director Steven C. Hollon provided an update on the committee’s work and what the General Assembly has proposed regarding the anti-monopoly provision, H.J.R. 4, now Issue 2 on the November ballot.

Mr. Hollon distributed to the committee a copy of the joint resolution that was ultimately approved by the General Assembly, as well as the ballot language both for Issue 2 and Issue 3, which is the initiative amendment proposed by ResponsibleOhio. He said ResponsibleOhio has filed an action in the Supreme Court contesting the ballot language, that the issue has been briefed, and the court is expected to rule in short order. He indicated that the secretary of state

has determined that a decision would have to be made by September 19 to accommodate the absentee ballot schedule.

Chair Mulvihill invited questions by committee members. He noted that the final resolution being submitted to voters is more extensive than the language the committee was discussing; specifically mentioning that division (B)(3) seems directed at ResponsibleOhio. Chair Mulvihill asked whether staff had any sense of what prompted the changes from what the committee had been discussing. Mr. Hollon said he did not have that information. Mr. Steinglass said that the legislative process worked on the language, and that legislators had different views and concerns about the initial provision the committee had discussed. He commented that Representative Bob Cupp had one concern about the use of the word “other,” and the change that resulted from his concern got incorporated into the final version. Mr. Steinglass said that as the resolution went through the legislative process, additional language was added. He said Auditor Dave Yost had recommended a two-step process.

Representative Emilia Sykes commented that the language in the House version of the resolution was identical to what the committee had discussed, but when the resolution went to the Senate there were some changes added. She said she could not speak to the Senate deliberations, but what was passed out of the House was the exact same language as was discussed in the May meeting of this committee.

Chair Mulvihill observed that it is a two-part provision, meaning that, if the ballot board believes there is a conflict, the ballot will submit two questions to the voters. Mr. Steinglass agreed that this is what the resolution provides.

*“The Ohio Indirect Statutory Initiative”*

*Steven H. Steinglass*  
*Senior Policy Advisor*

The committee then turned to the issue of the indirect statutory initiative. Chair Mulvihill indicated he asked Steinglass for a presentation on the topic as a way for the committee to begin discussing ways to encourage people to use the statutory initiative process instead of the constitutional initiative.

Mr. Steinglass began by stating the question is whether there is anything the committee can or should do to revise the statutory initiative process. He said that, in prior discussions, the committee was reluctant to change the constitutional initiative, but the feeling was that the committee might be able to look at the indirect initiative to see if it can be made more robust in order to encourage the statutory route.

Mr. Steinglass identified the statutory initiative as one of the major accomplishments of the 1912 Constitutional Convention. He said the big debate at the convention was whether to have a direct or an indirect statutory initiative. He said that, after an initial flurry of attempts to use the statutory initiative, it is fair to say it has not had a very active history. There are only 12 instances in which a statutory initiative has gone to the voters, with only three initiatives having

resulted in approval: an initiative to color oleomargarine, an initiative regarding old-age pensions, and, more recently, an initiative prohibiting smoking in public places. Mr. Steinglass noted, however, that the actual appearance of initiatives on the ballot doesn't tell the whole story because it is not possible to get accurate information as to efforts to initiate a statute that might have not made it to the ballot.

Chair Mulvihill commented that the committee had briefly discussed eliminating the supplemental petition requirement. Mr. Steinglass said he tried to recall and summarize what had been discussed at prior meetings.

Mr. Steinglass said, when it comes to states that have both constitutional and statutory initiative, Ohio is an outlier. Looking at the percentage of time people use the initiative, in Ohio 86 percent of the initiated efforts were for constitutional amendments, whereas the mean in other states was around 50 percent.

Mr. Steinglass said one area the committee could focus on is the requirement for a supplemental petition. He said that part of the procedure is more burdensome for the average citizen than it is for groups of investors with "deep pockets."

Mr. Steinglass identified other issues that would benefit from review. He referenced a prior meeting of the committee in which two pro-initiative lawyers, Don McTigue and Maurice Thompson, discussed some of the issues related to the initiative process. Mr. Steinglass said some of their comments about the statutory initiative were worth repeating. He said one comment that struck him as important had to do with timing. He said that, in 2008, the constitution was changed to require submission of proposed initiated statutes to the secretary of state by 125 days before the election, which shortened the time period for obtaining signatures. The argument made by Mr. McTigue and Mr. Thompson in their presentations was that moving the deadline forward, albeit for good motives, effectively creates a July 1 deadline to file the petitions. The result is that petitioners only have 60 days, reduced from 90, to collect signatures for the supplemental petitions. Mr. Steinglass said Mr. McTigue and Mr. Thompson thought that requirement burdened those seeking to use the statutory initiative. He said one solution would be to do something about the time limits. Mr. Steinglass asked whether the recommendation could be to have petitioners get more signatures at the outset and do away with the supplemental petition. He said under that plan, the General Assembly would still have time to examine the proposed statute.

Chair Mulvihill asked whether other states that have both constitutional and statutory initiative, generally have a two-step process like Ohio's. Mr. Steinglass said it is rare. He said that, in an earlier memo he provided to the committee about a year ago, he identified four states that have the supplemental signature language, which is a relatively small amount.

Committee member Janet Abaray said the committee was looking at making the statutory initiative easier and constitutional initiative harder. She wondered if this is still the interest of the committee. Chair Mulvihill said anything is on the table, but the committee also was working on the anti-monopoly idea, which was then taken up by the General Assembly.

Committee member Larry Macon said this topic is difficult to understand for the layperson, wondering what problem the committee is facing right now and whether Mr. Steinglass could succinctly identify or recommend what the solution would be.

Mr. Steinglass said the larger picture is that he doesn't think Ohio is a state that, like California, has had a huge number of constitutional initiatives; rather they have been relatively rare. He said, as far as he can tell, in Ohio the constitutional initiative is an important part of our political heritage. He said tinkering with that, and changing the percentage regarding constitutional amendment, would bring opposition from groups all over the spectrum. Mr. Steinglass said he thinks the committee ought to seriously look at making the statutory initiative more viable, recognizing that is not a complete solution. He recommended that the committee look at each of the potential ways to strengthen the statutory initiative so that the supplementary petition process would be less cumbersome or eliminated.

Mr. Steinglass added he would not recommend abandoning the indirect statutory initiative. He said respect for the legislative process is an important value, and the legislature should have the opportunity to see what citizens have drafted. He said the idea of people drafting a statute, and then having it go on the ballot, and directly be enacted into law he doesn't think is good. Mr. Steinglass said there are too many complexities in the statutory process, so he would not move toward a direct statutory initiative. He said there may be ways, suggested by the National Conference of State Legislatures, to have statutory initiative proponents submit the language to the Legislative Service Commission to receive drafting assistance.

Mr. Steinglass said the committee could do something with the language in these provisions that currently is impossible to follow, perhaps just dividing it up into paragraphs or subsections. He said this could make it simpler to read, providing better transparency.

Mr. Macon asked whether Mr. Steinglass had submitted this recommendation in writing to the committee, and whether he has framed it for the committee in that succinct language. Mr. Steinglass answered he had not, but due to time constraints he thought it might be useful to offer additional opinions about ways the committee could proceed. Mr. Macon asked Chair Mulvihill whether the committee could have Mr. Steinglass provide some recommendations in writing, and Chair Mulvihill agreed this would be helpful.

As follow up, Mr. Steinglass asked whether staff could participate in preparing a cleanup of the language by working with the secretary of state or attorney general. Chair Mulvihill said the committee could look at changes both in substance and in aesthetics.

Ms. Abaray asked about the "trump card" language that has been used in many constitutional initiatives, saying she is disturbed by that trend. She asked whether the committee should look at prohibiting that kind of language.

Mr. Steinglass answered that may be the goal but that he does not advise addressing the language right away. He said he would prepare a memo about the trump provisions because it has become part of the standard drafting approach. He said, it is not a new development and the committee may decide it wants to come up with language for it.

Chair Mulvihill asked whether the committee wants to hear again from someone from the office of the attorney general or secretary of state regarding the statutory initiative process. Mr. Macon suggested that the committee might benefit from hearing from someone who is a proponent of strengthening the statutory process. Chair Mulvihill noted that while the committee has heard from various people, the secretary of state and attorney general didn't seem to want to give recommendations and may have an institutional reluctance to do so.

Mr. Steinglass commented that, regarding redrafting and simplifying the provision, the best approach is to just try to do it. He noted that the committee might also consider the placement of the initiative and the referendum in Article II, the Legislative Article. He said those provisions could be moved but there is no ideal placement.

Committee member Chad Readler said he does not know if these suggestions, if implemented, would do enough to change the numbers. He wondered whether it is possible to heighten the requirements of the amendment process as additional incentive for use of the statutory initiative.

Chair Mulvihill offered that the committee can talk about them both.

Mr. Steinglass referenced a chart he had provided on a previous occasion showing the 18 initiated amendments that were approved, and the vote. He said he could provide this again, and include information about initiated amendments that failed. Mr. Steinglass additionally noted that the committee has not yet covered the referendum. He said it has been used only 11 times, passing only three times.

#### **New Business:**

Chair Mulvihill asked if there was any other business for the committee. He summarized that Mr. Hollon will reach out to the secretary of state and attorney general to get input at a future meeting. He added that staff would attempt to put together language to make Article II, Section 1b a little more readable, and would also put together some thoughts about making the statutory initiative more attractive.

Ms. Abaray commented that one issue they had previously considered was whether there was a cost savings to the state if the requirements for providing notice in printed media were updated to reflect modern modes of communication. Chair Mulvihill said that is an additional area the committee could consider.

#### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:04 p.m.

**Approval:**

The minutes of the September 10, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the November 12, 2015 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 12, 2015

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:10 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Macon, Readler, and Sykes in attendance.

#### **Approval of Minutes:**

The minutes of the September 10, 2015 meeting of the committee were approved.

#### **Presentations:**

*“Update on Status of Anti-Monopoly Ballot Initiative”*

*Steven C. Hollon*  
*Executive Director*

Chair Mulvihill recognized Executive Director Steven C. Hollon, who presented to the committee on the November 3, 2015 election results, specifically with regard to state Issue 2.

Mr. Hollon said that Issue 2 arose out of Substitute Senate Joint Resolution 4, a proposal to amend the constitution to prohibit the use of the constitutional initiative to grant a monopoly, oligopoly, or cartel for exclusive financial benefit or to establish a preferential tax status. The measure arose out of the efforts of Representative Michael F. Curtin, a member of the Commission. Mr. Hollon said the amendment requires proponents of an exclusive economic interest to present the question to voters on two separate ballots. He said that preliminary

election results indicate that 3,076,763 votes were cast, out of which 1,587,060, or 51.58 percent, voted in favor of Issue 2, with 1,489,703, or 48.42 percent, voting against Issue 2.

Mr. Hollon also indicated that Issue 3 on the ballot was the marijuana legalization initiative promoted by ResponsibleOhio. He said out of the 3,126,027 votes cast, 2,003,641, or 64.10 percent, voted against the initiative, while 1,122,386, or 35.90 percent, voted for it.

*“The Ohio Indirect Statutory Initiative”*

*Steven H. Steinglass*  
*Senior Policy Advisor*

Chair Mulvihill then recognized Senior Policy Advisor Steven H. Steinglass, who presented on the topic of the statutory initiative.

Chair Mulvihill asked Mr. Steinglass whether the passage of Issue 2 will prevent proponents of the marijuana initiative from initiating an amendment that would tax different plots of land differently. Mr. Steinglass said if there is an effort to classify differently, it would be necessary to look at the text of the limitation.

Committee member Janet Abaray asked if the initiative and referendum provisions had always existed side by side. Mr. Steinglass answered they were all presented to the voters by a single recommendation of the 1912 Constitutional Convention.

Vice-chair Charles Kurfess asked whether actions that would be prohibited by initiative could be accomplished by the General Assembly. Mr. Steinglass said yes, Article II, Section 1a is a substantive limitation on the use of the initiative, but not a limit on the General Assembly. Mr. Kurfess commented that he has a degree of discomfort in saying the people cannot do it but the legislature can, in any area. Chair Mulvihill said the committee did discuss that issue in previous meetings.

Mr. Kurfess followed up, commenting that the General Assembly could not pass legislation violating this section and submitting it to the people for a vote, clarifying that he is referring to the taxation aspect.

Mr. Steinglass said that is correct, adding that the legislature could propose through a joint resolution an amendment asking that the constitution be amended, but Mr. Kurfess is referring to a provision of Article II, Section 26 that has been interpreted to prevent the General Assembly from, in effect, proposing a law and having people vote on it as a plebiscite. Some states have such a provision, but Ohio does not, except on the narrow subject of education.

Mr. Kurfess asked whether a statute could violate this section and be subject to a referendum, saying he is thinking there is no way the public could ever address the issue.

Mr. Steinglass said if an effort was made to initiate a statute that could not be initiated because of the limitation in Article II, Section 1e, it would raise the question whether the constitution could

permit pre-election review to knock it off the ballot. He said, typically, the Ohio Supreme Court does not permit pre-election judicial review relating to the substance of the constitutionality of the proposal for the ballot. He said the Court does permit review, however, in a limited circumstance, specifying that the Court exercises review in terms of original jurisdiction in cases involving the one-subject rule. He said he does not know what would happen if someone tried to advance a statute that violated Section 1e. He suggested that, in such a case, the secretary of state would have to make an initial determination of whether it goes on the ballot, and either way there would be litigation. He added if the Court does not intervene pre-election, it could do so post-election, but this is uncharted territory.

Chair Mulvihill commented with regard to eliminating the supplemental petition that if the committee is going to encourage people to take the statutory initiative route, the supplemental signature requirement is one of the major hurdles because it doubles the work.

Mr. Steinglass clarified that there is a supplementary petition and a vote, and that in terms of the process the committee could eliminate the supplementary petition and still go to the General Assembly first, wait 120 days and then go to the people with some other trigger other than the collection of the signatures. He added it is at least theoretically possible to gather the signatures on a statute, and the statute could bypass the General Assembly and go right to the people. He said the discussion has bundled a couple of different concepts, and one concept is whether the proposed statute should stop at the General Assembly and give the General Assembly an opportunity to review, consider, or change the proposed statute. He said the other question is if indirect statutory initiative is retained, what is done to trigger the vote, whether it would be another collection of signatures or allowing the committee that was collecting the signatures simply to conclude that the changes made in the General Assembly were good but not good enough, and that the proponents want to take it to a ballot without getting another 100,000 signatures.

Chair Mulvihill said the committee has heard from people that work in this area that the supplemental petition is an impediment. He added there is also a concern that if an issue passes, the next day the General Assembly can just repeal it, and so there is no comfort in a successful initiative process. He said, "if we leave it as is, I do not know how we are encouraging anyone to pursue the initiated statute route."

Mr. Steinglass said there are three big issues: (i) whether the statutory initiative should be indirect or direct; (ii) whether there should be a requirement of a supplementary petition; and (iii) whether there should be a safe harbor provision. He said Ohio does not have a track record on statutory initiatives because there have only been three successful initiated statutes. He said there is no legal protection for initiated statutes, although some argue there is a political protection for a statute adopted by the people. But, he said, these are the three steps along the way where a conversation about big issues could take place.

Chair Mulvihill then called on the committee to comment on the question of whether or how to revise the statutory initiative procedure. He asked Mr. Steinglass to outline the three issues again for the committee.

Mr. Steinglass said these questions are:

1. With regard to the direct or the indirect initiative, does the proposed initiated statute go right to the voters or does it stop in the General Assembly?
2. Assuming it should go to the General Assembly first, what happens to initiate a vote of the people? Is it just the committee that supported the statute saying move forward because it does not like what the General Assembly did, or do they have to re-collect signatures?
3. The statute has now been approved by the voters, how safe is it, is there a safe harbor or anti-tampering provision that prevents the legislature from making changes?

Committee member Roger Beckett said one of the features that he likes about the Ohio indirect statutory initiative is that it has a very low percentage of signature requirements, adding there are only 21 states that allow these kinds of statutory requirements, with the only state lower than Ohio being North Dakota at two percent. He said most are five or six percent or some larger number. He said, in terms of giving the people of Ohio the opportunity to present an issue to the legislature that it is not addressing, having that low three percent requirement is a very good thing because it sends a strong message to the legislature that this is something voters want it to tackle. He said the committee does not know how many petitions were submitted where the legislature actually dealt with that issue and it never did make it to the ballot because there is no data on that. He remarked, “in terms of the question of spending tens of millions of dollars and being able to gather more signatures, for organizations to collect the number of signatures, what we have in Ohio gives more power directly back to the people, to a smaller number of people to raise an issue,” adding “getting it on the ballot, that part needs to be tweaked, but there is some virtue to this indirect system with a low signature requirement.”

Agreeing with Mr. Beckett, Chair Mulvihill noted, however, that the statutory initiative option has not been utilized. He wondered if it is because it is double the work, or if it is because the General Assembly can change the result. He said he has no problem with the indirect method so long as the proponents are not required to start over. He said people who want to change the law go to the General Assembly first and lobby, or talk to a member who might sponsor a bill, so “it is not as though the General Assembly has not considered the issue before such that the indirect initiative gives the General Assembly the first time to think about it.” He said there is always time for the General Assembly to get involved if it wants to. “So if we want to keep the indirect route what we have to do is allow the people who sponsored it to go directly to the people should the General Assembly not act, without having to go back to get more signatures.”

Committee member Janet Abaray asked, to the extent that there is a huge expense with trying to either get an amendment or a statute passed through these processes, whether there is information about how many initiatives are driven by a small group with a specific financial interest. She said, if there are many of these instances, should not the committee be looking at what is going to happen now if they will be thwarted from the constitutional route (because Issue 2 has passed) and may now want to opt for the statutory route.

Mr. Steinglass said he is not sure how often actual grass roots groups jump into this. He said he does know that the need to get supplementary signatures is a big impediment for real grass roots groups because if the initiative is being funded by someone with a big checkbook they write another check for the supplementary period. A real grass roots group has trouble having enough resources to get through the supplementary period. He said there may be some groups after Issue 2 who are forced to go the statutory route, and that is probably a good thing if you believe the constitution should be reserved for more basic kinds of matters.

Chair Mulvihill disagreed, saying Issue 2 does not completely prevent a constitutional initiative for a monopoly, just requires it to be a two-step process. He said it is not possible to be sure yet whether the limitation imposed by Issue 2 is a substantive limitation.

Chair Mulvihill asked Mr. Beckett what his position would be if the committee makes a proposal that leaves the statutory initiative indirect, eliminating the supplemental petition and allowing the proponent to go directly to the voters if it does not like what the General Assembly does.

Mr. Beckett said one of largest concerns is that we have such a low percentage of signatures required, so that if the committee were to recommend something like Chair Mulvihill suggested, he would like to increase that percentage amount. The question he has is whether that creates an additional barrier for a grass roots group that is harder to cross than doing the three percent initially and then the three percent for the supplemental. He said he likes the low percentage to get the General Assembly's attention, but not for getting something on the ballot. Chair Mulvihill said the committee does not want to erect barriers and that he thought Mr. Beckett was touting the virtue of the lower threshold. Mr. Beckett clarified he is touting it in terms of sending a message to the legislature that this is an issue they should deal with, but he would not suggest that the committee create a terribly low threshold for getting something on the ballot. He said three percent is very low compared to other states, and he guesses there would be many people in the legislature who would be hesitant to do that. Chair Mulvihill clarified, stating that what Mr. Beckett is saying is that he would consider taking out the supplemental petition requirement but would want a higher threshold than three percent.

Mr. Readler suggested a revision that would require proponents to get five percent up front, rather than initially three and then an additional three later.

Mr. Kurfess asked a procedural question, wondering what would occur if the legislature enacts legislation as a result of what proponents have submitted, and the legislation is not substantially at variance with what the proponents want but the proponents still want their version on the ballot. He asked whether the proponents can add a repeal of what the legislature has done.

Mr. Steinglass said his assumption is the proponents could try to initiate their own statute, but their initial proposal would be enacted and it would be up to the courts to sort it out, presumably giving great deference to the subsequently-enacted statute on the same topic. He said it could get pretty confusing because it is not clear the General Assembly would do precisely in the same language what the proponents would do. He said there is no mechanism now for the proponents to shift their proposal around, rather, it is an all-or-nothing kind of procedure. He said he could see some tactical maneuvering going on with a process like that.

Mr. Kurfess asked whether the committee should consider some language that would address that issue and make it clear what happens if there is that kind of conflict. Mr. Steinglass said it would be possible to look at that. He cautioned, however, that anything that gets done could be seen as removing power from the General Assembly and so a prudent course would be not to do multiple things. He said he likes the idea of keeping the indirect statutory initiative, and then changing the supplementary petition procedure, which changes work together relatively nicely because that plan respects the role of the General Assembly but makes it easier to give proponents a proper role in both initiating and in going to the voters. He said this seems appropriate in a representative democracy that has a direct democracy as part of it.

Chair Mulvihill asked the committee its opinion about leaving the statutory initiative indirect but removing the supplemental petition requirement. Ms. Abaray asked about increasing the time for getting supplemental signatures. Mr. Steinglass said a concern about the supplementary petition is it is hard to change the time because of absentee and early voting and the need to place items on the ballot by a certain date. He said what used to look like a 90-day period has shrunk to a 60-day period. He said a change to the provision could give the General Assembly only 90 days to make its determination, but that option raises some additional issues. Ms. Abaray said that alternative might be a little less controversial than changing the supplementary petition requirement. Chair Mulvihill said that the committee has heard some testimony on this indicating that would be effective. She said the committee has to take into account that the constitutional amendment that just passed (Issue 2) is going to change the fact pattern, and that there is now restriction on the constitutional side that wasn't there before.

Chair Mulvihill commented the committee has been talking about this issue before Issue 2 was ever on anyone's mind and so he does not want it to affect the conversation about streamlining the statutory initiative process. He said it is unclear how or whether Issue 2 will be an impediment to the constitutional initiative process, and whether it will encourage the statutory route. He added Issue 2 is not a firm prohibition, simply a multi-step process for getting a monopoly approved.

Chair Mulvihill wondered whether the committee should draft some language to consider, whether in conjunction with a safe harbor provision, or separately, or not at all.

Mr. Readler said a safe harbor, if it is enacted, addresses whether there is a limitation on the legislature in changing it.

Chair Mulvihill said, in some way, there could be a restriction requiring two-thirds, or supermajority, vote to overrule an initiated statute, or possibly restricting the General Assembly from acting within a certain, maybe five-year, time period.

Mr. Steinglass said six or seven states have safe harbor provisions. He said this is a period in which it is not possible to change an initiated statute without a super majority vote. He said, on the other hand, if there is a glaring error, there could be a change if there is a supermajority vote. He said the safe harbor is a limitation on the power of the General Assembly, and there could be pushback on that.

Mr. Readler said his view is that he does not like the trend of using the constitution for special interests. He said he is still an advocate of making some changes to the constitutional amendment process. He said he supported Issue 2, which passed by fifty-one percent. He said the bar should be higher. He said he could see making the signature requirement five percent, as suggested by Mr. Beckett. He said he advocates a four-to-five year period during which the statute would be difficult to change, but that if two thirds of the legislature agrees there should be some ability to make minor changes, suggesting there be a “safe harbor to the safe harbor.” He said this would make the statutory initiative more attractive and help preserve the constitution.

Committee member Larry Macon said he agrees with Mr. Readler.

Representative Emilia Sykes said she also agrees with Mr. Readler. She mentioned her previous legal experience in Florida, saying Florida’s constitution is full of special interests. She commented that in Florida a proponent must have 60 percent approval at the polls to pass an initiative, but that still is not enough to keep special interests out of the constitution. She said the balance is in allowing the citizens access to the ability to change the law when the legislature is not responsive, without muddying up the constitution with parcel numbers and other items that do not belong there.

Chair Mulvihill suggested to Executive Director Steven C. Hollon that staff try to draft some language that would be a redraft of Article II, Section 1b, eliminating the supplemental petition requirement, keeping the statutory initiative procedure, and indicating that, if the General Assembly passes something different or refuses to act, the proponents can go directly to the people. He added a draft should have a safe harbor provision preventing the General Assembly from acting for five years absent a two-thirds vote for the first five years, and moving from a signature requirement of three percent to five percent in terms of signatures to get the initiated statute to the people.

Mr. Kurfess asked, regarding counties, what two counties are the median in terms of population. Mr. Steinglass said he did not know, but that this information should be available on the secretary of state’s website. Mr. Kurfess said the reason he asked is because if the requirement is to get signatures from half the counties, it is a little easier in larger counties, and so it would be helpful to know what half of the counties are above that median.

Chair Mulvihill commented that the committee might want to consider whether to modernize the signature-gathering process, noting that technological advances might impact how that process could be improved. He wondered if the geographic requirement still makes sense.

Mr. Steinglass added that the committee might talk about the role of the attorney general. He added the committee could look at the role of the ballot board, or consider an overall organization of the article. He said that the assigned task of drafting a change to the statutory initiative process will require some research and the question is whether the research should go into a memorandum or directly into the report and recommendation. He said a lot of the research has already been done, and that the Legislative Service Commission has provided some draft language dealing with strengthening the statutory initiative.

Chair Mulvihill thanked Mr. Steinglass for his hard work on this topic.

**Next Steps:**

Mr. Hollon pointed out the planning documents in the back of the booklet, indicating these documents are intended to assist the committee in its work, asking the committee to consider these provisions in order to give guidance to staff for future research needs.

Mr. Steinglass added that the committee has not talked about the referendum, or municipalities' powers of direct democracy. He said when the Commission was created, the only explicit guidance was a specific charge to have this committee look at the procedure for changing the constitution, for example how the constitutional convention process works.

Chair Mulvihill said that these topics would be addressed in the future.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:10 p.m.

**Approval:**

The minutes of the November 12, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the January 14, 2016 meeting of the committee.

*/s/ Dennis P. Mulvihill* \_\_\_\_\_  
Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess* \_\_\_\_\_  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JANUARY 14, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 1:04 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, and committee members Abaray, Beckett, Cupp, Jordan, Readler, Sykes, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the November 12, 2015 meeting of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by describing that, at its last meeting, the committee had been discussing the supplemental petition in Article II with regard to initiated statutes. He said the committee asked staff, and then the Legislative Service Commission (“LSC”) through Senator Larry Obhof, a former member of the committee, to draft changes to the initiated statute provisions that will be used as part of the committee’s ongoing discussion. He said key changes include an increase in the percentage of electors needed on the initial petition from three percent to five percent, the elimination of the supplemental petition, and the provision of a “safe harbor” from legislative repeal of an initiated statute.

Chair Mulvihill said LSC provided the committee with four different versions. He said he picked out the one that he thinks reflects the committees’ wishes, which is the draft numbered “LR 131 0172-1.” Chair Mulvihill said the committee would use that version as a working model, and asked the committee to take a few minutes to review the draft before commencing discussion.

Chair Mulvihill indicated that his thought is to discuss the draft and have interested parties provide their perspective on the changes under consideration. He also invited staff to participate in the discussion.

Committee member Mark Wagoner drew attention to lines 160-62 of the draft, dealing with the publication issue. He said, as technology changes, that topic may be one for the committee to explore. Chair Mulvihill agreed, saying this topic was raised at a previous meeting.

Committee member Janet Abaray noted that the draft proposal mentions amendment of the constitution, rather than simply dealing with statutory changes. She wondered why that is, if the committee had only intended to deal with the statutory initiative at this time. Chair Mulvihill explained that all of the initiative and referendum sections are interconnected, and he is not sure how the committee can parse them out. He explained that, in the LSC draft, anything underlined is new language.

Ms. Abaray asked about geographic distribution, wondering if there was a proposal to change that provision. Chair Mulvihill said that topic was not part of what was requested for this draft proposal.

Ms. Abaray asked whether there needed to be a definition of what would constitute an amendment, wondering whether, for the General Assembly to adopt an amendment as described in the provision, it would have to adopt language that was “word for word.” Chair Mulvihill answered that this concern is addressed in division “C” on page three of the proposed amendment.

Senior Policy Advisor Steven H. Steinglass commented that the draft seems to assume an automatic referral to the ballot if the proposed statute is not adopted. He said that approach is not necessarily preferred. He said the proponents of a statutory change might conclude they would not want to go to the ballot if the legislature enacts a statute that accomplishes the same goals.

Representative Robert Cupp said the draft appears to require the statutory initiative to be placed on the ballot regardless, even if the legislature proposes a minor technical change the proponents would agree with. He added there could be a situation in which a committee of the General Assembly is divided. He said it is unclear what is meant by “a committee” of the legislature.

Chair Mulvihill said he noticed lines 23 through 31 seem to have a contradictory feature. Those lines require the secretary of state to verify the statutory initiative petition, and to transmit it to the General Assembly, additionally requiring that if the legislature passes the proposed provision, either as petitioned for or in an amended form, it will be subject to the referendum, and if it is not passed, passed in an amended form, or if no action is taken within four months, it will be submitted to the electors for their approval or rejection.

Ms. Abaray asked, because the committee is providing a three-year safe harbor provision, what would happen if the proponents introduce a statute that is blatantly unconstitutional. She said it would take three years to challenge it in the Ohio Supreme Court, making her wonder whether there should be a provision giving the Court original jurisdiction to consider the provision. Chair

Mulvihill asked whether she was referring to the possibility of seeking an advisory opinion from the Court. Ms. Abaray answered that Justice Paul Pfeiffer had appeared before the Judicial Branch and Administration of Justice Committee to advocate for original jurisdiction for the Ohio Supreme Court, but not in this context.

Mr. Steinglass directed the committee to Article II, Section 1g, providing for original jurisdiction. He wondered whether that jurisdiction covered all eventualities, suggesting research could be provided on this. Ms. Abaray commented that she was reading that section as only covering judicial review of the signatures on the petition.

Mr. Wagoner said he envisions the process as being if the General Assembly does not enact what is put before it and the proposal is passed by the voters, it is a law. He said he does not know why one would draw a distinction between laws enacted by General Assembly, as opposed to by initiative, wondering why the Court would have original jurisdiction over one but not the other.

Ms. Abaray said she raised the issue because of the three-year guarantee that the legislature cannot change the initiated statute. Mr. Wagoner noted that merely because there are three years in which the General Assembly cannot change the law, it does not mean it cannot be challenged in the courts. Chair Mulvihill explained this is one way to give people using this route some confidence that the statute will be there for a while.

Ms. Abaray asked what happens after a statute gets passed and the people decide they want to get rid of it, wondering if there would be a guarantee that it would not be subject to a referendum for three years. Chair Mulvihill answered that the only thing the safe harbor does is to keep the General Assembly from repealing the statute. He said there is nothing to prevent the people from repealing the law by referendum. Mr. Steinglass agreed that an initiated statute is subject to the referendum. He added that if the General Assembly should pass the law sought by the proponents, another group could come forward and submit the statute to the referendum process.

Chair Mulvihill noted his concern regarding language at the bottom of page two of the proposed resolution, at line 50. That line reads that the initiated statute will go into effect unless the General Assembly takes no action before four months expires, giving the legislature four months to decide what to do. Chair Mulvihill asked what the phrase “no action” means in that context. He said “action” could mean the legislature discusses the provision, continues to discuss the provision, and/or does not pass the provision, so long as the proposal is on the agenda. He wondered whether there was ambiguity in the phrase that could create problems.

Mr. Steinglass noted that same language is repeated in a repealed section, so may have been interpreted by the courts. Chair Mulvihill reiterated that the committee does not want a provision that would allow the General Assembly to interpret “action” in a broad manner.

Executive Director Steven C. Hollon commented that “action” may be a term of art, thus “no action” means the General Assembly has not adopted what is before them. Rep. Cupp said, in terms of the General Assembly’s procedures, if one house does something intermediate, it does not count. He said there are two actions: pass or no pass. Mr. Wagoner said he reads the provision as meaning that if a proposed statute is simply referred to committee and discussed, it does not delay the four-month period.

Ms. Abaray said when the committee began its discussion of the statutory initiative, there was a concern about whether economic benefit provisions were being put into the constitution, for example casino gambling, and the recent marijuana legalization proposal. She said she wonders whether, because the anti-monopoly provision (Issue 2) was passed, it is now more difficult to amend the constitution, and whether that fact will cause people to reconsider using the constitutional amendment process. She questioned whether the committee now needs to do more to make it easier to use the statutory initiative.

Chair Mulvihill explained that the business interest concern is a subset of a larger category of topics the committee is trying to prevent being put in the constitution. He said it is unclear whether the passage of Issue 2 will affect the thought process of proponents of changes to the constitution. He said the initiated statute has rarely been used, and when it has been used, voters have approved statutory changes only three times. Mr. Steinglass explained that initiated statutes have only gone to the ballot 11 times. Chair Mulvihill continued that the committee's work is not done, adding that Issue 2 did not provide a strict prohibition on monopolistic interests being placed in the constitution; rather, a proposed amendment creating a monopoly now must be presented to voters twice if it is to be adopted.

Mr. Steinglass said, considering states that have both types of initiative, there are 10 or 11 states that permit both the statutory and the constitutional initiative. He said in Ohio proponents take the constitutional route 85 percent of the time. In other states, he said, 50 or 60 percent is the general number. He said data shows that the statutory initiative is underutilized in Ohio, a fact that led the committee to look to ways to strengthen the statutory initiative.

Ms. Abaray asked how the percentages of vote requirements compare, specifically how many signatures are needed for the statutory as opposed to the constitutional initiative. Mr. Steinglass explained for initiated statutes, proponents need three percent on the original petition and three percent on the supplementary petition. For a constitutional initiative, proponents need ten percent up front.

Mr. Hollon explained to the committee the content of two charts that were provided to the committee. He said the charts are intended to show the number of counties and their population, explaining that the geographic requirement for the signatures is 44 counties.

Committee member Roger Beckett mentioned the single subject rule, asking how the legislature abides by that and wondering whether it applies to initiated statutes. He said the proposed change amends Sections 1b and 1g, which include reference to constitutional amendments. He asked whether Section 1a, dealing with the constitutional initiative, could be included in this proposal without violating the single subject rule.

Chair Mulvihill suggested that the committee address the initiated statute first before going on to address Section 1a. Mr. Beckett said that would be acceptable but that the committee should leave open the possibility of amending Section 1a later.

Mr. Steinglass said if the General Assembly wanted to package diverse amendments relating to the initiative and referendum processes, that action would be subject to the one amendment rule.

Chair Mulvihill said the committee would have to discuss whether the proposed changes will all go in one presentation to the General Assembly.

Ms. Abaray said the committee may want to come to a consensus on the whole package. Chair Mulvihill said the committee has discussed that question and agreed, but is now dealing with the statutory initiative process. Ms. Abaray said she is not clear on whether the committee is attempting to reach agreement on a recommendation that will be in isolation. Chair Mulvihill explained there would be no recommendations until the committee finishes addressing Sections 1b and 1g together, saying it is easier to limit the discussion to initiated statutes and then have the discussion about how to present recommendations.

Rep. Cupp asked whether there is any indication why the statutory initiative procedure was adopted as a two-step process in relation to the petitions. Mr. Steinglass answered that, in 1912, the hotly contested issue was whether to have a direct or indirect statutory initiative, and convention delegates chose the indirect method. He said he is not sure why the two-step process was adopted. Mr. Beckett said he suspects, given the move toward populism, three percent was perceived as a good low barrier for proponents of a statutory law. He added, by only requiring three percent, proponents could “fire a shot across the bow” that could spur the legislature to act.

Mr. Wagoner said he suspects that the reason a supplemental petition was required may have been for a situation in which the legislature sought to amend what was presented.

Rep. Cupp wondered if there is any restriction on using the same signers from the initial petition, indicating that proponents might just have two petitions signed at once. Mr. Steinglass answered that his assumption is that the two petitions must have to have different signatures. He continued that, in 2008, constitutional provisions dealing with the initiative were changed to create an earlier deadline for the signatures. The result was that people who might be interested in a supplementary petition had less time available for gathering the signatures. He said the change put those who wanted to use the supplemental petition in a bind, explaining that is one reason why it made sense for the committee to consider the requirement of a supplementary petition.

Rep. Cupp commented that the change also potentially places the Ohio Supreme Court in a bind, because it gives the Court only ten days to hear challenges. He said Section 1g needs to be revisited for this reason.

Chair Mulvihill asked Rep. Cupp where such challenges are filed. Rep. Cupp explained that they are filed in the board of elections, and, in the past, were heard by the court of common pleas, and then the court of appeals, or were all moved to Franklin County where they were heard together. He said that has been changed so that, under current law, there now are very few people reviewing the challenges to the petitions.

Mr. Steinglass wondered if a challenge in those circumstances is directed toward the secretary of state's determination as to whether the signature requirements are met. He said he would like to know more about this procedure.

Mr. Wagoner commented that line 107 of the proposed resolution seems to imply it is the court looking at the petition signature by signature. Mr. Steinglass noted the General Assembly is allowed to handle this issue by statute, so that statutory law may answer the question.

Committee member Chad Readler said he supports the general direction of the committee. He wondered whether a three-year safe harbor period is sufficient to incentivize the statutory initiative option.

Chair Mulvihill explained how the choice of three years came about. He said that figure was just a starting point and that five years would be fine, too. He suggested the committee should try to get its preferences drafted in a manner that covers the concerns that have been raised, and suggested there be one more meeting to discuss the changes. He also suggested the committee invite presenters such as Don McTigue and Maurice Thompson to offer their opinions of the proposed changes.

Mr. Steinglass directed the committee to a previous memorandum he provided, dated April 9, 2014, in which he discussed safe harbor provisions in other states.

Mr. Beckett said he would like information on the percentages used by other states that have signature requirements.

Following up on an earlier thread of discussion, Mr. Steinglass noted that the “one amendment” rule is located in Article XVI, Section 1, in the last line. He said Ohio did not have a one-amendment rule for initiated amendments until 2008, when the provision was adopted by reference through some indirect procedures. He explained that Article II, Section 1g was amended in 2008, and included the same language in one paragraph – stating that the ballot language shall be prescribed by the Ohio ballot board in the same manner and subject to the same terms and conditions as are applied to resolutions submitted by the General Assembly. He said the fact this is actually a “one amendment” rule is not immediately obvious, but that is the part of Section 1g that made the one amendment rule applicable to initiated amendments.

Ms. Abaray asked for clarification, wondering if Article II, Section 15(D) only applies to statues enacted by the General Assembly. Mr. Steinglass answered affirmatively, saying that section does not apply to an initiated constitutional amendment.

Rep. Cupp noted there is a provision that says the limitation on the General Assembly enacting laws is also a limitation on the statutory initiative, meaning someone initiating a statute must have it relate to only one subject.

### **Next Steps:**

The committee having concluded its discussion, Chair Mulvihill asked what should be the next step.

Mr. Steinglass suggested one next step could be to try to answer all the questions that were raised by the committee at the meeting, but offered that it may be appropriate to introduce some sections, subsections, and paragraphs, redesigning the initiative and referendum provisions to

make them more readable. He said the committee could introduce changes to the statutory initiative process as a proposal that both changes statutory initiative and makes it all readable. He said he does not think that would violate the single amendment rule. He added that Article II, Sections 1b and 1g are prime candidates for reorganization.

Chair Mulvihill commented that a larger reorganization was a primary point that drove the committee's interest in the statutory initiative. Mr. Steinglass added that LSC was modestly doing this, but the sections could use more in-depth change.

Chair Mulvihill asked the committee for its opinions on whether it wants to continue with these concepts, discuss the publication issue, and/or consider the timeliness "85 days" issue as raised by Rep. Cupp. He said he would like to see another draft proposal based on the committee's conversation.

Mr. Beckett said the most complex issue raised is the question of what happens when the General Assembly acts on a topic proposed by statutory initiative, noting in almost every case the General Assembly is going to amend the proposal in some form. He wondered if there are other states that use the indirect statutory initiative without a supplemental petition. Mr. Steinglass said there are, and suggested the committee could use those states as a model.

Chair Mulvihill said he would like to continue the conversation, have staff bring that language to the committee, and to avoid making changes while the committee determines what other states have done. He said the committee could then start to narrow the language after the next meeting.

Mr. Steinglass said staff could look at the minutes to try to identify all of the questions that have been asked, and could try to provide answers. He said he can also provide information about the other states.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:15 p.m.

**Approval:**

The minutes of the January 14, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the March 10, 2016 meeting of the committee.

*/s/ Dennis P. Mulvihill*

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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*

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Charles F. Kurfess, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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MINUTES OF THE  
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 10, 2016

**Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:07 a.m.

**Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Beckett, Cupp, Jordan, Sykes, and Wagoner in attendance.

**Approval of Minutes:**

The minutes of the January 14, 2016 meeting of the committee were approved.

**Discussion:**

Chair Mulvihill began the meeting by indicating that the committee would be continuing its discussion of methods for streamlining the statutory initiative process as described in Article II, Sections 1b and 1g. Chair Mulvihill thanked staff for the recent memorandum that provided an in-depth response to questions raised in the committee's January meeting.

Chair Mulvihill continued that, in January, the committee was discussing dispensing with the supplementary petition requirement. He said it became clear to him in reading what other states have done that only Ohio uses this particular supplemental petition procedure. He said, while other states have a supplemental petition procedure, in those states proponents have an option as to whether they want to use a direct or indirect statutory initiative process, and that only the indirect process has the supplemental petition requirement. Senior Policy Advisor Steven H. Steinglass confirmed this comment, indicating that in those states, typically, proponents of an initiated statute use the direct route and so do not use a supplemental petition.

Chair Mulvihill asked the committee whether it would agree that the supplemental petition is an unnecessary burden on the statutory initiative process.

Committee member Mark Wagoner said he believes the supplemental petition process is not necessary. He said having a five percent signature requirement initially would cover it, and that the supplemental petition does not add anything.

Committee member Roger Beckett said the advantage the supplemental petition gives is that it serves as the trigger as to whether the initiated statute would go on the ballot. He agreed the supplemental petition is not necessary, but that the committee needs to consider addressing what happens if the General Assembly deals with the issue and the proponents no longer want the initiative to go on the ballot. He suggested there needs to be a method for allowing the proponents to withdraw their petition.

Mr. Steinglass noted that, among the six states that have the indirect initiative, some give the legislature an opportunity to review the proposed statute and, if it is not approved in the format proposed, it automatically goes to the ballot. He said the issue was discussed, but not in great depth because he could not find a lot on it for the memo. Mr. Steinglass noted a suggestion that the contents of the proposed statute could be written to decide whether it goes on the ballot. He observed that automatically going to the ballot raises a problem if action taken by the General Assembly is sufficient.

Mr. Steinglass continued that, in 1912, convention delegates rejected the idea that a proponent committee, acting on its own, should decide whether to pursue the statutory initiative after action by the General Assembly. He said it was a democratic view that the people should decide, and so delegates came up with the idea of requiring a supplemental petition. He observed the problem is that it has gotten squeezed from both ends in terms of time to do a supplemental petition. He said the supplemental petition has outlived its usefulness and makes the statutory initiative far less attractive. Mr. Steinglass said the question is what acts as the trigger if there is no supplemental petition requirement. He observed that the revised code procedure indicates a group pushing something on the ballot can keep it off the ballot by notifying the secretary of state in time to take it off the ballot.

Chair Mulvihill asked Mr. Steinglass whether he interprets the Legislative Service Commission (LSC) draft version of a revised Section 1b(B) to require the proposed law to go on the ballot. Mr. Steinglass agreed that the draft version sends the proposed statute straight to the voters.

Asking for clarification, Senator Kris Jordan wondered whether the draft version only deals with the statutory initiative, and Mr. Steinglass confirmed. Sen. Jordan then asked whether other states' statutory initiative procedures make it less likely that people will use the constitutional initiative route. Mr. Steinglass answered that, looking at the states having both the constitutional and the statutory initiative, 80 percent of the instances in which people seek to initiate a proposal in Ohio they go the constitutional route. He said that is significantly higher than the average around the country, which is 45 percent. He continued, among states that have both courses open, Ohio is more likely to see a constitutional amendment as opposed to an initiated statute. By contrast, he said, in Illinois 100 percent of their initiated activity is constitutional, but Illinois has had only one initiated amendment.

Sen. Jordan asked whether, if a proposal goes through this process and changes state law, how long the legislature has to wait to get rid of it. Mr. Steinglass explained in Ohio there is no safe

harbor or anti-tampering provision, so that the General Assembly could the next day take action to repeal it or change it. He said, although that has never happened, there have only been three instances where the initiated statute has been taken to the voters. He noted the argument was made that the General Assembly would not reject the work product of the people in a cavalier manner.

Mr. Wagoner said the committee is trying to encourage the initiated statute route; he views it as a package deal to also address making amending the constitution a more deliberative process.

Chair Mulvihill directed the committee to the following language from the draft version, at Section 1b(B):

If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum.

He asked whether this language is a contradiction.

Mr. Steinglass noted that the sentence deals with the possibility the statute has passed in amended form, noting it is also possible for proponents of the amended form to take their original proposal to the voters. He said if a group does not like the statute as passed but amended, seeking the supplementary petition under current law has the same effect as a referendum in the sense that it suspends the effective date of the new statute. He said the missing trigger is the big issue.

Chair Mulvihill asked committee members what should be the triggering event.

Mr. Beckett directed the committee to Mr. Steinglass's memo at page ten on how other states handle this.

Mr. Steinglass said Michigan has an indirect initiative procedure, but does not require additional signatures in order for the initiative to go right to the voters. He said he is not sure that any states have the proponents operating the trigger.

Mr. Beckett asked whether, if it is likely that the proposed statute will be sent directly to the ballot, in practice would the legislature draft an alternative to that statute if they agree that the issue needs to be addressed. He wondered if, in any case, in practice there are competing issues on the ballot.

Mr. Steinglass said he asked that question but could not find evidence of that. He said Nevada and Michigan explicitly provide that the issue goes directly to the voters, and both have provisions in which the legislature can propose alternatives on the ballot.

Chair Mulvihill asked, in states with the indirect initiative, how frequently their legislatures pass those statutes in amended form.

Mr. Steinglass said there is no definitive information, but he has a sense that the indirect is not used that often when people have a choice.

Chair Mulvihill said he would like to know because the committee may have to foresee circumstances that do not currently exist. He wonders if the committee is holding up the process by trying to address a nonexistent problem, and that he wants to assuage concerns about whether there is a problem in states that have the indirect statutory initiative.

Mr. Steinglass said if the legislature believes that a proposed statute heading toward the ballot should not be going to the ballot, there should be a barrier. He said the committee could draft language giving the General Assembly a role to play.

Mr. Beckett commented that Michigan, in terms of the indirect, seems to be the outlier, and so does Nevada. Their process is indirect, but no additional signatures are required. He wondered how those states address this issue.

Mr. Steinglass said he has not seen anything written about that circumstance. He said, when he checked the Michigan Constitution, it did not provide qualifying language saying “shall go to the ballot but \* \* \*,” so to fully answer the question requires looking at the Michigan statutes. He said he does not have the statistics for how many times the Michigan statutes have been amended through the initiative process. He said Ohio does not record when a statute proposed by initiative is adopted by the General Assembly. He added, there are “a couple of instances where we know, but it is random. In those instances it never goes to the ballot because the legislation proposed was accepted by the General Assembly.”

Mr. Beckett said he would propose that the committee essentially have a direct initiative but include a simple “exit ramp” for the proponents who submitted the petition, allowing them to withdraw if the legislature addresses their issue. He said the way this process is likely to unfold is that the General Assembly takes up the issue, wants to refine it, and if petitioners are satisfied, then they can withdraw it. He said that seems reasonable to him, but practically speaking the impression is that there is no record of how many times that has happened.

Mr. Steinglass directed the committee to Ohio Revised Code 3519.08(A), suggesting that the statute provides the “exit ramp.” He said if the committee wants to be cautious it could create a section in the constitution, but would have to be careful about that.

Representative Bob Cupp commented that this suggestion would essentially require constitutionalizing the statutory initiative proponent committee that, right now, only exists in statute.

Mr. Steinglass agreed with Rep. Cupp’s observation. Rep. Cupp continued that, instead of entirely eliminating the supplemental petition, the provision could have a smaller number of signatures be the trigger, but it would be necessary to limit who could do that. He said he is not sure that is a solution.

Mr. Steinglass commented that Massachusetts only requires .5 percent on a supplemental petition, and so makes the requirement as unburdensome as possible.

Chair Mulvihill asked whether the committee is generally satisfied with the proposed five percent on the initial petition.

Mr. Beckett noted it is among the lower of the requirements out there. Chair Mulvihill asked if Mr. Beckett thought it should be higher, and Mr. Beckett said he did not think it mattered a lot.

Rep. Cupp said in 1912, when these thresholds were put in place, it would have been more difficult to collect these signatures due to travel constraints, and no ability to have electronic transmittal. He said then, the percentage would have been a higher hurdle than it is now. He said it would be an interesting question whether this is actually too low a threshold. He noted although Ohio does not want to shut out citizens from being able to use this process, it also is important to avoid the result occurring in states where there is a long list of statutory initiatives every election.

Mr. Steinglass said it is important to put the 1912 convention in context. He remarked that he is struck by how contentious the signature-gathering step has become, with many challenges in the courts. He said the constitution refers to signatures of electors, rather than to qualified electors, or registered voters. He said in 1912 Ohio did not even have registered voters as registration was not required. So, he said, in a sense a big part of the fight over signatures includes questions about whether someone is a qualified elector, or registered voter. He concluded that is one instance in which the process has become more complicated.

Mr. Wagoner said, with regard to percentage as threshold, it depends on whether there is a direct or indirect process. He said, in indirect, there is at least a quality control process, and the legislature will take a look at it. He said, "if we go direct, the signature limit should be higher."

Chair Mulvihill said he understands the direct route avoids the General Assembly. He noted the indirect route gives the General Assembly the opportunity to get involved. He wondered how different that is from now, where if the General Assembly does not act it goes to the ballot.

Mr. Steinglass said there is no precedent for what happens when competing issues go to the ballot. He said he sees mentioning this in a constitutional provision as creating a failsafe by giving the General Assembly a formal role and giving petitioners an easier way to go to the ballot if they are not satisfied. He said it is more likely the General Assembly will be supportive of a role that includes them.

Chair Mulvihill said, assuming the statutory initiative process continues to be indirect, should the General Assembly need four months to consider whether to adopt the proposed statute.

Rep. Cupp said the General Assembly can act fairly quickly, wondering if four months could become three months. He said the petition would have to be filed before the end of the year preceding the General Assembly and that January is not an active month.

Mr. Steinglass said Michigan and Nevada give their legislatures 40 days to act on a proposal, additionally requiring that statutes proposed by initiative take precedence in time over legislation, other than budget bills.

Chair Mulvihill asked whether the proponent committee should be constitutionalized, adding there needs to be a procedure addressing a situation in which the General Assembly passes an amended version of the proposed statute.

Mr. Steinglass asked whether Chair Mulvihill was describing a situation in which the General Assembly has passed an alternative version and the petitioners have to make a decision as to whether the alternative is acceptable or whether to pursue placing their version on the ballot.

Chair Mulvihill added “or it automatically goes to the ballot without allowing the committee to make a decision.” He continued that if the committee is going to work from the draft of the indirect initiative as provided by LSC, the failure of the General Assembly to act means the proposed statute automatically goes to the voters. He said the question is also, if the General Assembly does act, but it is not identical, then what should happen.

Mr. Steinglass said following the procedure outlined in the Revised Code, the petitioners could withdraw without constitutionalizing the proponent committee. Chair Mulvihill wondered if there is a timing element in the Revised Code section. Mr. Steinglass said the time limit is that 70 days before the election petitioners could pull the issue from the ballot.

Chair Mulvihill wondered if the provision could say “as prescribed by law.” Mr. Steinglass said LSC may want to do some tinkering. He said this is a drafting issue; we need guidance from professional drafters.

Rep. Cupp asked whether timing matters, and whether placing the proposed statute on the ballot will cost money. Mr. Steinglass said proposed statutes only go on a general election ballot.

Mr. Wagoner said whenever anything goes to ballot, he would have a problem if there is not a hard brake. He said if there is to be some sort of brake mechanism, he would like to see it stop the process. This would allow the proponent committee to decide whether to proceed to the ballot, because no one knows better than they do what was intended. He said his concern is creating an issue that has to be litigated in the courts, which would invariably happen. He would like the proponent committee itself to decide if what the General Assembly has enacted accomplishes its goals.

Mr. Beckett asked whether, if the proponent committee is not constitutionalized, language could be proposed that would describe who submits the arguments or explanations. He said the statute gives the petitioners the ability to name the individuals who will draft that argument or explanation, wondering if they would be the same individuals who could pull the proposed statute from the ballot.

Mr. Wagoner asked whether there are five members of a proponent committee. Mr. Steinglass said that is the number he sees, but his is not sure. Mr. Beckett directed the committee to Section 1g in the LSC draft.

Chair Mulvihill directed the committee to R.C. 3519.02, indicating that the proponent committee is created to represent petitioners in all matters.

With regard to determining how to revise the current draft, Chair Mulvihill asked Rep. Cupp to approach LSC to ask for changes to the proposed revision. He said it would be important to have LSC reference the committee that has already been created under R.C. 3519.02, and has the ability to withdraw the petition under R.C. 3519.08, and to have that as the braking procedure. He said the plan is to keep five percent for now, and decide if that number should change later.

Chair Mulvihill identified two other issues. Regarding the concept of a safe harbor provision, he said only 10 of 21 states have safe harbors, according to Mr. Steinglass's memo. He said it would also be important to consider the issue of electors versus registered voters, wondering if it would save the secretary of state and attorney general trouble by redefining who can sign.

Mr. Steinglass added it is important to ask whether the provision could be modified to include the use of modern technology in the area of initiatives. He said the current system seems complex when it does not need to be. He said maybe there are other issues related to the whole process.

Chair Mulvihill said he would be in favor of allowing online and written petitions, and that it might be possible to have the secretary of state's office come to address that.

Mr. Steinglass said he ran across provisions in state constitutions that address issues of using technology, and could take a closer look. Chair Mulvihill agreed that should be done.

Mr. Steinglass asked whether it makes sense to take a deeper look at the six states that have the supplemental petition and competing proposals. Chair Mulvihill answered that the relevant sections of the Revised Code address that problem, so that task is not necessary. Mr. Steinglass said he will take a deeper look at the six states that have the indirect.

Chair Mulvihill said he does not want to make too many decisions before discussing the safe harbor concept, wondering if committee members had any thoughts on this.

Rep. Cupp said he is confused by the provision stating that the people who prepare the arguments may be named in the petition, but also saying the General Assembly shall name them. Mr. Steinglass said there is a fallback on this, they are a little different, and he will double check.

Mr. Beckett said, when talking about modernization related to publishing, he would be open to eliminating language about publication. He said it is unlikely that someone will sneak something onto the ballot without people knowing about it, so that is a non-issue. He said his other concern is that it strikes him how detailed and complex these sections are. He understands it is good to include details, but his opinion is that a number of the details should be prescribed by law and not by constitution. He wondered if the committee should be looking at this language in a broader sense and trying to make it more understandable.

Chair Mulvihill agreed with that point, noting Section 1g as an example. He said first he would like to get another draft and see what that looks like. The next draft would get rid of the supplemental petition, include an "exit ramp," provide the number of signatures, and a safe harbor. He said then the committee can get into easier decisions regarding publication requirements.

Mr. Steinglass observed it would have been an anathema in the 1912 Constitutional Convention to avoid putting in lots of details, and that delegates put self-executing provisions because they were highly suspicious of the General Assembly. He continued that past efforts to clean up and make these sections more readable have rarely gone beyond adding subsections.

Chair Mulvihill said the safe harbor is three years in the current draft, and that the committee will continue to discuss that concept next time. He suggested the best place to put the addition is in the current draft at the end of line 32.<sup>1</sup>

Vice-chair Kurfess asked whether there has been discussion regarding paragraph D, specifically whether there should be a change to the language indicating that if there are conflicting proposed laws the one with the most votes prevails. He observed that it looks as if the coming election might involve there being a proposed statute on the ballot, and a proposed constitutional amendment on the ballot dealing with the same subject but obviously conflicting. He wondered what would happen if they both pass.

Chair Mulvihill commented that the same thing happened a few years ago in relation to the smoking issue, but in the end, because of the final vote, there was no problem.

Mr. Steinglass added it might also help to see Issues 2 and 3 on the November 2015 ballot.

Chair Mulvihill thanked Mr. Kurfess for his comment, noting the issue is something to address. Mr. Steinglass noted that is a common provision that other states have.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:21 p.m.

**Approval:**

The minutes of the March 10, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the May 12, 2016 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair

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<sup>1</sup> A copy of the LSC Draft referenced in these Minutes is provided as Attachment A.

131st General Assembly  
Regular Session  
2015-2016

J. R. No.

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A JOINT RESOLUTION

Proposing to amend Sections 1b and 1g of Article II of  
the Constitution of the State of Ohio to modify the  
requirements to propose a statute by initiative  
petition.

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Be it resolved by the General Assembly of the State of  
Ohio, three-fifths of the members elected to each house  
concurring herein, that there shall be submitted to the electors  
of the state, in the manner prescribed by law at the general  
election to be held on November 8, 2016, a proposal to amend  
Sections 1b and 1g of Article II of the Constitution of the  
State of Ohio to read as follows:

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ARTICLE II

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Section 1b. ~~When at~~ (A) At any time, not less than ten  
days ~~prior to~~ before the commencement of any session of the  
general assembly, ~~there shall have been filed~~ the electors may  
file with the secretary of state a petition signed by ~~three~~ five  
per centum of the electors ~~and verified as herein provided,~~  
proposing a law, the full text of which shall have been set  
forth in such petition, ~~the~~. All such initiative petitions,  
last above described, shall have printed across the top thereof,

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ATTACHMENT A

in case of proposed laws: "Law Proposed by Initiative Petition 21  
First to be Submitted to the General Assembly." 22

(B) The secretary of state shall verify the petition as 23  
provided in Section 1g of this article and shall transmit the 24  
same to the general assembly as soon as it convenes. If said 25  
proposed law shall be passed by the general assembly, either as 26  
petitioned for or in an amended form, it shall be subject to the 27  
referendum. If it shall not be passed, or if it shall be passed 28  
in an amended form, or if no action shall be taken thereon 29  
within four months from the time it is received by the general 30  
assembly, it shall be submitted by the secretary of state to the 31  
electors for their approval or rejection, ~~if such submission~~ 32  
~~shall be demanded by supplementary petition verified as herein~~ 33  
~~provided and signed by not less than three per centum of the~~ 34  
~~electors in addition to those signing the original petition,~~ 35  
~~which supplementary petition must be signed and filed with the~~ 36  
~~secretary of state within ninety days after the proposed law~~ 37  
~~shall have been rejected by the general assembly or after the~~ 38  
~~expiration of such term of four months, if no action has been~~ 39  
~~taken thereon, or after the law as passed by the general~~ 40  
~~assembly shall have been filed by the governor in the office of~~ 41  
~~the secretary of state. The proposed law shall be submitted at~~ 42  
the next regular or general election occurring subsequent to one 43  
hundred twenty-five days after the ~~supplementary petition is~~ 44  
~~filed in the form demanded by such supplementary petition, which~~ 45  
~~form shall be either as first petitioned for or with any~~ 46  
~~amendment or amendments which may have been incorporated therein~~ 47  
~~by either branch or by both branches, of proposed law shall have~~ 48  
been rejected by the general assembly or after the expiration of 49  
such term of four months, if no action has been taken thereon, 50  
or after the law as passed by the general assembly shall have 51

been filed by the governor in the office of the secretary of 52  
state. Ballots shall be so printed as to permit an affirmative 53  
or negative vote upon each measure submitted to the electors. 54

(C) If a proposed law so submitted is approved by a 55  
majority of the electors voting thereon, it shall be the law and 56  
shall go into effect as herein provided in lieu of any amended 57  
form of said law which may have been passed by the general 58  
assembly, and such amended law passed by the general assembly 59  
shall not go into effect until and unless the law proposed by 60  
~~supplementary the~~ petition shall have been rejected by the 61  
electors. ~~All such initiative petitions, last above described,~~ 62  
~~shall have printed across the top thereof, in case of proposed~~ 63  
~~laws: "Law Proposed by Initiative Petition First to be Submitted~~ 64  
~~to the General Assembly." Ballots shall be so printed as to~~ 65  
~~permit an affirmative or negative vote upon each measure~~ 66  
~~submitted to the electors.~~ Any proposed law or amendment to the 67  
constitution submitted to the electors as provided in 1a and 1b, 68  
if approved by a majority of the electors voting thereon, shall 69  
take effect thirty days after the election at which it was 70  
approved and shall be published by the secretary of state. 71

(D) If conflicting proposed laws or conflicting proposed 72  
amendments to the constitution shall be approved at the same 73  
election by a majority of the total number of votes cast for and 74  
against the same, the one receiving the highest number of 75  
affirmative votes shall be the law, or in the case of amendments 76  
to the constitution shall be the amendment to the constitution. 77

(E) No law proposed by initiative petition and approved by 78  
the electors shall be subject to the veto of the governor. For a 79  
period of three years after a law proposed by initiative 80  
petition is approved by the voters, the general assembly shall 81  
not amend or repeal that law except by a vote of two-thirds of 82

the members elected to each branch of the general assembly. 83

Section 1g. Any initiative, ~~supplementary,~~ or referendum 84  
petition may be presented in separate parts but each part shall 85  
contain a full and correct copy of the title, and text of the 86  
law, section or item thereof sought to be referred, or the 87  
proposed law or proposed amendment to the constitution. Each 88  
signer of any initiative, ~~supplementary,~~ or referendum petition 89  
must be an elector of the state and shall place on such petition 90  
after ~~his~~ the signer's name the date of signing and ~~his~~ the 91  
signer's place of residence. A signer residing outside of a 92  
municipality shall state the county and the rural route number, 93  
post office address, or township of his residence. A resident of 94  
a municipality shall state the street and number, if any, of ~~his~~ 95  
the signer's residence and the name of the municipality or post 96  
office address. The names of all signers to such petitions shall 97  
be written in ink, each signer for ~~himself,~~ the signer's self. To 98  
each part of such petition shall be attached the statement of 99  
the circulator, as may be required by law, that ~~he~~ the 100  
circulator witnessed the affixing of every signature. The 101  
secretary of state shall determine the sufficiency of the 102  
signatures not later than one hundred five days before the 103  
election. 104

The Ohio supreme court shall have original, exclusive 105  
jurisdiction over all challenges made to petitions and 106  
signatures upon such petitions under this section. Any challenge 107  
to a petition or signature on a petition shall be filed not 108  
later than ninety-five days before the day of the election. The 109  
court shall hear and rule on any challenges made to petitions 110  
and signatures not later than eighty-five days before the 111  
election. If no ruling determining the petition or signatures to 112  
be insufficient is issued at least eighty-five days before the 113

election, the petition and signatures upon such petitions shall 114  
be presumed to be in all respects sufficient. 115

If the petitions or signatures are determined to be 116  
insufficient, ten additional days shall be allowed for the 117  
filing of additional signatures to such petition. If additional 118  
signatures are filed, the secretary of state shall determine the 119  
sufficiency of those additional signatures not later than sixty- 120  
five days before the election. Any challenge to the additional 121  
signatures shall be filed not later than fifty-five days before 122  
the day of the election. The court shall hear and rule on any 123  
challenges made to the additional signatures not later than 124  
forty-five days before the election. If no ruling determining 125  
the additional signatures to be insufficient is issued at least 126  
forty-five days before the election, the petition and signatures 127  
shall be presumed to be in all respects sufficient. 128

No law or amendment to the constitution submitted to the 129  
electors by initiative ~~and supplementary~~ petition and receiving 130  
an affirmative majority of the votes cast thereon, shall be held 131  
unconstitutional or void on account of the insufficiency of the 132  
petitions by which such submission of the same was procured; nor 133  
shall the rejection of any law submitted by referendum petition 134  
be held invalid for such insufficiency. Upon all initiative, ~~and~~ 135  
~~supplementary,~~ and referendum petitions provided for in any of 136  
the sections of this article, it shall be necessary to file from 137  
each of one-half of the counties of the state, petitions bearing 138  
the signatures of not less than one-half of the designated 139  
percentage of the electors of such county. A true copy of all 140  
laws or proposed laws or proposed amendments to the 141  
constitution, together with an argument or explanation, or both, 142  
for, and also an argument or explanation, or both, against the 143  
same, shall be prepared. The person or persons who prepare the 144

argument or explanation, or both, against any law, section, or 145  
item, submitted to the electors by referendum petition, may be 146  
named in such petition and the persons who prepare the argument 147  
or explanation, or both, for any proposed law or proposed 148  
amendment to the constitution may be named in the petition 149  
proposing the same. The person or persons who prepare the 150  
argument or explanation, or both, for the law, section, or item, 151  
submitted to the electors by referendum petition, or against any 152  
proposed law submitted by ~~supplementary initiative~~ petition, 153  
shall be named by the general assembly, if in session, and if 154  
not in session then by the governor. The law, or proposed law, 155  
or proposed amendment to the constitution, together with the 156  
arguments and explanations, not exceeding a total of three 157  
hundred words for each, and also the arguments and explanations, 158  
not exceeding a total of three hundred words against each, shall 159  
be published once a week for three consecutive weeks preceding 160  
the election, in at least one newspaper of general circulation 161  
in each county of the state, where a newspaper is published. The 162  
secretary of state shall cause to be placed upon the ballots, 163  
the ballot language for any such law, or proposed law, or 164  
proposed amendment to the constitution, to be submitted. The 165  
ballot language shall be prescribed by the Ohio ballot board in 166  
the same manner, and subject to the same terms and conditions, 167  
as apply to issues submitted by the general assembly pursuant to 168  
Section 1 of Article XVI of this constitution. The ballot 169  
language shall be so prescribed and the secretary of state shall 170  
cause the ballots so to be printed as to permit an affirmative 171  
or negative vote upon each law, section of law, or item in a law 172  
appropriating money, or proposed law, or proposed amendment to 173  
the constitution. The style of all laws submitted by initiative 174  
~~and supplementary~~ petition shall be: "Be it Enacted by the 175  
People of the State of Ohio," and of all constitutional 176

amendments: "Be it Resolved by the People of the State of Ohio." 177  
The basis upon which the required number of petitioners in any 178  
case shall be determined shall be the total number of votes cast 179  
for the office of governor at the last preceding election 180  
therefor. The foregoing provisions of this section shall be 181  
self-executing, except as herein otherwise provided. Laws may be 182  
passed to facilitate their operation, but in no way limiting or 183  
restricting either such provisions or the powers herein 184  
reserved. 185

EFFECTIVE DATE AND REPEAL 186

If adopted by a majority of the electors voting on this 187  
proposal, Sections 1b and 1g of Article II as amended by this 188  
proposal take effect immediately and existing Sections 1b and 1g 189  
of Article II of the Constitution of the State of Ohio are 190  
repealed on that effective date. 191

SCHEDULE 192

The amendments to Section 1g of Article II of the Ohio 193  
Constitution in part substitute gender neutral for gender 194  
specific language. These gender neutralizing amendments are not 195  
intended to make a substantive change in the Ohio Constitution. 196  
The gender neutral language is to be construed as a restatement 197  
of, and substituted in a continuing way for, the corresponding 198  
gender specific language existing before adoption of the gender 199  
neutralizing amendments. 200



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MAY 12, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:04 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, Sawyer, and Sykes in attendance.

#### **Approval of Minutes:**

The minutes of the March 10, 2016 meeting of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by indicating that the committee would be continuing its review of the statutory initiative process, specifically considering draft language that was prepared by Steven C. Hollon, executive director.<sup>1</sup>

Chair Mulvihill explained that, at the last meeting, there was a request to have the Legislative Service Commission (LSC) continue to draft changes to the statutory initiative process, but that Mr. Hollon had undertaken the task of rewriting the sections in order to both incorporate the committee's suggestions and to attempt to clarify the initiative process described in Article II, Sections 1b and 1g.

Mr. Hollon then described the process by which he reviewed and edited the relevant constitutional provisions. He said the draft before the committee reflects the work of the last several months. He said current Section 1b does not contain paragraphs, so he included

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<sup>1</sup> A copy of the draft prepared by Mr. Hollon and distributed to the committee is provided as Attachment A.

paragraph lettering for ease of use. He noted that his draft built on a first redraft attempt by LSC.<sup>2</sup> Mr. Hollon then described the document, indicating places he suggested that language be changed or removed and explaining the rationale for doing so, adding that the changes were based on the discussions held by the committee in recent months.

Committee member Janet Abaray asked about the aspect of the provision that indicates the proposed statute would automatically go on the ballot unless it is withdrawn, wondering whether an alternative would be to have the sponsors be required to elect if they want it to proceed to the ballot.

Mr. Hollon answered that paragraph (C) of the draft amendment authorizes the General Assembly to provide a procedure for withdrawing the proposed initiated statute when it states that the proposed law shall be submitted to the electors at the next general election “unless the electors filing the petition withdraw it in the manner provided by law.”

Ms. Abaray suggested a different approach might be to phrase it in the affirmative, as in the petition sponsors would have to affirmatively request that the issue go to the ballot, rather than that it would automatically go to the ballot unless they withdraw it. She also asked about language describing both the petition filers and the voters as “electors.” Mr. Hollon explained that the draft maintains some of the ambiguity of the original section, and that this could be refined in a future draft.

Representative Robert Cupp followed up on the issue of the language used to identify the petition circulators, indicating that the constitution is somewhat unclear in defining those persons or groups. Mr. Hollon agreed there is room for greater clarity, and that he is not sure how the language in the constitution tracks with the words used in the related statutes.

Mr. Steinglass commented that a statute permits the committee named in the initial petition to withdraw a proposed amendment from the ballot, a procedure that is analogous what is suggested by the constitutional language. He added the proposed revision makes an explicit constitutional foundation for that process. He said he does not think the word “electors” should mean two different things, but the statute says “committee” and “sponsors,” two words that are not used in the constitution. He said the proposal could state “unless the petition is withdrawn in the manner provided by law,” a change that would avoid duplicative use of the word “elector” and would relate back to the existing statute, R.C. 3519.08(A). He said this option would remove confusion down the road and would be consistent with what happens now. He noted this change would not alleviate Ms. Abaray’s concern, but the proposal says go forward unless the committee pulls it back.

Ms. Abaray asked whether it also could be stated that there be some disclosure of who the sponsor is, to delegate to the legislature to set out the standards, so that the public would know who behind the petition.

Senator Tom Sawyer clarified such an addition would indicate who actually speaks for the sponsors.

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<sup>2</sup> A copy of the LSC Draft referenced in these Minutes is provided as Attachment B.

Mr. Steinglass said the identity of the members of the proponent committee are available online through the attorney general's office, but providing more information could be accommodated through facilitating legislation.

Chair Mulvihill said he would like to avoid making the constitutional language too detailed, and does not want to include steps that are the province of the General Assembly to determine.

Ms. Abaray suggested putting in language that specifically indicates the General Assembly will adopt standards, wondering if that language is not added would the legislature be prohibited from doing so.

Mr. Hollon said the General Assembly has the authority to fill in any piece that it likes, so long as it is not in contravention of the constitutional directive.

Mr. Steinglass said these proposed requirements would apply with equal force to the constitutional initiative, as well as the referendum, suggesting the language might be better placed in a more generic provision so that it would be clear it relates to all citizen-initiated acts.

Chair Mulvihill suggested the appropriate place for the language might be in Section 1b(A), but that he is not sure there have been problems historically so it may not need to be in the constitution.

Chair Mulvihill turned to the question of the use of the words "regular election" and "general election," asking the difference. Committee member Roger Beckett answered that, if the goal is to encourage the statutory route, one way to do that on the constitutional side is to say that amendments have to be approved at a general election in an even year when there is greater turnout. He added, however, that leaving open the possibility of raising the issue at a "regular election" seems reasonable.

Mr. Hollon asked how the current structure works. He said if the electors have to submit not less than ten days before session, then the General Assembly has four months. He added, this means that, calculating four months from January 15, the date would be May 15, wondering when would be the next regular election after May 15. He said, if the primary is on June 6, he supposes that is when the issue would go on the ballot. He said he tried to avoid the 85 days, all-days calculations, and tried to use dates certain. He noted the General Assembly typically will finish work near the end of May, or, in budget year, at the end of June. He said that is the hard part, what is meant by "regular election," and when that might occur.

Commenting on the 120 day requirement, Mr. Beckett asked whether the provision instead could avoid giving a time frame because it would be affected by the legislative calendar.

Chair Mulvihill said the language might provide "either or."

Rep. Cupp said because a General Assembly session is two years in length, a proponent would be limited to filing once every two years.

Mr. Hollon directed attention to Article II, Section 8, which references sessions of the General Assembly. He said that provision provides that the regular session commences in January of odd number years, and “the second regular session on the same date of the following year.” He said that provision causes confusion as to what the phrase “regular session” means.

Chair Mulvihill noted that no one has been concerned about that language, and witnesses have not commented on it.

Mr. Steinglass agreed, saying the focus of concern was that there was not enough time to gather signatures. He said, when it is a General Assembly initiated amendment, it can be presented at a general primary or special election, but initiated statutes may only be presented to voters in the fall.

Mr. Hollon noted the language currently reads “regular or general.” Chair Mulvihill noted the problem is how to define “regular election.”

Mr. Steinglass said the pattern was that initiatives would be placed on the ballot only in the fall.

Chair Mulvihill said the concern is that it does not encourage use of the statutory route if the election is 18 months away. So, he said, it would be better to use the general election.

Mr. Steinglass said the same problem arises with regard to the referendum and should be considered when the committee reviews the referendum provision.

Sen. Sawyer asked whether there is any idea of the definition of “regular election” at the time this provision was enacted.

Mr. Hollon said he is not sure the phrase “general election” is defined in the constitution. He said there is a provision in Article XVII about elections, but there is nothing in the constitution that says the November election is the general election.

Mr. Steinglass noted the phrase “general election” generally has been viewed as the November election.

Sen. Sawyer said it is the term regular election that the committee is unsure about.

Mr. Steinglass agreed this is a question that would be researched. Mr. Hollon said other states do say the general election is the first Tuesday after the first Monday in November. He made a note to raise the question with the Bill of Rights and Voting Committee.

Mr. Kurfess said the practice had always been that the General Assembly meets in odd numbered years. He said he can contemplate an issue being supported by several different interest groups and then, when the legislature acts, the groups have to decide whether to withdraw. He suggested that the provision read “when a majority of the electors” who are circulating petitions decide to withdraw, because some may not agree about whether to withdraw. He also said it might be helpful to address what happens in a close election, explaining that, 30 days after an

election, the secretary of state has to certify the results, and it is conceivable there might be an election so close that there is a recount. He said certification by the secretary of state should be the trigger, rather than the election result.

Senator Kris Jordan commented regarding paragraph (E) of proposed new Section 1b, saying if conflicting statutory initiatives are proposed, the one with the highest number of votes could be designated as the adopted initiative. He noted that, in regard to constitutional initiatives, there was recent concern about the outcome of the fall 2015 election, in which issues legalizing marijuana and prohibiting monopolies in the constitution were viewed as conflicting. He said there had been opinions offered that, if both issues passed, the antimonopoly provision would take effect immediately. He asked what would happen if this situation arose in the context of statutory initiatives, and whether an emergency clause could be included in any revision to the statutory initiative procedure.

Mr. Steinglass said he would research and report back on that question. He said, with regard to the competing issues on the fall 2015 ballot, the secretary of state opined that the first effective amendment would trump the second one regardless of the votes, an opinion Mr. Steinglass said is debatable. But, he said, it would be better to propose an amendment that identifies the potential problems and proposes solutions.

Chair Mulvihill suggested that the issues raised by Ms. Abaray and Sen. Jordan need to be explored more fully and possibly included in a revision. Mr. Steinglass commented that the related statute says “a majority of the committee.” He said his sense is that the legislative solution is clean and neat.

Chair Mulvihill wondered if an easy solution would be to say the provision that is adopted is the one that gets the greater number of votes. Mr. Steinglass said that is the current resolution of the conflict.

Ms. Abaray said Section 1b(A) says the electors may file with the secretary of state, suggesting that the secretary of state has some kind of form; follow what the secretary of state does. Mr. Hollon directed the committee to the beginning of Section 1b, noting language added by LSC that states that the electors may file with the secretary of state, a term that doesn’t exist in current provision. He said he is not wedded to that language, which could be revised to cover Ms. Abaray’s concern.

Mr. Kurfess commented that there is nothing wrong with the legislature having to adjust its schedule to accommodate a constitutional provision. He said, when the committee started this discussion there was the suggestion that constitutional amendments be subjected to the same kind of legislative attention that is given to initiated statutes, suggesting this is a topic the committee could discuss.

Rep. Cupp noted the current mechanism to trigger going to the voters is filing the supplementary petition, but with this version, that has been changed to automatically going to the voters unless it is withdrawn. He said it might be a good idea to use an affirmative action to go forward to the voters as opposed to having a withdrawal. For one thing, the sponsors of the amendment might

get tied up in lawsuits if there is a disagreement, so a requirement that they affirmatively go to the ballot might be a good idea. He asked if the language meant that, if the initiative is adopted, then could there not be another initiative that would amend the one approved by the voters? He wondered if the committee means to say that the only way to amend is by an act of the General Assembly.

Chair Mulvihill clarified that the intent was to prevent tampering by the General Assembly for a certain period of time. He said, it is a safe harbor provision, meaning if people pass a law, currently, the General Assembly could change it the next day. So, he said, the idea was to encourage the statutory route.

Rep. Cupp said it could be necessary to add a reference to the General Assembly one more time in that sentence.

Mr. Steinglass said the language opens up the possibility that another initiated statute could not amend the first one unless there is expressed a limitation.

Mr. Hollon then proposed the following language:

A proposed law approved by the electors shall not be amended or repealed by the general assembly for a period of three years after it takes effect, unless by a vote of two-thirds of the members elected to each branch of the general assembly.

Committee members expressed that this was an acceptable option for addressing the problem.

Committee member Chad Readler commented regarding Section 1b(H), asking if anyone could provide testimony indicating whether the time period provided is sufficient to encourage the statutory route. He said it would be important to know if the safe harbor provides enough time.

Chair Mulvihill said the committee had discussed that, after it is satisfied with the rewrite, opinions could be solicited from interested parties such as Maurice Thompson and Don McTigue, who could indicate whether the revision does what the committee intended.

Mr. Steinglass directed the committee to previous memoranda on the topic, noting that other states have safe harbor and anti-tampering provisions. He said past presenters indicated the idea of safe harbors but did not suggest a certain amount of time.

Mr. Hollon said he understood the committee's instructions to be they wanted a three-year safe harbor, but said he does not recall testimony suggesting that three years is better than four years or five years.

Ms. Abaray asked whether the committee needs to explicitly say that nothing prevents judicial review. Mr. Steinglass and Mr. Hollon noted that Section 1g provides for judicial review.

Mr. Hollon asked why there is a requirement that the petition has to be filed ten days before the commencement of the General Assembly. Mr. Steinglass said it could be filed earlier, but he

assumes the ten-day requirement is to accommodate the additional steps, including the need for a supplementary petition.

Rep. Cupp noted that the time was to allow for printing, with Sen. Sawyer agreeing.

Mr. Hollon wondered if that that time period still made sense to the committee.

Ms. Abaray said Section 1g talks about whether the petition is challenged on the basis of its signatures. She asked whether the committee needs to indicate it does not undercut the court's jurisdiction.

Mr. Steinglass said, regarding the original exclusive jurisdiction in Section 1g, there is an additional question about whether an original action can be filed, allowing the litigant to go straight to the Ohio Supreme Court. He said it may make sense to look at the different provisions related to original exclusive jurisdiction.

Ms. Abaray said she does not want there to be an implication that a court cannot review an initiated statute for three years. Chair Mulvihill said he does not read the proposed revision that way.

Rep. Cupp said the challenge would be raised under the constitution as this would be a statute. He added the court, at least on city ordinances and those kinds of constitutional challenges generally refrains from ruling on the constitutional grounds if the matter can be resolved on other grounds. So, he said, the court will not rule on the question until the voters decide the issue one way or another.

Mr. Readler asked, regarding Section 1g, about the restriction on the governor's veto, wondering if that ties the governor's hands.

Sen. Sawyer pointed out that the governor has a period of time in which to veto, and cannot just veto anytime.

Mr. Readler explained that, if the initiated statute addresses an issue, and five years later the General Assembly wants to change it, then the provision prevents that veto.

Rep. Cupp clarified that, if the legislature changes the provision at the end of the safe harbor period, it would fall back to the normal legislative process. Mr. Hollon noted that the current language regarding this procedure is found in Section 1b. He said he would continue to work on refining the language in both Sections 1b and 1g, as well as looking into the issues raised by the committee.

### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:13 p.m.

**Approval:**

The minutes of the May 12, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the October 13, 2016 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair

**ARTICLE II**

**Section 1b**

(A) At any time, not less than ten days before the commencement of a session of the general assembly, electors may file with the secretary of state a petition signed by five per cent of the electors, proposing a law, the full text of which shall be set forth in the petition. The petition shall have printed across the top: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly."

(B) The secretary of state shall verify the petition as provided in Section 1g of this article and shall transmit it to the general assembly as soon as it convenes. If the proposed law is passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum.

(C) If before the first day of June following the filing of the petition, the general assembly does not pass the proposed law in the form as filed with the secretary of state, the secretary of state shall submit the proposed law to the electors at the next general election, for their approval or rejection by majority vote, unless the electors filing the petition withdraw it in the manner provided by law. Ballots shall be printed to permit an affirmative or negative vote on each measure submitted to the electors.

(D) If a proposed law is approved by the electors, it shall go into effect thirty days after the election and be the law in lieu of any amended form of the law which may have been passed by the general assembly. If a proposed law is not approved by the electors, any amended form of the

law passed by the general assembly shall go into effect thirty days after the election at which the proposed law is rejected by the electors.

(E) If conflicting proposed laws are approved at the same election by a majority of the total number of votes cast for and against the proposed laws, the one receiving the highest number of affirmative votes shall be the law.

(F) A proposed law approved by the electors shall be published by the secretary of state.

(G) A proposed law approved by the electors shall not be subject to the veto of the governor.

(H) A proposed law approved by the electors shall not be amended or repealed for a period of three years after it takes effect, unless by a vote of two-thirds of the members elected to each branch of the general assembly.

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131st General Assembly  
 Regular Session  
 2015-2016

. J. R. No.

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**A JOINT RESOLUTION**

Proposing to amend Sections 1b and 1g of Article II of  
 the Constitution of the State of Ohio to modify the  
 requirements to propose a statute by initiative  
 petition.

Be it resolved by the General Assembly of the State of  
 Ohio, three-fifths of the members elected to each house  
 concurring herein, that there shall be submitted to the electors  
 of the state, in the manner prescribed by law at the general  
 election to be held on November 8, 2016, a proposal to amend  
 Sections 1b and 1g of Article II of the Constitution of the  
 State of Ohio to read as follows:

**ARTICLE II**

**Section 1b.** ~~When at (A)~~ At any time, not less than ten  
~~days prior to before~~ the commencement of any session of the  
 general assembly, ~~there shall have been filed~~ the electors may  
file with the secretary of state a petition signed by ~~three-five~~  
per centum of the electors ~~and verified as herein provided,~~  
 proposing a law, the full text of which shall have been set  
 forth in such petition, ~~the~~. All such initiative petitions,  
last above described, shall have printed across the top thereof,



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in case of proposed laws: "Law Proposed by Initiative Petition  
First to be Submitted to the General Assembly."

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(B) The secretary of state shall verify the petition as  
provided in Section 1g of this article and shall transmit the  
same to the general assembly as soon as it convenes. If said  
proposed law shall be passed by the general assembly, either as  
petitioned for or in an amended form, it shall be subject to the  
referendum. If it shall not be passed, or if it shall be passed  
in an amended form, or if no action shall be taken thereon  
within four months from the time it is received by the general  
assembly, it shall be submitted by the secretary of state to the  
electors for their approval or rejection, ~~if such submission~~  
~~shall be demanded by supplementary petition verified as herein~~  
~~provided and signed by not less than three per centum of the~~  
~~electors in addition to those signing the original petition,~~  
~~which supplementary petition must be signed and filed with the~~  
~~secretary of state within ninety days after the proposed law~~  
~~shall have been rejected by the general assembly or after the~~  
~~expiration of such term of four months, if no action has been~~  
~~taken thereon, or after the law as passed by the general~~  
~~assembly shall have been filed by the governor in the office of~~  
~~the secretary of state.~~ The proposed law shall be submitted at  
the next regular or general election occurring subsequent to one  
hundred twenty-five days after the ~~supplementary petition is~~  
~~filed in the form demanded by such supplementary petition, which~~  
~~form shall be either as first petitioned for or with any~~  
~~amendment or amendments which may have been incorporated therein~~  
~~by either branch or by both branches, of proposed law shall have~~  
been rejected by the general assembly or after the expiration of  
such term of four months, if no action has been taken thereon,  
or after the law as passed by the general assembly shall have

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been filed by the governor in the office of the secretary of 52  
state. Ballots shall be so printed as to permit an affirmative 53  
or negative vote upon each measure submitted to the electors. 54

(C) If a proposed law so submitted is approved by a 55  
majority of the electors voting thereon, it shall be the law and 56  
shall go into effect as herein provided in lieu of any amended 57  
form of said law which may have been passed by the general 58  
assembly, and such amended law passed by the general assembly 59  
shall not go into effect until and unless the law proposed by 60  
~~supplementary~~ the petition shall have been rejected by the 61  
electors. ~~All such initiative petitions, last above described,~~ 62  
~~shall have printed across the top thereof, in case of proposed~~ 63  
~~laws: "Law Proposed by Initiative Petition First to be Submitted~~ 64  
~~to the General Assembly." Ballots shall be so printed as to~~ 65  
~~permit an affirmative or negative vote upon each measure~~ 66  
~~submitted to the electors.~~ Any proposed law or amendment to the 67  
constitution submitted to the electors as provided in 1a and 1b, 68  
if approved by a majority of the electors voting thereon, shall 69  
take effect thirty days after the election at which it was 70  
approved and shall be published by the secretary of state. 71

(D) If conflicting proposed laws or conflicting proposed 72  
amendments to the constitution shall be approved at the same 73  
election by a majority of the total number of votes cast for and 74  
against the same, the one receiving the highest number of 75  
affirmative votes shall be the law, or in the case of amendments 76  
to the constitution shall be the amendment to the constitution. 77

(E) No law proposed by initiative petition and approved by 78  
the electors shall be subject to the veto of the governor. For a 79  
period of three years after a law proposed by initiative 80  
petition is approved by the voters, the general assembly shall 81  
not amend or repeal that law except by a vote of two-thirds of 82

the members elected to each branch of the general assembly. 83

**Section 1g.** Any initiative, ~~supplementary,~~ or referendum 84  
petition may be presented in separate parts but each part shall 85  
contain a full and correct copy of the title, and text of the 86  
law, section or item thereof sought to be referred, or the 87  
proposed law or proposed amendment to the constitution. Each 88  
signer of any initiative, ~~supplementary,~~ or referendum petition 89  
must be an elector of the state and shall place on such petition 90  
after ~~his~~ the signer's name the date of signing and ~~his~~ the 91  
signer's place of residence. A signer residing outside of a 92  
municipality shall state the county and the rural route number, 93  
post office address, or township of his residence. A resident of 94  
a municipality shall state the street and number, if any, of ~~his~~ 95  
the signer's residence and the name of the municipality or post 96  
office address. The names of all signers to such petitions shall 97  
be written in ink, each signer for ~~himself~~ the signer's self. To 98  
each part of such petition shall be attached the statement of 99  
the circulator, as may be required by law, that ~~he~~ the 100  
circulator witnessed the affixing of every signature. The 101  
secretary of state shall determine the sufficiency of the 102  
signatures not later than one hundred five days before the 103  
election. 104

The Ohio supreme court shall have original, exclusive 105  
jurisdiction over all challenges made to petitions and 106  
signatures upon such petitions under this section. Any challenge 107  
to a petition or signature on a petition shall be filed not 108  
later than ninety-five days before the day of the election. The 109  
court shall hear and rule on any challenges made to petitions 110  
and signatures not later than eighty-five days before the 111  
election. If no ruling determining the petition or signatures to 112  
be insufficient is issued at least eighty-five days before the 113

election, the petition and signatures upon such petitions shall 114  
be presumed to be in all respects sufficient. 115

If the petitions or signatures are determined to be 116  
insufficient, ten additional days shall be allowed for the 117  
filing of additional signatures to such petition. If additional 118  
signatures are filed, the secretary of state shall determine the 119  
sufficiency of those additional signatures not later than sixty- 120  
five days before the election. Any challenge to the additional 121  
signatures shall be filed not later than fifty-five days before 122  
the day of the election. The court shall hear and rule on any 123  
challenges made to the additional signatures not later than 124  
forty-five days before the election. If no ruling determining 125  
the additional signatures to be insufficient is issued at least 126  
forty-five days before the election, the petition and signatures 127  
shall be presumed to be in all respects sufficient. 128

No law or amendment to the constitution submitted to the 129  
electors by initiative ~~and supplementary~~ petition and receiving 130  
an affirmative majority of the votes cast thereon, shall be held 131  
unconstitutional or void on account of the insufficiency of the 132  
petitions by which such submission of the same was procured; nor 133  
shall the rejection of any law submitted by referendum petition 134  
be held invalid for such insufficiency. Upon all initiative, ~~7-~~ 135  
~~supplementary,~~ and referendum petitions provided for in any of 136  
the sections of this article, it shall be necessary to file from 137  
each of one-half of the counties of the state, petitions bearing 138  
the signatures of not less than one-half of the designated 139  
percentage of the electors of such county. A true copy of all 140  
laws or proposed laws or proposed amendments to the 141  
constitution, together with an argument or explanation, or both, 142  
for, and also an argument or explanation, or both, against the 143  
same, shall be prepared. The person or persons who prepare the 144

argument or explanation, or both, against any law, section, or 145  
item, submitted to the electors by referendum petition, may be 146  
named in such petition and the persons who prepare the argument 147  
or explanation, or both, for any proposed law or proposed 148  
amendment to the constitution may be named in the petition 149  
proposing the same. The person or persons who prepare the 150  
argument or explanation, or both, for the law, section, or item, 151  
submitted to the electors by referendum petition, or against any 152  
proposed law submitted by ~~supplementary~~-initiative petition, 153  
shall be named by the general assembly, if in session, and if 154  
not in session then by the governor. The law, or proposed law, 155  
or proposed amendment to the constitution, together with the 156  
arguments and explanations, not exceeding a total of three 157  
hundred words for each, and also the arguments and explanations, 158  
not exceeding a total of three hundred words against each, shall 159  
be published once a week for three consecutive weeks preceding 160  
the election, in at least one newspaper of general circulation 161  
in each county of the state, where a newspaper is published. The 162  
secretary of state shall cause to be placed upon the ballots, 163  
the ballot language for any such law, or proposed law, or 164  
proposed amendment to the constitution, to be submitted. The 165  
ballot language shall be prescribed by the Ohio ballot board in 166  
the same manner, and subject to the same terms and conditions, 167  
as apply to issues submitted by the general assembly pursuant to 168  
Section 1 of Article XVI of this constitution. The ballot 169  
language shall be so prescribed and the secretary of state shall 170  
cause the ballots so to be printed as to permit an affirmative 171  
or negative vote upon each law, section of law, or item in a law 172  
appropriating money, or proposed law, or proposed amendment to 173  
the constitution. The style of all laws submitted by initiative 174  
~~and supplementary~~ petition shall be: "Be it Enacted by the 175  
People of the State of Ohio," and of all constitutional 176

amendments: "Be it Resolved by the People of the State of Ohio." 177  
The basis upon which the required number of petitioners in any 178  
case shall be determined shall be the total number of votes cast 179  
for the office of governor at the last preceding election 180  
therefor. The foregoing provisions of this section shall be 181  
self-executing, except as herein otherwise provided. Laws may be 182  
passed to facilitate their operation, but in no way limiting or 183  
restricting either such provisions or the powers herein 184  
reserved. 185

EFFECTIVE DATE AND REPEAL 186

If adopted by a majority of the electors voting on this 187  
proposal, Sections 1b and 1g of Article II as amended by this 188  
proposal take effect immediately and existing Sections 1b and 1g 189  
of Article II of the Constitution of the State of Ohio are 190  
repealed on that effective date. 191

SCHEDULE 192

The amendments to Section 1g of Article II of the Ohio 193  
Constitution in part substitute gender neutral for gender 194  
specific language. These gender neutralizing amendments are not 195  
intended to make a substantive change in the Ohio Constitution. 196  
The gender neutral language is to be construed as a restatement 197  
of, and substituted in a continuing way for, the corresponding 198  
gender specific language existing before adoption of the gender 199  
neutralizing amendments. 200



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, OCTOBER 13, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 10:10 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, and Sawyer in attendance.

#### **Approval of Minutes:**

The minutes of the May 12, 2016 meeting of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by indicating that although the committee had not met over the summer, much work had been accomplished in the interim. He said he would like the committee to discuss a draft rewrite of Sections 1a through 1g of Article II.<sup>1</sup> He said this is a starting point based on conversations the committee had over the last couple of years. He thanked staff for preparing the draft.

Chair Mulvihill suggested that the committee engage in a general discussion about big picture ideas, inviting input from staff. He said the purpose of the rewrite is to make the sections more modern, and that this has been accomplished both by changing some small matters, such as publication requirements, and by changing big policy issues such as making the statutory initiative less cumbersome and more attractive, and making the constitutional amendment procedure just slightly more burdensome so as to encourage the statutory initiative route.

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<sup>1</sup> The draft is being provided as Attachment A to these minutes.

He said the statutory initiative process would be streamlined, but the constitutional amendment part of the revision process was more challenging. He said one way to change the constitutional amendment process would be to raise the threshold number of votes needed for passage, so that a simple majority would no longer be adequate. He added the committee also discussed requiring the proposed initiated amendment to be passed in consecutive general elections. He said one issue the committee could consider is whether to allow initiated amendments to appear on the ballot only in even-numbered year general elections, where the turnout is highest. He noted a significant voter drop off in odd-numbered year general elections. He said the draft presented to the committee also eliminates the requirement of a supplementary petition for the statutory initiative, as well as adding a safe harbor provision, both concepts the committee previously discussed.

Chair Mulvihill then asked for discussion of the constitutional amendment process, indicating the committee would then discuss the statutory initiative, after which Steven C. Hollon, executive director, would lead discussion on the rewrite.

Committee member Chad Readler asked committee member Roger Beckett to comment on the concept of requiring two consecutive elections to approve a constitutional amendment initiative versus requiring one even-numbered year election. Mr. Readler said that, early on, he wanted to raise the vote total to require a supermajority, but he now feels the successive election idea is a good check. He asked to hear more about Mr. Beckett's idea.

Mr. Beckett said that requiring two successive elections forces an issue to be on the ballot during either a presidential or a gubernatorial election year, where there is greater voter turnout. He cited the example of the casino issue, which appeared on the ballot and was passed as Article XV, Section 6 in November 2009. He observed that ballot measure passed with only 15 percent of Ohioans voting for it, noting if the proposal had been on the ballot the year before, it would have required 25 percent of the population to approve it. Mr. Beckett said the idea of setting up a system that encourages more citizens to weigh in on an issue is exactly the direction the state should be heading. He said he considers both the "two-consecutive" and the "even-year" plans as very good standards to use. He continued that the two-consecutive elections idea is appealing because it avoids changing the constitution for temporary or passing reasons. He said, if it is that important, the public will should be there to do it in the next election as well. He commented that "The key is we consider setting up something that allows as many Ohioans as possible to weigh in." He said he would favor both of those ideas over the supermajority idea, noting that voter turnout should be a factor.

Mr. Readler agreed, saying he was attracted to the idea of two consecutive elections because either the vote for president or governor will be on ballot. He said two elections allows a cooling off period, and raises the bar a little bit higher than just having the issue raised in one election.

Chair Mulvihill asked whether the committee would want to impose the same rule on General Assembly initiated amendments.

Committee member Janet Abaray said she agrees about two consecutive years, noting Section 21 of Article I, regarding the preservation of the freedom to choose health care, as an example. She

said if there had been two ballots for that issue, voters may have had a different perspective by the second year.

Chair Mulvihill asked the committee to comment whether allowing an issue to sit dormant for a year would create a major impediment to proponents using the constitutional initiative process.

Senator Kris Jordan said he leans toward requiring a higher vote threshold because the other ideas favor the big money interest. He said he likes the 55 or 60 percent threshold.

It was noted that, of the citizen-initiated amendments that have passed since 1950, only the minimum wage [Article II, Section 34a] and casino issues failed to beat the 60 percent threshold, with the casino issue also failing to reach the 55 percent threshold.

Representative Bob Cupp noted that the minimum wage provision was adopted in 2006, an even-numbered year, while the casino provision was adopted in 2009, an odd-numbered year.

Vice-chair Charles Kurfess noted one relevant factor if two elections were required is that the proposed amendment would get a lot more attention, discussion, and consideration after that first election. He said a hybrid might be that if it passes in the first election by a supermajority it would be adopted, but if not the proposal must stand for a second election. He said there would be a potential for the General Assembly to consider a legislatively-initiated amendment to clean up and improve language. He said that approach would make the constitutional initiative process more consistent with the approach taken with petitions for initiated statutory law. He said this would give the General Assembly a chance to consider and modify the proposal before it goes on the ballot.

Chair Mulvihill said one of the issues the committee has considered is whether to take out the supplemental petition, an approach that would step away from Mr. Kurfess's idea.

Senator Tom Sawyer suggested an alternative to two consecutive elections would be to have one election and then a period of repose in which the proposal might be considered in a subsequent election – either the next election or another later election. He said if organizers had the opportunity to have the first election in a gubernatorial year and the second two years later, then they could have an electorate of the same shape and size as the first one. He said this approach would make the timing a matter of choice for the organizers, who could wait to have the measure on the ballot until the next even-numbered year.

Ms. Abaray said that approach might be problematic because it might allow proponents to place the measure on the ballot in two odd-numbered years. Sen. Sawyer said that is possible, but the current proposal is having it in an even-numbered year and then immediately having it on the ballot in an odd-numbered year.

Mr. Hollon noted that Florida has a supermajority requirement of 60 percent, while a few states, notably Massachusetts, Mississippi, Nebraska, and Washington, require a majority vote for an initiated amendment and that the measure be supported by at least 30 to 40 percent of the total

votes cast in the election. He noted a recent suggestion by a constituent in Avon Lake, Ohio, that would require the issue to be supported by 50 percent of all registered voters.

Chair Mulvihill noted that if a certain percentage of all votes is required, those people who dropped off – meaning those who voted in the election but did not vote on that issue – are not included.

Mr. Beckett asked whether more research could be provided on the states that have a supermajority requirement, and Mr. Hollon said staff could look into the question.

Mr. Beckett noted that current Section 1a allows for a vote on a citizen-initiated constitutional amendment in a regular or general election; however, since 1912, there has never been a citizen-initiated constitutional amendment presented in a primary election. He said the new draft removes the primary as an option and instead requires the measure to be proposed in the general election. He wondered if that is a real barrier or if it is meaningless.

Senior Policy Advisor Steven H. Steinglass said the pattern in Ohio has been that constitutional amendments have gone on the ballot in primary elections, in special elections, and in general elections. He said the practice for the first 60 to 80 years after 1851 was to put the issue on the fall ballot, but once it was done in an August election. He said, at some time, someone realized it was possible to put proposed amendments on at any time, and then the pattern has been exclusively the primary or the general election. He said, regarding statutory initiative proposals, the assumption has been when the constitution says regular or general election, the fall election is meant.

Mr. Hollon added the secretary of state's counsel was asked about the meaning of the phrase “regular election,” and answered that the office considers the “general election” to be the fall election in even-numbered years, with the “regular election” being the election occurring in the odd-numbered years. He said the draft is requiring the issue to be raised in a general election because changing the constitution is important enough to be addressed in a general election.

Chair Mulvihill asked, policy wise, if the committee makes amending the constitution slightly more difficult, what would be the most workable format.

Mr. Steinglass said it is hard to get real examples from other states because they have different thresholds, and most use a simple majority. He said Nevada is the only state that requires two elections. He said there are several examples in recent years where Nevada voters have approved proposed amendments at successive elections. He said he does not have data on the four states other than Florida that use a percentage of the turnout as an additional requirement for determining that an item passed. He said Ohio had a supermajority requirement in the constitution between 1851 and 1912 that was a “stealth” supermajority requirement because proponents had to get the vote of more than 50 percent of the people who voted at that election, and that for some reason the voter drop off was significant. He said there are examples of items being approved by a 10 to 1 margin on the issue, but the measure failed because it did not get a majority of those who turned out. So, he said, a 1912 accomplishment was to get rid of the supermajority requirement. He noted, considering the question of voter drop off, which is different from the total number voting, there is a relatively low drop off. He said, for example, the casino vote involved 98.2 percent of

those who voted also voted on that issue. Regarding the Affordable Care Act issue [Article I, Section 21], 95.3 of voters who cast a ballot voted on that issue. Another issue, the minimum wage amendment, had a similar high 90s percentage. He noted there is a relatively modest voter drop off when it comes to the issues as compared to votes cast for the candidates.

Mr. Beckett said Ohio is one of the few states that even allow citizen initiated amendments. Mr. Steinglass agreed, saying some states have the direct initiative. He said Ohio has a breadth of tools for amending the constitution, but Ohio has not used its tools as much as other states have used theirs.

Ms. Abaray wondered if requiring a supermajority might influence whether a person or group might go the constitutional rather than the legislative route. Chair Mulvihill suggested all the proposals the committee is considering would help accomplish that.

Mr. Kurfess asked whether there has been a situation in which there is public movement to amend the constitution and the legislature enacted a law dealing with the subject. Mr. Steinglass noted the statutory initiative regarding smoking, which was a situation in which there were competing issues on the ballot.<sup>2</sup>

Chair Mulvihill asked the legislative members of the committee whether people who want to get an initiative passed go to the General Assembly first to see if there is an appetite for the General Assembly to act.

Sen. Jordan answered that, regarding the issue related to having a livestock standards board, he is not sure the citizen's initiative group's efforts were "the carrot or the stick" in getting the legislature to act. He said the General Assembly agreed to propose a resolution to create a livestock standards board because it wanted to avoid a worse outcome. He said the reality of being a legislator is that "on occasion you vote on something a little less bad to avoid a horrendous outcome."

Sen. Sawyer added that proponents of an issue can use discussion in the legislature to build a constituency outside the legislature.

Rep. Cupp raised a point that the requirement of two successive elections should not be applied to legislatively-proposed constitutional amendments. He said, currently, the General Assembly already must approve a resolution by a supermajority, and, additionally requiring two consecutive elections would impede the ability of the legislature to act quickly in situations in which there may be an urgent need to act. He noted the General Assembly resolution process already requires discussion and consensus.

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<sup>2</sup> Staff note: The Ohio Smoking Ban Initiative was approved on the November 7, 2006 ballot, and is codified at R.C. Chapter 3794. It competed with a citizen-initiated constitutional amendment that, if it had passed, would have replaced all state and local smoking bans with a single uniform ban that would have prohibited smoking restrictions for certain businesses and other public places.  
[https://ballotpedia.org/Ohio\\_Partial\\_Smoking\\_Ban\\_Amendment\\_4\\_\(2006\)](https://ballotpedia.org/Ohio_Partial_Smoking_Ban_Amendment_4_(2006)) (last visited Oct. 14, 2016).

Chair Mulvihill cautioned that the committee would have to consider how that concept would be received by the people, because it could be difficult to gain popular support for the two consecutive elections idea if there are different standards for the public and for the legislature.

Mr. Beckett observed that the General Assembly may not decide to bring forth an issue for which there is a broader will of the people to move forward, and so it seems that this process is an opportunity for the people to weigh in by proposing constitutional changes that the legislature is not addressing. He said one thing he likes about the two consecutive year idea is the possibility it will have the effect that the current process for initiating statutes has, meaning it would provide a “shot across the bow” for the legislature. He said, in thinking about the language drafted by the ordinary citizen, using two consecutive elections would allow the General Assembly to propose an alternative that might accomplish what the people were trying to accomplish but taking out inappropriate language, such as the casino location descriptions in Article XV, Section 6. He said the two consecutive year requirement may have the effect of letting the General Assembly have involvement in the process.

Mr. Kurfess said he could see one result as being that the General Assembly simply puts on the ballot an alternative, so there are two issues on the ballot. He added, at that point the discussion is whether the measure put on by petition would require a larger majority than the one proposed by the legislature. He said the committee has to decide if there is a role for the General Assembly, or whether there should be different requirements to amend the constitution based on the origin of the proposal.

Ms. Abaray said it would seem if the citizen proposal is required to go through two consecutive years, and the legislative proposal is not, it might cause people to try to work through the legislature, which would be a benefit.

Chair Mulvihill asked whether the committee was reaching a consensus on the issue of whether to recommend the two consecutive elections idea.

Mr. Readler said he likes the two consecutive elections idea. He said he worries about requiring a higher number of votes out of a belief the public would be more resistant to that idea. He said a two consecutive elections requirement would take a little of the people’s power away, but requiring a higher percentage would seem worse. He also noted requiring two consecutive elections would help to promote taking statutory initiative route because of the added expense and trouble. Asked whether he liked the even-numbered year concept, Mr. Readler said he would do a two-year requirement, so that at least one of those years would be a presidential or gubernatorial year.

Sen. Sawyer noted his proposal would be to try to get two even-numbered years.

Ms. Abaray said she is not in favor of two odd-numbered years. She said she likes two consecutive years, but not two consecutive even-numbered years because that would delay it too long.

Mr. Kurfess said it might be possible to require that the measure be passed in two elections with a higher majority in the primary and a lesser majority in the general. He said he is not sure he likes the idea of dragging it out for two years.

Ms. Abaray said having an opportunity for people to rethink their vote can be a good thing.

Chair Mulvihill asked whether any committee member objected to requiring that the initiative be on the ballot in two consecutive years. There were no objections.

Chair Mulvihill then turned the committee's attention to the "safe harbor" provision, which proposes to restrict the General Assembly from altering or repealing a statutory initiative law for a period of years after its enactment. He noted there are not many statutory initiatives that have passed, with the most recent one being the smoking law in 2006.

Mr. Steinglass noted there is not enough history to gauge the effectiveness of the statutory initiative provision, and no documentation of the extent to which proposed statutory initiatives have led the General Assembly to adopt legislation. He said that question is not tracked by the General Assembly, or anyone.

Sen. Jordan said, practically, a party choosing between placing a business plan into the law or into the constitution probably would not do it through changes in the law, which the General Assembly could alter later. He said maybe the reason why so few statutory initiatives have passed is that proponents were not willing to spend \$35 million to get the law passed when it could be changed by the legislature. On the other hand, he said, while there have been some attempts by legislators to alter citizen initiated statutes, some legislators back off because the law was passed by the voters. He said that creates a natural hurdle, because a legislator does not want to undo something that was popular and passed.

Mr. Beckett said he does not have a strong view of whether the safe harbor period should be three versus five years, but noted if the committee truly is trying to encourage use of the statutory initiative, it should make that number as high as the legislature would tolerate. He said he would lean toward five years.

**Presentation:**

*Steven C. Hollon*  
*Executive Director*  
*Draft of Initiative and Referendum Sections*

Chair Mulvihill recognized Mr. Hollon for the purpose of reviewing with the committee the draft of the rewrite of the initiative and referendum provisions.

Mr. Hollon noted that the draft contains headings that are not part of the constitution but rather are included for ease of reference. He said the draft offers the option of clarifying the difference between an initiative and a referendum, as those terms are generally used in other states. He said that a "referendum" generally means simply a vote by the electorate to approve or reject an issue.

He said, in Ohio, those terms have come to mean something different, with an initiative meaning “to bring forth a law,” and referendum meaning to challenge a law passed by the General Assembly. He said the committee may wish to continue to use those terms as they have been traditionally understood in Ohio, but wanted to point that out about the draft.

#### Section 1a [Initiative and Referendum to Amend Constitution]

Mr. Hollon described that Section 1 of the draft, concerning legislative power, provides the opportunity for the committee to decide whether it should “but the people reserve the power,” or whether it should say “and” the people reserve the power. He said Section 1, paragraph B derives from language at the end of current section 1g.

Concerning Section 1a in the draft, Mr. Hollon noted the time frame for filing a petition is described as commencing the first day of January, and ending the first day of June. Chair Mulvihill explained that currently in the constitution the timing is confusing because it starts with an end date and goes backward. He said the draft proposes to set the time requirements going forward rather than going backward.

Mr. Hollon continued that Section 1a, paragraph B, is in current Section 1a, while paragraph C derives from current Section 1a, and from the middle and end of Section 1g. He said paragraph D adds the requirement that the issue be presented at a general election, as opposed to the current requirement that the issue be presented in either a regular or general election.

Mr. Kurfess asked whether one half of the ten percent required must come from at least half the counties, or whether the requirements should say that there must be five percent from each of half of the counties of the state. Mr. Beckett said the current requirement, as expressed on the secretary of state’s website, is that there must be five percent from each of half of the counties in the state, with the total to be ten percent. Chair Mulvihill said the draft did not change the original language, but Mr. Hollon said adding the word “each” to the draft might clarify what is meant.

Mr. Hollon continued that paragraph F of the draft of Section 1a derives from current Section 1b, and has been moved because it belongs in 1a. He said paragraph G, relating to the publication requirements, has been added.

Mr. Kurfess asked whether there have been elections in which competing constitutional amendments were on the ballot. Mr. Steinglass answered that in 1918 there were two proposals on the ballot that were considered to be irreconcilable. He noted that, in November 2015, there were two competing measures on the ballot as Issue 2 and Issue 3, but the question of which measure succeeds did not arise because Issue 3 failed. Mr. Steinglass said that, prior to the election, the secretary of state provided an opinion about what would occur if both issues passed. Mr. Steinglass continued that the issue should be looked at, noting that courts initially would try to reconcile the two provisions before concluding they are in conflict. Chair Mulvihill suggested that some language resolving that question might be added to the draft.

Mr. Kurfess inquired whether the secretary of state determines the order in which issues are placed on the ballot, wondering if the date of the filing of the petition or joint resolution dictates the

order. Mr. Steinglass said he does not know, but said “it is murky.” He added, if there is concern about the problem of what happens when there are conflicting amendments that are both approved, the phrase “regardless of the effective date of the proposed amendments,” could be added to clarify that the proposal receiving the most votes prevails, rather than the proposal that is effective first. He said, under the current constitution, initiated amendments do not become effective until 30 days after approval. He said the Ohio Supreme Court has ruled that legislatively-enacted amendments take effect immediately. He concluded that, currently, legislatively-proposed amendments always trump a citizen amendment.

Ms. Abaray recalled that, at a previous meeting, a speaker wanted to put language in a proposed constitutional amendment that would expressly say the proposed amendment would take precedence over any competing proposal. She said that speaker said proponents are now putting that language in their proposed amendments as a matter of routine. She said she thinks that is something the committee should consider, noting that type of language should be prohibited in any initiative.

Mr. Steinglass said that comment had been expressed by Maurice Thompson, who had presented to the committee at a previous meeting. Mr. Steinglass said that current proposed initiated statutes, at the attorney general stage, reveal the drafting techniques being used. Mr. Steinglass continued that the question of subsequent constitutional provisions being in conflict with existing provisions is not new, and it has been up to the courts to reconcile the two provisions. He noted an example of the \$750,000 debt limit in Article VIII. He said the courts can handle that type of conflict, but the harder question arises when competing proposals are on the same ballot.

#### Section 1b [Initiative and Referendum to Enact Laws]

Mr. Hollon described that the draft of Section 1b, relating to the statutory initiative procedure, contains new language at paragraph A, allowing initiative proponents to file their petition with the secretary of state at any time after the first of January and before the first of February.

He continued that paragraph B, requiring a title on the petition, is taken from current Section 1b. He said paragraph C, relating to the signatures on the petition, is derived from current Sections 1b and 1g. Regarding paragraph D, Mr. Hollon said the draft requires the secretary of state to immediately transmit the petition to the General Assembly. He said if the General Assembly does not pass related law by June and the petition is not withdrawn as provided by law, and if the signatures are verified, the proposed law would be presented to the electors at the next general election. Chair Mulvihill noted the committee had discussed this procedure at a previous meeting. Mr. Hollon continued that paragraph F then indicates that, if the proposed law is approved by the electors, it takes effect 30 days after the election.

Mr. Kurfess asked whether a petition for a constitutional amendment can be withdrawn if the legislature enacts a satisfactory statute. Mr. Hollon said that concept is not in the current constitutional procedure, nor in the draft. Mr. Kurfess asked whether it would be a good idea to add that idea. Mr. Beckett noted that a good place to add that concept would be in the draft at Section 1a(E). Chair Mulvihill said the committee would consider putting that language in the draft.

### Section 1c [Initiative and Referendum to Challenge Laws]

Mr. Hollon described the draft at Section 1c, relating to the referendum to challenge laws. He said paragraph B, which prescribes a descriptive title to be added at the top of a referendum petition, is not in the current constitution, but has been added here to make the referendum procedure track the procedures for the constitutional and statutory initiative procedures. He said paragraph C of Section 1c of the draft allows the General Assembly to enact law relating to allowing electronic signatures, as was done with the redraft of the constitutional and statutory initiative sections.

Regarding Section 1c at paragraph D, Mr. Hollon described that the draft of the referendum procedure allows the referendum to be submitted to voters at the next primary or general election, which is different from the draft relating to the constitutional and statutory initiative procedures. He said the reason for this is that requiring petitioners to wait until the next general election may cause too long of a delay in the legislature's ability to implement the law.

Chair Mulvihill asked what the understanding is regarding the phrase "regular election" means, wondering if it means a primary election or a general election. Mr. Hollon said his understanding is that a regular election is one that occurs in an odd year, with a general election occurring in an even year.

Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, speaking from the audience, said November is a regular election, and that "regular" and "general" are the same thing. Mr. Steinglass said the word "primary" is a big substantive change in the draft. Chair Mulvihill said that issue will need future discussion.

Mr. Hollon continued that paragraph G of the draft of Section 1c includes the concept in current Section 1d that laws providing for tax levies, appropriations for current expenses of the state government, and emergency laws are not subject to the referendum.

Mr. Kurfess commented that defining what constitutes an appropriation has been an issue before the Supreme Court of Ohio, wondering if language could be added to the constitution to define the term "appropriation." Rep. Cupp said that is his question as well. Mr. Hollon said staff could prepare a memorandum on that topic.

### Section 1d [Petition Requirements]

Regarding Section 1d, Mr. Hollon said the draft now covers the requirements for the petition, simplifying procedures described in current Section 1g. Chair Mulvihill noted one change in the draft is that the General Assembly would now be authorized to make changes as needed to the petition signature process in order to allow the gathering of electronic signatures. Mr. Hollon added that paragraph C allows the General Assembly to provide law relating to the witnessing of electronic signatures. Mr. Hollon said paragraph D is derived from the beginning of current Section 1g.

### Section 1e [Verifying and Challenging Petitions]

Mr. Hollon described that the draft of Section 1e provides a new process for the timing of filing petitions, and adds days for the Ohio Supreme Court to rule on a challenge. He noted that paragraph F of the draft was new, prohibiting further challenges to a petition after the Court rules on the sufficiency of additional signatures. Mr. Hollon further described that paragraph G, indicating that a proposed amendment or law cannot be held unconstitutional on the basis of insufficient petitions, is taken from current Section 1g.

Ms. Rosenfield asked whether the draft clarifies when petitioners can get signatures, specifically whether petitioners can continue to get signatures after filing with the secretary of state but before the secretary of state determines the sufficiency of the signatures. She also asked whether the draft clarifies how long petitioners have to get signatures from the January filing. She said the problem is that when the deadline was changed from 90 days back to 100 days, it shortened the period for getting signatures.

Mr. Hollon said he does not know of anything in the constitution that says when a petitioner can and cannot get signatures. Chair Mulvihill said he thought that was addressed by the legislature two years ago. Mr. Steinglass said there is statutory law facilitating the signature gathering process. Ms. Rosenfield noted that the legislation was the General Assembly's interpretation of the constitution, which was not very clear on the question. She wondered if the draft addresses the shortened period in which the petitioner only has two months to gather signatures. Chair Mulvihill said the committee should consider that question at a future meeting.

Mr. Hollon said there is no ambiguity about when the petition goes to the General Assembly, pointing to the draft of Section 1b at paragraph D providing that the General Assembly is noticed as soon as the petition is filed. He added that the draft of Section 1e, at paragraph A, provides that within 30 days, the secretary of state shall verify the signatures. He said the draft contemplates that the issue of the sufficiency of petitions and signatures will be resolved by the first of May, but in the meantime the General Assembly has the petition before it.

Chair Mulvihill summarized the procedure in the draft, saying the signatures are collected and the petition is then filed with the secretary of state, who then provides it to the General Assembly, which can do whatever it wants when it gets the petition. He said the secretary of state then begins analysis of the signatures. He said, while the secretary of state is checking the signatures, the General Assembly has the ability to act or not act.

Ms. Abaray requested that staff provide a flow chart to allow the committee to compare the draft to the current procedure. Mr. Hollon said staff could put that together.

### Section 1f [Explanation and Publication of Ballot Issue]

Mr. Hollon described that Section 1f of the draft adopts language from current Section 1g, with the addition that the General Assembly may prescribe by law for the electronic publication of the text of the proposed amendment or law.

Sections 1g [Placing on the Ballot], 1h [Limitation of Use], and 1i [Application to Municipalities]

Mr. Hollon said the draft of Section 1g contains language in current Section 1g, while the draft of Section 1h is language from current Section 1e, and the draft of Section 1i derives from current Section 1f.

Section 15 [How Bills Shall Be Passed]

Regarding the draft of Section 15, Mr. Hollon said the procedure by which the General Assembly enacts an emergency law is currently part of Section 1e, and, in the draft, has been given its own section separate from the initiative and referendum process because current Section 1e exempts such laws from the referendum process.

Section 17 [Effective Date of Laws]

Noting that, under the current constitutional provision, finding out when a law takes effect requires one to search in the provision dealing with the referendum on challenging laws. Mr. Hollon said it makes more sense to place such an important concept in its own section, and so the draft creates a new section for that purpose.

Mr. Hollon having concluded his review of the draft, Chair Mulvihill thanked him for his presentation and announced that the committee should consider the draft carefully in preparation for its next meeting, which would occur in November.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:02 p.m.

**Approval:**

The minutes of the October 13, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the November 10, 2016 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair

Draft Date: 10.13.2016

**Section 1. [Legislative Power]**

(A) The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, [but the 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 herein provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. of the initiative and referendum,] or [and as the people reserve to themselves in the initiative and referendum,] as set forth in [this article] or [the constitution]. The limitations expressed in the constitution; on the power of the General Assembly to enact laws; shall be deemed limitations on the power of the people to enact laws.

(B) The ~~foregoing~~ provisions of ~~this section~~ [this article] or [the constitution] concerning the initiative and referendum 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 preserved.

**Section 1a. [Initiative and Referendum to Amend Constitution]**

(A) The people reserve the power to propose an amendment to the constitution, independent of the General Assembly, and may do so at any time after the first day of January and before the first day of June in the same year, by filing with the secretary of state an initiative petition proposing an amendment to the constitution.

(B) The petition shall have printed across the top: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors” and shall set forth the full text of the proposed amendment.

(C) The petition shall be required to bear the signatures of ten per cent or more of the electors of the state, including five per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed amendment for the approval or rejection of the electors, [by referendum vote], at the next general election.

(E) If the proposed amendment to the constitution is approved by a majority of the electors voting on the issue, the proposed amendment shall be placed on the ballot in the same form as passed by the electors, for approval or rejection, at the next succeeding general election. If the proposed amendment is approved by a majority of the electors voting on the issue at the next succeeding general election, it shall take effect thirty days after it was approved.

(F) If conflicting proposed amendments to the constitution are approved at the same election by a majority of the total number of votes cast for the proposed amendments, the one receiving the highest number of affirmative votes shall be the amendment to the constitution.

(G) An amendment that is approved by the electors shall be published by the secretary of state.

**Section 1b. [Initiative and Referendum to Enact Laws]**

(A) The people reserve the power to propose a law, and may do so at any time after the first day of January and before the first day of February of the same year, by filing with the secretary of state an initiative petition proposing a law to the General Assembly.

(B) The petition shall have printed across the top: “Law Proposed by Initiative Petition First to be Submitted to the General Assembly” and shall set forth the full text of the proposed law.

(C) The petition shall be required to bear the signatures of five per cent or more of the electors of the state, including two and one-half per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon receipt of the petition, the secretary of state shall transmit a copy of the petition and full text of the proposed law to the general assembly. If the proposed law is passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to [challenge by the electors] or [the referendum] under Section 1c of this article.

(E) If before the first day of June immediately following the filing of the petition the General Assembly does not pass the proposed law in the form as filed with the secretary of state, and the petition is not withdrawn as provided by law, and, upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed law for the approval or rejection of the electors, [by referendum vote], at the next general election.

(F) If the proposed law is approved by a majority of the electors voting on the issue, it shall take effect thirty days after the election at which it was approved in lieu of any amended form of the law that may have been passed by the General Assembly.

(G) If conflicting proposed laws are approved at the same election by a majority of the total number of votes cast for each of the proposed laws, the one receiving the highest number of affirmative votes shall be the law.

(H) A law proposed by initiative petition and approved by the electors shall not be subject to veto by the governor.

(I) A law proposed by initiative petition and approved by the electors shall be published by the secretary of state.

(J) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for [three] or [five] years after its effective date, unless upon the affirmative vote of two-thirds of all members elected to each house of the general assembly.

**Section 1c. [Initiative and Referendum to Challenge Laws]**

(A) The people reserve the power [through the referendum] to challenge a law, section of law, or item in a law appropriating money, and may do so at any time within ninety days after the law has been signed by the governor and filed with the secretary of state, by filing with the secretary of state [an initiative] or [a referendum] petition challenging the law, section of law, or item in a law appropriating money.

(B) The petition shall have printed across the top: “[Initiative] [Referendum] Petition to Challenge a Law Enacted by the General Assembly to be Submitted to the Electors” and shall set forth the full text of the law, section of law, or item in a law appropriating money being challenged.

(C) The petition shall be required to bear the signatures of six per cent or more of the electors of the state, including three per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon verifying the requirements of the petition as provided in this article, the secretary of state shall submit the challenge for the approval or rejection of the electors, by referendum vote, at the next ~~regular~~ primary or general election occurring sixty days or more after the process for verifying and challenging the requirements of the petition and signatures on the petition is complete.

(E) If a law, section of law, or item in a law appropriating money subjected to a challenge [by referendum] is approved by a majority of the electors voting on the issue, it shall go into effect thirty days after the election at which it is approved.

(F) If [an initiative] *or* [a referendum] petition is filed challenging any section of law or item in a law appropriating money, the remainder of the law that is not being challenged shall not be prevented or delayed from going into effect.

(G) A law providing for a tax levy, a law providing appropriation for current expenses of the state government and state institutions, or an emergency law necessary for the immediate preservation of the public peace, health, or safety, as determined under Section 15(E) of this article, shall not be subject to challenge by [initiative and] referendum.

**Section 1d. [Petition Requirements]**

(A) An initiative [and referendum] petition filed under this article may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the

proposed constitutional amendment, proposed law, or the challenged law, section of law, or item in a law appropriating money, to be submitted to the electors.

(B) Each person who signs an initiative [and referendum] petition shall sign in ink and only for the person individually, and shall provide the person's residential address and the date the person signed the petition. The General Assembly may prescribe by law for the collection of electronic signatures in addition to or in lieu of petitions signed in ink.

(C) Each separate part of an initiative [and referendum] petition shall contain a statement of the person who circulated the part, as may be required by law, indicating that the circulator witnessed the affixing of every signature to the part. The General Assembly may prescribe by law for the witnessing of electronic signatures presented in addition to or in lieu of petitions signed in ink.

(D) In determining the sufficiency of the signatures required for initiative [and referendum] petitions, the secretary of state shall consider only the signatures of persons who are electors.

**Section 1e. [Verifying and Challenging Petitions]**

(A) Within thirty days following the filing of an initiative [and referendum] petition, the secretary of state shall verify the sufficiency of the petition and the signatures on the petition pursuant to the requirements of this article.

(B) The supreme court shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the sufficiency of a petition and the signatures on a petition.

(C) A challenge to a petition or signatures on a petition shall be filed with the supreme court within seven days after the secretary of state's determination of the sufficiency of the petition and the signatures on the petition. The supreme court shall hear and rule on a challenge within

fourteen days after the filing of the challenge with the court. If the supreme court does not rule on the challenge within fourteen days after the filing of the challenge to the petition and the signatures, the petition and signatures shall be deemed to be sufficient in all respects.

(D) If the supreme court determines the petition or signatures are insufficient, additional signatures to the petitions may be filed with the secretary of state within ten days following the supreme court's ruling. If additional signatures are filed, the secretary of state shall determine their sufficiency within ten days following the filing of the additional signatures.

(E) A challenge to the secretary of state's determination as to the sufficiency of the additional signatures shall be filed with the supreme court within seven days of the secretary of state's determination. The supreme court shall hear and rule on any challenges to the additional signatures within fourteen days of the filing of the challenge with the court. If the supreme court does not rule on the challenge within fourteen days of the filing of the challenge, the petition and signatures shall be deemed to be sufficient in all respects.

(F) The filing of further signatures and challenges to petitions and signatures shall be not be permitted following the supreme court's determination as to the sufficiency of the additional signatures.

(G) The approval of a proposed amendment to the constitution or a proposed law, submitted by initiative petition and approved by a majority of the electors [voting on the issue] *or* [through a referendum vote], shall not be held unconstitutional on account of the insufficiency of the petitions proposing the issue. The rejection of a law, section of law, or item in a law appropriating money, challenged [by an initiative] *or* [in a referendum] petition and rejected by a [referendum vote] *or* [majority of the electors voting on the issue], shall not be held invalid on account of the insufficiency of the petitions initiating the challenge.

**Section 1f. [Explanation and Publication of Ballot Issue]**

(A) A true copy of a proposed amendment to the constitution or a proposed law, submitted by initiative petition, shall be prepared together with an argument or explanation, or both, for the proposed constitutional amendment or proposed law. The name of the person who prepares the argument or explanation, or both, for the proposed amendment to the constitution or proposed law, may be named in the petition submitted.

(B) A true copy of a law, section of law, or item in a law appropriating money, submitted by [initiative] or [referendum] petition, shall be prepared together with an argument or explanation, or both, against the law, section of law, or item in a law appropriating money, and an argument or explanation, or both, for the law, section of law, or item in a law appropriating money. The name of the person who prepares the argument or explanation, or both, against the law, section of law, or item appropriating money, may be named in the petition submitted. The name of the person who prepares the argument or explanation, or both, for the law, section of law, or item appropriating money, shall be named by the general assembly, if in session, and, if not in session, then by the governor.

(C) An argument or explanation, or both, as prepared under this section, shall be three hundred words or less.

(D) The full text of the proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money, together with the argument and explanation for each, and the argument and explanation against each, shall be published once a week for three consecutive weeks preceding the election in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly may prescribe

by law for the electronic publication of the items required by this section in addition to or in lieu of newspaper publication.

**Section 1g. [Placing on the Ballot]**

(A) The secretary of state shall place on the ballot language for a proposed amendment to the constitution, proposed law, law, section of law, or item in a law appropriating money, presented by [initiative] or [referendum] petition to be submitted to the electors for a [referendum] vote.

(B) The ballot language shall be prescribed by the Ohio ballot board in the same manner and under the same terms and conditions as apply to issues submitted by the general assembly under Article XVI, Section 1 of this constitution.

(C) The secretary of state shall cause the ballots to be prepared to permit an affirmative or negative vote on each proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money.

(D) The style of all constitutional amendments submitted by an initiative petition shall be: “Be it Resolved by the People of the State of Ohio.” The style of all laws submitted by initiative petition shall be: “Be it Enacted by the People of the State of Ohio.”

**Section 1h. [Limitation of Use]**

(A) The powers of the initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation on the property or of authorizing the levy of any single tax on land, land values, or land sites at a higher rate or by a different rule than is or may be applied to improvements on the land or to personal property.

(B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative [and referendum] shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows: "Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?"

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

~~(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary,~~

~~that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.~~

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

**Section 1i. [Application to Municipalities]**

The powers of the initiative and referendum are reserved to the people of each municipality, as provided by law, on questions which a municipality may be authorized by law to control by legislative action.

**Section 15. [How Bills Shall Be Passed]**

(E) An emergency law, necessary for the immediate preservation of the public peace, health, or safety, shall be passed only on the affirmative vote of two-thirds of all members elected to each house of the general assembly. The reason for the emergency shall be set forth in a section of the law, which shall be passed on a separate affirmative vote of two-thirds of all members elected to each house of the general assembly.

**Section 17. [Effective Date of Laws]**

(A) Except as otherwise provided in this section, a law passed by the general assembly and signed by the governor, shall go into effect ninety days after the governor files it with the secretary of state.

(B) A law passed by the general assembly and signed by the governor providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into effect and when filed by the governor with the secretary of state.

(V3)



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 10, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 2:12 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the October 13, 2016 meeting of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by recounting the various ideas the committee has explored over the last several meetings regarding the initiated constitutional amendment and initiated statute process. These include requiring a supermajority for the approval of a constitutional amendment, having a proposed amendment appear on the ballot in consecutive general elections, creating a safe harbor for initiated statutes, and modifying signature requirements.

Chair Mulvihill then called on committee member Chad Readler to provide his perspective on the latest draft of the sections before the committee. Mr. Readler stated that the one item that he has gone back and forth on concerns whether there should be a supermajority for the approval of a constitutional amendment, or if the proposed amendment should appear on the ballot at two consecutive elections. He indicated that, while he originally thought two consecutive elections might make sense, he has since rethought the matter and now believes that a supermajority requirement for one election, perhaps to be held in an even-numbered year might make more sense.

Committee member Roger Beckett said the committee is trying to find some scientific precision as to a revision that would be palatable to the people. He said his assessment is that the committee is making progress, and has reached bipartisan agreement that the process should be recalibrated. He said the challenge is that, when the committee's proposal goes to the legislature, it could be that no one is going to be completely happy about the proposed changes. He said the Democrats do not want to strengthen the constitutional initiative procedure and the Republicans are not interested in easing the initiated statute procedure. He said "The balance we have to find is how to make everyone equally unhappy." Mr. Beckett continued that, on the initiated statute side, the committee has gone a long way in removing the indirect and taking the percentage of signatures needed from a total of six to five percent, and adding the safe harbor. He said the committee has been talking about requiring two consecutive elections, and there has been consensus, and the committee has gotten some push back on that from the Democrats that that proposal would be too hard to sell. He said he understands that. He suggested that the goal should be to get the number of electors who participate in voting on a ballot initiative as high as possible, and said his preference would be to require a 60 percent approval rate, instead of 55. He added that the committee should recommend constitutional initiative proposals only be placed on the ballot in even-year elections, when there is larger turnout and higher percentage of voters.

Senator Tom Sawyer added that in even-numbered years there is not such disparity in voting between one community and another.

Mr. Beckett said the committee should be getting information on which of the proposals it is considering is most likely to pass, but he said "we need a sense from the legislature of the appetite for this."

Chair Mulvihill asked Senator Kris Jordan for his thoughts on how the legislature might view the proposals under consideration.

Sen. Jordan said he cannot speak for his caucus, or the leadership, but he thinks the committee needs to make the statutory initiative easier. He offered to bring the topic to the caucus to see what others might be thinking.

Vice-chair Charles Kurfess noted that what kind of supermajority or procedure is recommended might depend on how people view imposing a supermajority on the constitutional initiative process. Chair Mulvihill agreed that is an issue the committee has been worrying about.

Representative Bob Cupp observed that the initiated statute procedure was developed as a bypass to the legislature because the legislature would bottle up the process due to narrow interests. He said he hopes whatever the committee does, it does not approve a plan that makes it too easy to bypass the legislature, causing Ohio to become like some western states that overdo it with initiated statutes. He said there is a conceptual theory about requiring a higher standard for passage of citizen's initiatives, yet the legislature has to attain a 3/5 vote of support to propose an amendment. He said imposing a supermajority requirement on a citizen's initiative is the comparable version of having a supermajority for the legislature.

Mr. Kurfess said the emphasis may need to be on increasing the difficulty in getting an initiated amendment on the ballot, rather than requiring a supermajority vote. He said he is concerned about making it too easy to obtain petition signatures, and does not like the idea of paying people to gather signatures. He said if a proposal is that important, there ought to be enough people willing to volunteer to get the signatures.

Committee member Janet Abaray asked whether it might work to add a requirement that a competing ballot issue be placed on the ballot by the political party, so as to balance the ballot questions.

Chair Mulvihill said that requirement might be too cumbersome, plus it might be hard to determine what the party thinks of a particular issue.

Mr. Beckett said alternate points of view are expressed in the required language providing pros and cons regarding the ballot question.

Mr. Kurfess summed up Rep. Cupp's position as arguing for a supermajority rather than requiring the initiative to go on the ballot twice, and Chair Mulvihill agreed.

Sen. Sawyer said the idea of a supermajority requirement also has merit because of its simplicity.

Chair Mulvihill asked Mr. Hollon, under Section 1a(E), to remove the segment "elections" and put in language for the sake of discussion next month that would require a majority vote of 55 to 60 percent in favor of an initiated amendment, and would only allow it to be placed on the ballot in an even-numbered year. He said that will be the draft the committee will work from when the committee invites guests in next month to discuss these issues.

Chair Mulvihill asked if there were any other items from the draft that could be altered.

Rep. Cupp asked about the requirement of getting signatures from various counties. He said there may need to be changes in consideration of the modern age in which communication and travel is easier.

Chair Mulvihill said the committee has discussed that question previously. He said the argument went both ways, and there was a concern that proposed amendments would only come from large metropolitan areas. He said, to the extent the General Assembly wants to allow electronic signatures, that would alleviate concerns about the even distribution of persons signing the petitions.

Mr. Hollon noted that the word "each" was inserted in the current draft in response to a concern previously expressed by Mr. Kurfess. Mr. Hollon also pointed out the committee had been provided with three charts showing the proposed timeline, in response to a request from Ms. Abaray. Mr. Hollon also noted alternative language was used in Section 1f(B) in order to eliminate the unnecessary repetition of a phrase and make the section read more easily.

Chair Mulvihill asked who the committee thought should be invited to attend the next meeting to provide their views of the proposed language. He noted the League of Women Voters, the 1851 Center, and Attorney Don McTigue should be invited.

Mr. Beckett suggested the secretary of state's office might wish to provide insight.

Mr. Hollon said he would issue these invitations.

Chair Mulvihill said he would follow up with Mr. Hollon to identify anyone else and extend invitations. He said additional groups would be Common Cause Ohio, Policy Matters, Progress Ohio, and Initiative Ohio.

Sen. Sawyer suggested also contacting persons who have signaled their interest in running for secretary of state.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:54 p.m.

**Approval:**

The minutes of the November 10, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the January 12, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, DECEMBER 15, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:11 a.m.

#### **Members Present:**

A quorum was not present with Chair Mulvihill and committee members Beckett, Cupp, and Sawyer in attendance.

#### **Approval of Minutes:**

There being no quorum, the minutes of the November 10, 2016 meeting of the committee were not approved.

#### **Presentations and Discussion:**

Chair Mulvihill began the meeting by providing an overview of the various ideas the committee has explored regarding changes to the initiated constitutional amendment and initiated statute processes. He said the committee would be hearing from interested parties regarding their suggestions for improving the redraft of the initiative and referendum process.

*Donald J. McTigue, Attorney  
McTigue & Colombo LLC*

Chair Mulvihill recognized Attorney Donald J. McTigue to present his comments regarding the redraft of Article II, Sections 1 through 1g, relating to the initiative and referendum process.

Mr. McTigue said his recommendation is that the initiated constitutional amendment petition process should stay the same in terms of when the ballot issue is submitted to voters, primarily because both general elections are well attended by voters, and sometimes proponents need to get

the issue before the voters sooner rather than later. He said there is no reason to change the constitution in this regard because that issue has not been the source of problems in terms of timing or the processing of petitions. In addition, he said, the voters should have the same right as the General Assembly to determine at which election a petition should be submitted.

Mr. McTigue continued that the current constitution provides for a ten-day cure period after the Ohio Supreme Court determines the signatures are not sufficient. He said that provision is important and should be retained, explaining that petition efforts often do not get underway until after an extended process of building a coalition and getting agreement to the text of the petition. He said being able to have the additional time is important because proponents can fall short in getting the exact number of signatures needed from various counties. Mr. McTigue said having that time also reduces the impetus to challenge the petition in court. He said keeping that measure would necessitate reworking the deadlines that are in the redraft. He said the ten-day cure period is especially important with regard to referendum petitions, since referendum proponents have only 90 days to get their signatures. So, he said, at a minimum, the committee should consider restoring the ten-day cure period for referendum petitions.

Mr. McTigue also recommended that the committee address the standards for ballot language to be followed by the ballot board under Article XVI. He said ballot language has been a source of contention over the years, and that is where games are played. He suggested amending Article XVI to include a provision relating to the ballot board prescribing ballot language. He said he did not provide language for this concept because Article XVI was not part of the redraft.

Mr. McTigue directed the committee's attention to a marked-up version of the redraft of the subject sections, noting the edits he included that would resolve some of the problems he saw with the procedures. He said his biggest complaint is that the General Assembly passes laws that do not facilitate the process but rather restrict the right of citizens to propose initiated amendments, laws, and referenda. He said it is important to address a specific law requiring that, in addition to filing the petition, a proponent must simultaneously file a full electronic copy and sign a verification that it is a true copy. He said the problem with this requirement is that it adds expense because proponents have to scan everything. He said there may be 20,000 part petitions, but every page must be scanned and submitted electronically, which is an expensive process.

Chair Mulvihill asked about the expense. Mr. McTigue answered one of his clients had to hire three outside firms, and spent about \$30,000 to complete this task. He said a related problem is that referendum petitions must be processed in only 90 days, requiring referendum proponents to budget time at the end to scan the petitions. He estimated that scanning takes about ten days off of the already limited time proponents have. He said the statute also requires a full index for the scan. Mr. McTigue explained the statute was enacted as a way to deal with public records requests that were burdening the secretary of state because the courts ruled the secretary had to provide copies of petitions. So, he said, the General Assembly enacted law requiring proponents to submit an electronic copy at the same time they submit their petitions, and this electronic copy is used to fulfill public records requests. He said while the law resolved the secretary of state's public records problem, it did so by placing an expensive and time-consuming burden on citizens.

Representative Bob Cupp said he could understand how creating an index would be time consuming, but wondered why scanning would take so long. Mr. McTigue said the index is not that time consuming because one can create a searchable index as scanning occurs. But, he said, the scanning takes a lot of time because pages are double-sided, and each document must be named. He said, in addition, staples must be removed in order to scan, and hard copies must then be re-stapled and returned to county order.

Chair Mulvihill wondered if Mr. McTigue was suggesting that the ballot language should be addressed after the petition goes to the attorney general, rather than at the end of the process. Mr. McTigue said handling the language up front with the ballot board would be advantageous.

Chair Mulvihill asked how gamesmanship was being used to affect proponents' ability to get an issue on the ballot. Mr. McTigue said this occurs not just with regard to the language but also regarding the title. He said, as an example, in 2015 the marijuana legalization initiative was given a ballot title that uses the word "monopoly," even though the word "monopoly" is not in the petition, and that this characterization was added for prejudicial effect. Mr. McTigue said the title is applied at the end, after the petition is submitted. He said it would be useful to have that decision made up front, which would eliminate the initial statutory procedure requiring 1,000 signatures, going to the attorney general, and other tasks which use up a lot of time. He said it would then be possible to have the ballot title and the ballot language printed on the petitions.

Referencing Section 1a in the redraft, Mr. McTigue directed the committee's attention to his suggestion that proponents be permitted to propose an amendment at any time after the general election in an even-numbered year, rather than on the last day of May of an odd-numbered year. He said moving the date back to the day after the general election gives as much time as possible.

Mr. McTigue said he is not in favor of the redraft's requirement of a supermajority to approve a proposed initiative, a requirement that is not applied to legislatively-proposed constitutional amendments. He said having this requirement for initiated amendments puts citizens at a disadvantage. Regarding conflicting amendments, he said a supermajority is not needed, and that he would add a sentence indicating that the Ohio Supreme Court should have exclusive jurisdiction to determine if a conflict exists.

Mr. McTigue said he would change the draft of Section 1b(D) regarding the statutory initiative to indicate that the secretary of state must transmit a copy of the full text of the proposed law to the General Assembly the same or the following day. He said that issue was just litigated in the Ohio Supreme Court this year.<sup>1</sup> He added that he would remove the requirement that the petition be transmitted to the General Assembly because it could be thousands of pages long.

Chair Mulvihill asked whether the concern is that the secretary of state could run out the clock. Mr. McTigue said that is not exactly the reason; rather, under the current constitution, the General Assembly has four months to review and decide whether to act after the proposed law is transmitted, and this period only commences after the proposed law and the petition are verified. As a result, he said, this year the proposed law did not get transmitted to the General Assembly until February 5, thereby pushing back the commencement of the General Assembly's four-month

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<sup>1</sup> *Ohio Mfrs. Assn. v. Ohioans for Drug Price Relief Act*, 147 Ohio St.3d 42, 2016-Ohio-3038, 59 N.E.3d 1274.

period. He said that timeline basically made it impossible to get a statutory initiative on the ballot in 2016. He said there may not be the same problem under the revised timetable in the redraft. He said, under the current model he is not sure petitioners are hurt by the delay of transmission to the General Assembly, but it would be to the benefit of the General Assembly to have as much time as possible for review. He said that change also could aid the petitioners because, if the General Assembly has more time to consider it, it may adopt something to possibly meet proponents' needs.

Committee member Roger Beckett asked Mr. McTigue to clarify why the proposal regarding requiring a supermajority would not be adequate. Mr. McTigue said he has no particular problem with requiring a supermajority as long as issues are resolved related to redistricting. He said votes fall on ideological lines, so currently Ohio does not have a representative General Assembly due to gerrymandering. He said that lessens the protective effect of the current requirement of a supermajority in the General Assembly.

Describing his suggested changes to Section 1c, relating to the referendum process, Mr. McTigue said there is a serious problem with going to the attorney general with a summary. He said referendum proponents have only 90 days after the law is signed and filed, and they lose up to 30 days by having to approach the attorney general's office first. So, he said, referendum proponents lose time at the beginning, and at the end because of the requirement for the electronic copy.

Addressing proposed Section 1e, dealing with challenging petitions, Mr. McTigue said this was an area where there have been many problems. He said the current provision (located at Section 1g) gives original, exclusive jurisdiction to the Ohio Supreme Court over all challenges to petitions and signatures. He said the current model does not provide for recovery of signatures, affecting the timelines for completing other tasks. He cited a recent example in which proponents had enough signatures as verified by the secretary of state, but opponents went to court because they disagreed with what the secretary of state accepted. At the same time, the proponents went to court because some signatures were thrown out. Mr. McTigue said the Supreme Court dismissed the proponents' case as premature because proponents still had enough signatures, but opponents' case was partially successful and got more signatures thrown out, causing proponents to fall below the threshold for the required number of signatures. He said, although the court ultimately agreed they had enough signatures all along, the process caused delay and cost money. He said, for that reason, he was suggesting a change that would clarify that the Supreme Court should decide the validity and invalidity of the signatures and the sufficiency or insufficiency of the petitions. He said this would make sure everything would be dealt with at the same time.

Mr. McTigue said he would like to see changes to the language adopted as a result of the passage of Issue 2 in November 2015, now provided in the redraft at Section 1h. He advocated that the ballot board decide prior to circulation whether the proposed amendment creates a monopoly. He said he also would recommend removing the language about the proposed amendment being in violation of part of the section.

Chair Mulvihill thanked Mr. McTigue for his presentation and asked if he could provide a short memorandum outlining his various suggestions for changes to the redraft. Mr. McTigue agreed to do so.

*Ann Henkener*  
*League of Women Voters of Ohio*

Chair Mulvihill welcomed Ann Henkener, of the League of Women Voters of Ohio, to present to the committee her views on possible ways to improve the initiative and referendum process. Ms. Henkener said she agrees with Mr. McTigue's recommendations, noting her experience with constitutional amendments has come in the context of redistricting reform. She said there is no reason to make the constitutional amendment process more difficult. She said it is difficult right now to get something on the ballot. She said one way to improve that situation would be to lower the number of signatures required. She noted that only California and Florida exceed Ohio in the number of petition signatures needed. She said some states have a higher percentage but a smaller population, so there is no comparison. She said a 55 percent supermajority requirement is unreasonable, but if it is adopted it should also apply to the General Assembly. She also disagreed that placement of citizen's initiatives on the ballot should be limited to certain years.

Regarding initiated statutes, Ms. Henkener said increasing the number of signatures from three to five percent defeats the benefit of having a safe harbor because knowing the legislature cannot change the statute for three to five years is not enough incentive for proponents to justify having to get so many signatures. She suggested an improvement would be to have a longer safe harbor period along with the ability to go back to the voters if a change needs to be made.

Ms. Henkener said her views on the ballot board are consistent with those of Mr. McTigue, noting her experience in working on a redistricting reform proposal in which the board rejected the ballot language at the end of a long and expensive petition gathering process. She said she was alarmed to see an article in the *New York Times* that described lobbyists meeting with secretaries of state across the country to try to affect ballot language. She said she looks at ballot language as something the secretary of state and the ballot boards should perform as part of their duty to serve voters, rather than something they do in their political party capacity. She said ballot language should not be prejudicial, or used to sway the voters, but rather a way to indicate to voters what the issue is. She said a five-member board eliminates the problem of the deadlock, but that also makes it partisan, adding the partisan nature of the secretary of state influences the partisan nature of the ballot board.

Ms. Henkener said she supports Mr. McTigue's observations about timing. She said under the current system, if someone disagrees with the ballot language, there is one chance to get the Ohio Supreme Court to review the challenge and then the ballot language comes back to the same people on the ballot board and there is no further recourse. She said this must be done at least 75 days before the election, and the board traditionally meets in August. She said by the time they meet, there is time for only one appeal.

Chair Mulvihill asked whether Ms. Henkener is suggesting a change in the composition of the ballot board, or a change in the time when the board meets. Ms. Henkener said she would like to change the composition, but said she is unsure what arrangement would be an improvement. She said there could be a requirement of an equal number of persons on the board, but then there is a deadlock. She said that issue has been raised with regard to the formation of a redistricting

commission. She said the decision regarding the ballot language should go up front so that proponents know where they stand. She said the bar is pretty high for petitioners to prove there is a problem with the ballot language as provided by the ballot board. She said she would recommend lowering the standard so that the board would be more sensitive toward neutral language.

Chair Mulvihill asked whether, if the committee were to recommend moving the ballot board review to the front end, and voters are reading the language itself, that would take care of the problem. Ms. Henkener said that would not exactly resolve the problem. She said she would like to be able to submit the language to the ballot board, allowing petitioners to get a first crack at drafting the language that is on the ballot. She said she would like for the proponents to submit language that has to be seriously considered, and that language should prevail unless there is something wrong with it.

Chair Mulvihill asked, regarding the current procedure, whether someone who is asked to sign a petition is reading a summary. Ms. Henkener said that is correct, and that the summary is provided by the attorney general.

Chair Mulvihill asked what would happen if there were no summary, and petition signers would only be looking at the ballot language. Ms. Henkener said it would be fair to review proponents' language for accuracy, but the ballot language needs to be something the proponents have written, rather than language provided by the ballot board.

Mr. Beckett asked about the statistics regarding the number of signatures required. He said, looking at the percentages, Ohio falls in the middle, with a number of states requiring ten percent or higher. Ms. Henkener said some larger states have lower percentages, and that this is related to the absolute number of signatures.

Chair Mulvihill remarked that Ohio is the third most populous state of those that have the initiative process. He wondered whether Ms. Henkener was recommending any changes to the geographic distribution requirement.

Ms. Henkener replied that the requirement of 44 counties is half of the state. She said this makes the process more difficult and more likely to need the assistance of paid petition circulators. She said most good government advocacy groups do not have a presence in 44 counties.

There being no further questions for Ms. Henkener, Chair Mulvihill thanked her for her presentation.

*Catherine Turcer, Policy Analyst  
Common Cause Ohio*

Chair Mulvihill recognized Catherine Turcer, policy analyst with Common Cause Ohio. Ms. Turcer directed the committee to a handout consisting of data compiled by the Ballot Initiative Strategy Center indicating how different states approach the preparation of ballot language. She commented that it is extremely difficult for proponents to collect sufficient signatures, and it is

disappointing when the effort falls apart at the end, as occurred with a redistricting reform effort in which she was involved. She said she would like the ballot board review to be moved to the front to address these problems early in the process. She said this gives time for some litigation and discussion. She noted there are nine states where the proponent creates the title and the summary. She said proponents should have first crack at drafting the language.

Chair Mulvihill noted one purpose of raising the voting percentage to 60 percent for constitutional amendments is that if the measure originates in the General Assembly it is vetted, whereas if the measure is by citizens there is not that same opportunity to work through issues. Ms. Turcer said in the initiative process, even if there is a disagreement, there is still a significant amount of time invested. Chair Mulvihill said he assumes proponents would not bring in people who are going to advocate against the proposal, as would happen in the legislature. Ms. Turcer disagreed, saying advocacy groups put out public language and solicit comments from all sides of an issue. She said there is much give and take. Ms. Henkener agreed, saying when she was involved in the redistricting reform effort, her group discussed their proposal with every elected official who would talk to them.

Rep. Cupp observed that constitutional requirements cut both ways, and party control may change. He said it may be hard to be neutral, but that one must be careful not to tilt things strongly in one direction or another.

Ms. Turcer said that is why she likes voters to be part of the conversation. She said the citizen initiative allows everyone to hear from different voices. She said it is hard to look at this and think “how do we do this in a way that honors the voters.” She said it is better for the voters for proponents to be able to take care of the ballot title and summary at the front end rather than at the back end.

Chair Mulvihill expressed that the committee is taking the long view and not trying to respond to a particular political issue. Rather, he said, the goal is to make the process easier and better for everyone without regard.

Representative Mike Curtin, who was in the audience, said there is no question that the ballot board has done political things since its creation in 1978, including adopting prejudicial language and sending proponents back to the drawing board, but the suggestion of giving proponents an upfront advantage would be “a dire mistake.” He agreed that it would be useful to improve the ballot board process, but that the initiative industry has deep pockets, and giving a benefit of the doubt to proponents will result in seeing things embedded in Ohio law that would not be desired. He noted that, in the instance of Issue 3 in 2015, the issue was not specifically marijuana legalization, but rather the problem with embedding a business plan in the constitution. Rep. Curtin said the elected officials in the General Assembly and on the ballot board need to take ownership of that language, and much can be done to improve how the ballot board works and how to have language that improves the process. He said he cannot agree with giving the benefit of the doubt to proponents.

Chair Mulvihill asked whether Rep. Curtin was recommending the improvements occur legislatively or constitutionally. Rep. Curtin answered that this probably could be done legislatively.

There being no further questions or comments, Chair Mulvihill thanked Ms. Turcer for her presentation.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:22 p.m.

**Approval:**

The minutes of the December 15, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the January 12, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JANUARY 12, 2017

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 1:43 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Cupp, Jordan, and Readler in attendance.

#### **Approval of Minutes:**

The minutes of the December 15, 2016 meetings of the committee were approved.

#### **Presentations and Discussion:**

Chair Mulvihill announced the committee would be continuing its consideration of the initiative and referendum sections of Article II. He said additional edits to the draft resulting from last month's presentations and discussion were prepared and would be described by Senior Policy Advisor Steven H. Steinglass and Executive Director Steven C. Hollon. He added that Attorney Don McTigue also had ideas for improving the draft and was present to assist in the committee's ongoing review.

Chair Mulvihill first recognized Mr. Steinglass, who described the changes to the draft that had circulated at the last committee meeting.

Mr. Steinglass said the revisions were designed to accomplish several goals. First, the new draft places a constitutional foundation under the statutory requirement that initial petitions with 1,000 signatures be filed with the attorney general for proposed amendments and proposed statutes so that the attorney general can determine whether the summary is a "fair and truthful" statement of the proposal. He said the draft also makes explicit that the statutory one amendment/separate vote

requirement applies to proposed constitutional amendments. Mr. Steinglass said the new draft continues the current policy of allowing the ballot board to determine the one amendment/separate vote issue at the beginning of the process, but moves to the beginning of the process the ballot board's determination of whether the proposal creates a monopoly, determines a tax rate, or confers a special benefit. Mr. Steinglass said, currently, this determination takes place after the petition signatures are verified.

Mr. Steinglass continued that the new draft requires proponents to include in their initial petition a proposed title and explanation, and requires the ballot board to review the proposed ballot title and proposed explanation at the start of the process. He said the new draft expressly gives the Ohio Supreme Court exclusive original jurisdiction over determinations concerning the fair and truthful summary, the one amendment/separate vote requirement, the monopoly determination, and the validity of the title and explanation. He said the draft indicates that the secretary of state's verification of petitions and signatures includes not only their sufficiency but also their validity, invalidity, and insufficiency, and that Ohio Supreme Court review reaches all these determinations. He said the new draft additionally applies the new requirements for the constitutional initiative petition to the statutory initiative process.

Underscoring these points, Mr. Steinglass said there is currently an initial petition requirement that has been in the statutes since the 1920s but does not have any explicit constitutional authorization. He said if the new draft is to front load the ballot board determination, it becomes more important to give the initial part of the process a constitutional foundation. He added that the draft now takes the one amendment/separate vote requirement that is currently in Article XVI, and makes it applicable to citizen initiated amendments. He noted that the revised code makes the requirement applicable to initiated amendments, and there is language in the constitution that arguably bootstraps it in, but the new draft includes it in the constitution.

Chair Mulvihill asked the committee for its thoughts on the new draft.

Representative Bob Cupp asked if the statutory requirement of submitting to the attorney general an initial petition along with 1,000 signatures is still in effect in the latest version. Mr. Steinglass agreed that this is still the case, adding that the edit is designed to put that requirement in the constitution, and not to change anything about that procedure.

*Donald J. McTigue, Attorney  
McTigue & Colombo LLC*

Chair Mulvihill introduced Mr. McTigue, an attorney with McTigue & Colombo LLC, who was present to offer some proposed revisions to the draft and to describe his suggestions.

Mr. McTigue said that, since his appearance at the December 2016 committee meeting, he had given more thought to the issue of frontloading the ballot board review process. He said he made redline changes to the draft he submitted previously. Comparing his edits with those undertaken by staff, he said the drafts are essentially the same in terms of moving the review process up front, but that he wanted to clarify some of the terms that are being used. He said there are four different

terms describing different written documents: the summary, the ballot title, the ballot language, and the explanation.

He described the ballot language as being what voters see when they go into the voting booth, and that the ballot title is the heading that appears above the ballot language. He said the ballot language and ballot title are not on the petition, and that, by statute, the secretary of state decides the title. He said, by constitutional provision, the ballot board decides the ballot language.

Mr. McTigue said the summary is a statutory creature, and is connected with the requirement of getting 1,000 signatures. He said, by statute, proponents must have a summary to submit to the attorney general, who then determines whether the summary is fair and truthful. If that requirement is met, the proponents have to print on the face of the petition that it includes certification by the attorney general. He said there is a statutory process for challenging that in the Supreme Court. He said if the ballot language and title is to be moved to the front of the process, he suggests that the ballot language and title can essentially take the place of the summary. He said the proponents still would have to get 1,000 signatures, but instead of a summary they would be proposing the ballot title and the ballot language, and submitting them to the ballot board, rather than to the attorney general. He said the ballot board can disregard the summary if it wishes. He said there are standards the Supreme Court has developed for what makes ballot language fair and accurate, adding if there is to be a summary up front, make it the ballot language and title, and say that is what has to be proposed by the proponents with 1,000 signatures before circulating the main petition. He said he proposes that there then be a short period where it could be challenged if someone does not like it, the court then makes a decision, and that is what gets printed on the face of the petition. He said his draft replaces the summary with the ballot language, and adds the date of certification. He said that is the primary difference between the current draft and what he did.

Commenting on the staff edits to the draft, Mr. McTigue said he sees no reason to go to the attorney general. He said there is also no need for a 300 word argument or explanation. He said he would recommend getting rid of the summary requirement and require submission of proposed ballot language instead. He said he would recommend keeping the requirement that the ballot board prescribe the ballot language. He also suggested adding some tight time frames for filing a challenge with the Ohio Supreme Court. He said the one subject/separate vote requirement is purely statutory, and because that determination is made up front by statute, it should be rolled into that same process.

Mr. McTigue said the draft should reinstate a ten-day cure period in the situation in which the initial petition as certified by the secretary of state has insufficient signatures. He said his draft builds that cure period into the process, for use where the secretary of state's initial determination is that proponents do not meet one of those thresholds. He said he believes this change works with the overall timelines but said he would double check that. He said the constitution currently allows ten days if the signatures fall below initially, or if the Supreme Court knocks out some of the signatures. He said the initial staff version of the proposal eliminated that provision, so he put it back in.

Chair Mulvihill thanked Mr. McTigue for his work and asked, as a practical matter, where in the process the constitutional provision is actually drafted, and by whom. Mr. McTigue said that

would be the full text of the proposed amendment that is drafted by the proponents and submitted with 1,000 signatures. Chair Mulvihill asked whether the ballot board plays a role regarding the text that is going into the constitution. Mr. McTigue said the ballot board has no authority to do that.

Mr. Hollon asked whether there should be a process for the ballot board to work with the proponents to suggest changes, so there is constitutional consistency. Mr. McTigue said there are a couple of ways to deal with that, noting many city charters provide that amendment proponents should submit proposed language to the city law director and get feedback. He said the General Assembly could enact legislation to require the attorney general's office to review the language, and the constitution could require that legislation to be enacted. He said the ballot board could be the entity charged with that task. He said, right now, the analogous situation is that the attorney general reviews the summary, and may reject it if it is not fair and truthful. At that point, the proponents can either challenge that decision in court, or they can get another 1,000 signatures and start over. Something like that could happen as well when substituting ballot language instead of a summary.

Mr. Steinglass asked whether the 300 word limitation applies only to arguments or whether it also applies to the explanation. Mr. McTigue said in the past it has been a 300 word limit for each, but the preference is to provide fewer words.

Mr. Steinglass noted that the full text of the constitutional language is in the initial petition and in the publication. He asked whether the text of the summary drafted for the attorney general is also included in the publication. He wondered about the function of the summary that goes to the attorney general.

Mr. McTigue said it is purely a statutory requirement that was enacted because people do not read the full text. He said the expectation is that the voters would read the summary on the front of the petition because they would not read the entire proposed amendment or law. Mr. McTigue said the summary has tended to get longer over the years because the attorney general may reject the summary for leaving out information.

Mr. Steinglass noted that if the summary that goes to the attorney general is also the explanation that goes on the ballot, there might be tension in terms of the number of words. Mr. McTigue said if the ballot language is moved to the front of the process, the ballot language is what voters will see both on the petition and in the voting booth. So, he said, the question becomes whether there is a need for the summary at all. He added there may not be a need for 300 word arguments printed in newspapers, since many people do not read the arguments.

Mr. Steinglass wondered if there is a way to avoid petitions being sent back multiple times. Mr. McTigue said this does not happen most of the time, but in one instance it was because the proponents were not told all the objections at the beginning. He said the more common problem with petitions is that the proponents leave information out, or that the summary describes what the provision will do, which is really an argument and not a summary.

Chair Mulvihill asked whether Mr. McTigue's draft removes the attorney general from the process altogether. Mr. Mctigue answered affirmatively, but said the attorney general will defend the ballot board if the ballot board is sued.

Rep. Cupp noted the draft's requirement that the attorney general examine the summary, wondering if that summary must be included with 1,000 signatures or whether the summary goes to the ballot board before those signatures are obtained. He also wondered if there is an opportunity for someone other than the proponents to challenge the determinations of the attorney general or ballot board in the Ohio Supreme Court.

Noting his proposed language is different from that provided by staff, Mr. McTigue said if the provision does not indicate who may file a challenge, the Supreme Court will allow any elector of the state of Ohio to do so. He said, as a general rule, the Court has held if someone is a qualified elector who would be entitled to vote on the issue, that is sufficient to provide standing. He said that he did not specify who could file a challenge in his draft. Rep. Cupp suggested that there should be language allowing parties who may be against a proposal to object.

Mr. Kurfess, noting the three decisions that are to be made by the ballot board in subdivision (B)(2) of the draft, said each of these determinations should be phrased so that the answers are consistent – either three “yes” answers or three “no” answers. Mr. Kurfess said a second point is that an amendment, to be fully implemented, might require changing two or three different sections of the constitution. He noted that this does not necessarily mean the amendment violates the one amendment rule because there is still only one goal being accomplished.

Mr. McTigue commented that the ballot board and the Supreme Court both have said that on the one subject requirement that they apply the same standards that are applied to the legislation in the one subject rule. As long as the sections are cohesively interrelated it should be okay to amend them simultaneously.

Chair Mulvihill asked whether committee members have concerns about removing the attorney general as the first repository and giving it straight to the ballot board.

Mr. Readler said he is not sure he understands the justification for that, wondering if the reason is to streamline the process.

Mr. McTigue said the goal of the revision was to move up front the challenges to the ballot language. He said one could keep challenges to ballot language where it is right now, but all that does is create pressure on election officials to get ballot language decided in time to print ballots. But if there is agreement to move that review to the front, the ballot language should just replace the summary requirement because the ballot language is a summary. Right now there is a summary process at beginning and another, called ballot language, at the end. His suggestion would streamline the petition process. Mr. McTigue said the attorney general is only a part of the process as a matter of statute, and only with regard to the 1,000 signature, summary petition requirement. He said the ballot board could do that too. Or, he said, the attorney general could be the one to approve the ballot language.

Mr. Readler said the change takes the attorney general out of the process when the legislature has said the attorney general should be involved. He said he is anxious about changing that requirement.

Mr. McTigue explained that the attorney general comes out because his draft eliminates the summary requirement. Mr. McTigue said the attorney general is legal counsel to the Ohio ballot board; the attorney general's office could send an assistant attorney general to give legal advice on whether proposed language meets constitutional standards. Mr. McTigue said the attorney general may not mind being taken out of the process as this is not one of that office's core functions.

Chair Mulvihill explained that if the ballot language is to be approved at the beginning, there would be no need to duplicate the efforts and require a summary, which is essentially the same thing.

Mr. Readler said he appreciates the concern about the ballot board considering the ballot language at the end of the process, but noted that there might be some value to the current procedure, in which, during the time between the initial petition and the final review by the ballot board, there is development of issues, and public attention drawn to the topic, allowing public officials to refine their views and weigh in on the matter.

Mr. McTigue said the attorney general's office is legal counsel to the ballot board, and, if the committee would like, the draft could be revised to require the attorney general to provide legal counsel to assist the ballot board on the front end.

Mr. Kurfess asked if there has been an occasion when the attorney general and ballot board were taking inconsistent approaches in the language they are applying. Mr. McTigue said not that he is aware of. Mr. Kurfess then asked if there has been exit polling which included the question of whether voters had to read the language of the issue before they voted. McTigue said he is not aware of such polling.

Rep. Cupp suggested it would be helpful to the committee to have before it examples of a summary and ballot language at the next meeting. Chair Mulvihill agreed and suggested those items could be provided from the ballot issues on the November 2015 ballot.

Chair Mulvihill thanked Mr. McTigue and staff for their work on the issue, and indicated the committee would continue to consider and discuss this topic at the next meeting.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:46 p.m.

**Approval:**

The minutes of the January 12, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the March 9, 2017 meeting of the committee.

*/s/ Dennis P. Mulvihill* \_\_\_\_\_  
Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess* \_\_\_\_\_  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 9, 2017

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:05 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, and Jordan. At the invitation of the chair, Senator Vernon Sykes participated as an ex officio non-voting member of the committee.

#### **Approval of Minutes:**

The minutes of the January 12, 2017 meetings of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by thanking staff for the new draft, titled "V7," that was before the committee for review. He said the committee's goal has been to make the initiative and referendum sections of Article II more user-friendly and understandable, noting that, in the current sections, sentences go on for paragraphs without punctuation. He said the committee has succeeded in this goal, and has benefited from input from the League of Women Voters and other interested groups and individuals who have suggested ways to structure the process to make it more modern. He said this has been done through allowing the General Assembly to enact law allowing the signature-gathering process to be conducted electronically. He added that a structural improvement has been to remove the supplemental petition requirement in the statutory initiative process.

Chair Mulvihill continued that the committee has recognized that the statutory initiative has been underused, and the constitutional initiative has been overused. He said the committee has sought a way to discourage people from dropping their business plans into the constitution. He

summarized some of the changes as being that the committee has removed the supplemental petition in order to streamline the statutory initiative, to drop the signature requirement from six to five percent, and to create a “safe harbor” provision protecting an initiated statute from changes by the legislature for a certain period of time. He said there is not much history in Ohio of enacted statutory initiatives, with the process being used only three times in a little over one hundred years.

Referencing the constitutional initiative process, Chair Mulvihill said the committee’s changes have been to require a 55 percent voter approval rate, making it slightly more difficult to pass a constitutional initiative amendment. He said the committee also cleaned up the timing issues, widening the time frame for collection of signatures, and requiring initiated constitutional amendments to be placed on the ballot in even years. He said there is a vast difference in the number of voters in odd-year elections versus even-year elections, and the committee considered it important to have the maximum number of voters weigh in on whether to amend the state constitution.

He said the committee wanted to encourage the statutory route, making it easier to amend the Revised Code by initiative. He said there was wide consensus within the committee for the elements of the draft.

Committee member Janet Abaray commented that there is an additional conceptual issue she had raised that she would like to see included in the draft. She described it as a need to prevent proponents from creating amendment language that would state the amendment supersedes every other part of the constitution. She noted that a speaker who had appeared before the committee had described this type of language as being a way for proponents to protect their amendment from ever being challenged or repealed. Ms. Abaray said she suggested language that would prohibit an initiative from containing a provision purporting to give it precedence over any other statute or constitutional provision.

Addressing Ms. Abaray’s suggestion, Senator Kris Jordan noted that constitutional amendments would always have precedence over the Revised Code, questioning whether it would be possible to prohibit the problem Ms. Abaray was describing.

Ms. Abaray agreed with that premise, but said that occurs by operation of law. She said her concern is that proponents of an initiative should not be able to use language that will tie the hands of the court.

Chair Mulvihill said the committee did discuss this at a previous meeting and agreed it is an important point. However, he said it would be difficult to find language to prevent proponents from trying this tactic because every initiated constitutional amendment or statute changes something. He suggested the committee could revisit the issue after considering the new version of the draft.

Chair Mulvihill then directed the committee to the V7 draft. He described changes he would like to see to V7. First, he indicated that the draft refer to “electors,” without calling them “qualified electors.” He noted additional revisions, including allowing proponents to submit at their discretion a suggested title, explanation, and ballot language, and a clarification that a proposed amendment must be approved by at least 55 percent of the electors.

Concluding his review of the changes to V7, Chair Mulvihill complimented the committee, saying it has worked in a nonpartisan manner to make the language better for everyone.

Vice-chair Charles Kurfess, noting the draft's requirement that an initiated amendment or statute go into effect 30 days after it is approved, asked what date constitutes the date of approval. He asked what would be the effective date in the case of a recount.

Chair Mulvihill said the approval date would be when the secretary of state certifies the election results.

Mr. Kurfess noted that certification does not occur until at least ten days after the election, wondering if there should be some process by which the secretary of state takes some action, or by litigation is precluded from taking some action, to certify the results.

Chair Mulvihill agreed that is a good question. Ms. Abaray suggested that it would be better to keep the 30-day requirement, as it is language that is in the current sections. She said if the committee changes that, it may be adding problems that do not currently exist.

Chair Mulvihill agreed, noting that the committee is running out of time to complete its work. Mr. Kurfess suggested the committee might wish to consult with the secretary of state so that question could be answered if it comes up.

Senior Policy Advisor Steven H. Steinglass noted he has never seen a problem with the effective date for initiated amendments. He said legislatively-initiated amendments become effective when approved, unless they say otherwise.

Senator Vernon Sykes noted that, even with a recount, there is a prescribed time period for taking action before the secretary of state certifies the results.

Having concluded his description of changes to the circulating draft, Chair Mulvihill said he would like to work with Committee member Roger Beckett, Commission Counsel Shari O'Neill, and Mr. Steinglass in finalizing the draft. He said the committee has spent four years on the project, and could spend another four years, but there is a benefit to finality. He said the redraft has been a good effort on the part of the committee.

Ms. Abaray agreed that the committee had done an excellent job on the draft, but said she would like to formally move that the committee consider a way to prevent the "trump card" language about which she expressed concern. She said she worries that someone will introduce a provision that would overcome the balancing that normally is done through the judicial review process.

Chair Mulvihill said, while he understands the concern, he worries about the execution of a plan to prevent it in terms of potentially obliterating the initiative process altogether.

Mr. Beckett said the concern is that such a provision would essentially limit someone's ability to amend the constitution.

Mr. Steinglass agreed with Ms. Abaray that proponent language such as she described is part of the arsenal of those who are professionally involved in the initiative industry. He said it involves using superseding clauses to resolve potential conflicts at the beginning, instead of letting the courts sort it out. He said it is hard to get a handle on the problem, which does not occur when a constitutional provision conflicts with a statute, but rather only applies when conflicting potential provisions are concerns. He said the only way he could see to address it would be to place a limitation on what goes on the ballot.

Chair Mulvihill suggested that if the committee agrees on its latest version, it can send a cover letter to the General Assembly describing this concern. Then, he said, the General Assembly can look into it and would have more time to do so. If the legislature finds it is a problem, a solution could be placed on the ballot quickly.

Sen. Sykes said he basically agrees, but thinks the people are the final arbiters and would record their views at the polls. He said having a provision to try to fix that problem would result in prohibiting an issue for voters to even consider. He said he is not sure how to solve the problem without taking away the citizens' initiative right.

Chair Mulvihill added he worries about the potential message that the public's initiative rights are being taken away.

Mr. Kurfess asked whether the sense of the committee is that it had met its goal of encouraging people to use the statutory initiative as opposed to the constitutional initiative. Chair Mulvihill said only time will tell whether that goal has been met.

Mr. Beckett said the calibration has been significant, noting that, by requiring even-year elections and increasing the percentage, the committee has cleaned up the process, reduced the statutory initiative procedure to one round of petitions, and put in a safe harbor. He said he does not think anything stronger could be done on the initiated statute side, noting that, for example, increasing the approval rate to 60 percent would create a barrier that would be opposed by the public.

Ms. Abaray asked how the committee should present its conclusions, wondering whether there is a rationale that could be expressed that, based on prior constitutional amendments, the committee wanted to increase the threshold to encourage people to consider the statutory initiative. She wondered if the committee should explain why it picked the percentage as 55 percent.

Chair Mulvihill said the committee spent time talking about what the number should be, saying members had a gut feeling 60 percent would be too far. Instead, he said, the consensus was that 55 percent seemed like it was more difficult but not too difficult.

Mr. Beckett said the strongest argument relates to the number of people who vote in off-year general elections. He said if the Ohio Constitution is to be changed, it should not be in elections where fewer people are going to show. He said the even-year election criterion is the real key.

Ms. Abaray said the committee's rationale should be to encourage the maximum number of voters, and to encourage that there be a strong majority, but not an insurmountable goal. She

said this number seemed to be one that comfortably would have included all the prior amendments. She said the committee should reference that data.

Chair Mulvihill agreed, saying this would be in the report. He said the committee would get a final version emailed in the next few days, and that this would be the committee's final draft.

Sen. Sykes said he is sensitive to Ms. Abaray's issue. He said ballot initiatives are difficult; it only takes a little to be unsuccessful. He said an attempt to supersede other issues would be difficult to get through. Chair Mulvihill noted that the ballot board will write the language, so perhaps there is a built-in buffer.

Chair Mulvihill said he would like to have a report and recommendation for the April meeting, and that he would provide a new draft incorporating the changes discussed.

Mr. Steinglass said if committee members have additional suggestions, they could be emailed to Chair Mulvihill for incorporation into the final draft and report.

Chair Mulvihill requested that committee members reach out to fellow Commission members to explain the committee's position and describe how it has sought to achieve its goals. He said he thinks it is important to take the pulse of the members to see what they may be thinking.

Sen. Jordan asked if a one-page description of the changes could be provided to allow committee members to be able to quickly describe what is being recommended. Mr. Beckett said he had put together such a document and would share it with the committee.

Chair Mulvihill thanked members of the League of Women Voters, who were present in the audience, for their participation in the process.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:07 p.m.

**Approval:**

The minutes of the March 9, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the April 13, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, APRIL 13, 2017

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:19 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Holmes, and Jordan.

#### **Approval of Minutes:**

The minutes of the March 9, 2017 meetings of the committee were approved.

#### **Reports and Recommendations:**

*Article II, Sections 1 through 1i, 15 and 17  
(Constitutional Initiative, Statutory Initiative, and the Referendum)*

Introducing a report and recommendation for change to the initiative and referendum sections in Article II, Chair Mulvihill provided an overview of those changes. He specifically described proposed changes to the statutory initiative, including making the process more user-friendly by eliminating the supplementary petition, creating a five-year safe harbor in which initiated statutes can only be amended or repealed by the General Assembly with a two-thirds supermajority vote, and decreasing the number of signatures required to initiate a statute from six percent to five percent but requiring the signatures to be submitted at the beginning of the process. He continued that the recommended changes create constitutional authority for the initial 1,000-signature petition presently in the Ohio Revised Code for the initiative and the referendum, and creates constitutional authority for the determination by the attorney general that the summary of the initiative and referendum is “fair and truthful.”

Regarding the constitutional initiative process, Chair Mulvihill described that the recommendation is to increase the passing percentage for proposed initiated constitutional amendments from 50 percent to 55 percent and permits proposed initiated amendments to be on the general election ballot only in even-numbered years. He added that the proposed changes would apply the one amendment requirement for General Assembly-initiated constitutional amendments to initiated constitutional amendments. He said the recommendation also clarifies the dates when proposed statutory and constitutional initiatives may be submitted to the voters. Finally, he said the committee is recommending a provision that would permit the General Assembly to modernize the signature-gathering process by allowing signatures to be gathered electronically, and a provision requiring proponents to use gender-neutral language.

Chair Mulvihill then asked committee members for questions and comments regarding the report and recommendation.

Senator Kris Jordan asked if the committee is recommending a way for proponents to remove a proposed statutory change from the ballot if the General Assembly enacts related, but not identical, law. Chair Mulvihill said the recommendation is that if the General Assembly enacts law that makes changes to the proponent's initiative, the statutory initiative goes to the ballot unless the proponents decide to remove it. Senior Policy Advisor Steven H. Steinglass said that "off ramp" concept is currently in the revised code.

Committee member Janet Abaray asked whether, if the proponent wants to go forward even though the General Assembly has passed a law, the ballot board creates a new description of the law. Chair Mulvihill said that the initiative would go on the ballot as presented.

Representative Robert Cupp asked about the requirement that an initiative contain only one proposed constitutional amendment. He said he is not sure what that means. Mr. Steinglass explained that there is a one-amendment jurisprudence that looks at the relationship between the different pieces of the proposed amendment to decide if it really is one amendment.

Chair Mulvihill said the question arose whether the recommendation should be presented in separate parts, indicating that an editorial in the *Columbus Dispatch* had suggested separating the recommendations for the constitutional initiative from those for the statutory initiative. He said he does not agree because the parts are connected. Vice-chair Charles Kurfess agreed.

Chair Mulvihill said a controversial recommendation is the requirement of 55 percent passage rate and the even-year ballot requirement for constitutional initiatives. He noted statistics from the Ohio Secretary of State indicating that in an odd-numbered year there is a drop off of a million-and-a-half votes. He said one committee goal was to have more people considering the constitutional aspect than not. He said they decided it is better to have more people to consider a proposal to change the constitution.

Committee member Roger Beckett agreed it is important and appropriate to allow more people to weigh in on constitutional questions.

Speaking from the audience, Ann Henkener, director and legislative director of the League of Women Voters of Ohio, asked why the recommendation is for a one-year span for voters to submit signatures. She noted that proponents who cannot make the May 1 cutoff date would

have to wait an entire year, during which time the signatures they already obtained would grow stale. She explained that some grass roots organizations lack the funding to get all of their signatures in the time frame, but if they miss the May 1 deadline they cannot submit signatures during the one year after that. She said she does not see a public policy reason why they would not be permitted to submit those signatures after May 1.

Mr. Beckett explained the reason that the beginning date was included was the committee was trying to lay out a much clearer process and thought there ought to be a beginning date. He said he does not see a problem with her recommendation to allow signatures to be submitted after May 1. Chair Mulvihill agreed, saying the committee talked about not having a beginning date. He said he saw no objection to Ms. Henkener's suggestion. Mr. Beckett agreed, indicating the change is reasonable. There being no objection by the committee, Chair Mulvihill said that requirement would be removed.

Representative Glenn Holmes asked about the requirement that the ballot year for introducing a statutory initiative will be determined by when the petitions are submitted. Mr. Steinglass said the point of this requirement is to get the proposal in front of the General Assembly. Rep. Holmes said the General Assembly should be able to hear things when appropriate or when necessary. Mr. Steinglass said for the process to be triggered the petitions have to be submitted by February 1, which gives the General Assembly the 120 days until the last day of May to act. He added, if the General Assembly does not act the proposal goes to the ballot unless it is pulled back. So, he said, the dates are appropriate because they address a slightly different issue.

Regarding proposed Section 1b(F), Rep. Cupp asked why the date could not just be the first day of February, because the legislature acts by the first day of June. He said, if the proponent wants to submit in an even year, then the proponent would do so before February of that year. Chair Mulvihill said there may not be enough time with the built-in 120 days. Rep. Cupp suggested, and the committee agreed, that proposed Section 1b(F) could be altered to remove the requirement that the statutory initiative proponent file the petition with the secretary of state after the last day of May.

The committee also discussed Section 1b(G) and (H), specifically whether the relevant date should be the date the secretary of state transmits the petition to the General Assembly or the date the General Assembly receives it. The committee agreed that the relevant date should be the date the secretary of state transmits the materials, and suggested the word "filing" in division (H) should be changed to "transmission."

Mr. Steinglass said he would review these questions and suggestions in conjunction with the relevant time periods, and would suggest appropriate changes throughout the redraft.

Chair Mulvihill indicated the draft before the committee is labeled "9a," meaning that the committee has gone through the redrafting process more than ten times. He said what the committee is giving the Commission is a report and recommendation. He said, while the proposed language is provided, it is not binding on the Commission or on the General Assembly, which will take a fresh look regardless.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:27 p.m.

**Approval:**

The minutes of the April 13, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the May 11, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill  
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess  
Charles F. Kurfess, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MAY 11, 2017

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:07 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Holmes, and Sykes.

#### **Approval of Minutes:**

The minutes of the April 13, 2017 meeting of the committee were approved.

#### **Reports and Recommendations:**

*Article II, Sections 1 through 1i, 15 and 17  
(Constitutional Initiative, Statutory Initiative, and the Referendum)*

Chair Mulvihill began the meeting by announcing that the committee would be hearing a second presentation on the initiative and referendum sections of Article II. He said some amendments have been introduced that the committee would be addressing. He thanked Shari L. O'Neill, interim executive director and counsel, and Steven H. Steinglass, senior policy advisor, for their work assisting the committee. He also thanked committee members, particularly noting the success of the committee in leaving partisan politics out of the meetings. He said the committee has made policy judgments, but that they were made in the spirit of preserving the people's right to use ballot initiatives, and did require some give and take among the members. He said, in aggregate, the committee's work reflects the collective wisdom of those judgments and those compromises.

Describing the existing sections of Article II, Chair Mulvihill said the initiative and referendum provisions contain some of the most confusing and difficult-to-understand language in the constitution. He said the committee's work has been to modernize, streamline, and clear out the density contained in those current provisions.

He continued that the committee has reorganized and rewritten the sections to accomplish its goals. He said the recommendation is the result of four-and-a-half years, during which the committee heard dozens of presentations, received much public comment and input, and had strong bipartisan support for the changes. He said the recommendations were approved by the committee in a unanimous vote.

He said, from the outset, the committee was committed to protecting the strong history of provisions that allow Ohioans the right to initiate laws and constitutional amendments. At the same time, he said, "we have 105 years of history to see what has worked and what has not."

Summarizing the committee's work, Chair Mulvihill said the committee had a sense the constitutional initiative has been abused over the years, while the statutory initiative has been underutilized. He observed that, since 1913, there have been 69 citizen-initiated constitutional amendments submitted to the voters, with 14 in the last 16 years. He said, of the 69, 18 were approved by the voters, or 26 percent of the time, with the General Assembly having 154 submitted to voters, with 106 approved, for a total of 68.8 percent. He noted that Ohio currently has the tenth longest state constitution in the country, in terms of the number of words.

Since 1913, he said there have only been 12 statutory initiatives submitted to the voters, with only three passing, and only one since 1949. He explained that this means that when the initiative process is used, 85 percent of the time the petitioners use the constitutional route. He said this has resulted in many concepts being implanted, or attempted to be implanted, in the constitution that would be better served being in the Ohio Revised Code.

Chair Mulvihill said the committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

He said the committee's philosophy was that the state constitution exists to establish the basic framework of government; that there are three branches of government and their relationship to one another; the relationship between state and local governments; and the relationship between citizens and government, primarily through the Bill of Rights.

He continued that what have emerged lately are initiated amendments to the constitution that are inconsistent with the purpose of the constitution. He said, without commenting on the merits of any of these items, but only their placement or attempted placement in the constitution, there has been a trend of placing in the constitution topics such as casino gaming, including the specific land plots for that purpose, age limits for judicial office, smoking bans, minimum wage, treatment in lieu of incarceration for drug offenders, and marijuana legalization, including reference to specific land plots.

He said irrespective of whether someone would support or oppose any of these issues, the committee felt these kinds of initiatives do not really belong in the constitution but rather in the Revised Code. So, he said, the committee's work, in addition to modernizing and making the provisions readable and understandable, was designed to encourage petitioners to take the statutory, rather than the constitutional, route when undertaking the initiative process.

He said the committee also had a goal of reducing the influence of politics and political gamesmanship that occasionally impair the abilities of citizens to get their petitions to the ballot.

He summarized the recommendations as follows:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;
- Increasing the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;
- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather the hundreds of thousands of signatures that are required;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

Chair Mulvihill said the committee strongly believes that, on balance, the suggested changes create a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protect the rights of petitioners to bring their ideas to the voters and reduce the potential for political interference with that right; allow constitutional amendments to be

considered by more voters, knowing the significant drop-off between even and odd year elections; and encourage petitioners to use the statutory process, rather than placing in the constitution issues that belong in statutory law.

Chair Mulvihill said the committee considers the proposals to be in compliance with the single subject requirement because the subject would be “reforming the initiative process.” He noted that the committee received last-minute proposed amendments to the re-write of the initiative which will be considered. However, he noted those proposed amendments are not to the report and recommendation and do not substantively change the recommendations in the report. He emphasized the technical conveyance to the Commission is the report and recommendation rather than the re-write.

Chair Mulvihill recognized Senator Vernon Sykes for the purposes of describing the proposed amendments. Sen. Sykes invited George Boas, deputy chief of staff for the Senate Democratic Caucus, to review the amendments with the committee.

Mr. Boas directed the committee’s attention to the first amendment, titled “Adding Timeframe for Attorney General Action.” (Attachment A) He said the amendment establishes a time frame for the attorney general to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. He said this proposed amendment clarifies how long the attorney general has, saying it is ten days. That requirement is currently in statutory law.

Committee member Janet Abaray asked if this amendment would cause any problem, specifically, whether the fact it was not included in the previous draft was intentional. Chair Mulvihill said it does not create an issue, and Mr. Boas said that this is the current process according to the relevant statute. Steven H. Steinglass, senior policy advisor, commented that the failure to include it was a drafting oversight, and indicated that including it is a good precaution. Ann Henkener, director and legislative director of the League of Women Voters of Ohio, noted that she had submitted comments to the chair, and that the subject of this proposed amendment was part of her comments. Mr. Boas said the next three proposed amendments also are based on Ms. Henkener’s comments.

Mr. Boas continued, describing a second proposed amendment titled “Petition Requirements Conflict Correction.” (Attachment B) He said this amendment would remove language within proposed Section 1d(A) referencing a “summary approved by the attorney general,” and substituting it with the phrase “title and ballot language prescribed by the ballot board.” He said the reason for this is that, because the ballot board review is now front loaded, the amendment places that review as part of the initial petition process. He said the reason for the change is that it makes sense to have the ballot language be part of the petition process.

Describing the third proposed amendment, titled “Annual Deadline to File a Proposed Initiated Statute,” (Attachment C) Mr. Boas indicated that this change would replace February with April, and June with July, thus delaying by two months the deadlines for an initiated statute. He said this would give petitioners more time to perform all the necessary tasks to get an initiated statute on the ballot.

The fourth proposed amendment, titled “Annual Deadline to File a Proposed Constitutional Amendment,” replaces the deadline in June with a July deadline. (Attachment D)

Ms. Henkener noted that the summary needs to be part of the original petition with 1,000 signatures, but the current provision in Section 1d is different.

Ms. Abaray asked whether Mr. Mulvihill is comfortable stating these changes do not change the report and recommendation. Mr. Mulvihill said he reviewed the proposed amendments along with committee member Roger Beckett and Mr. Steinglass, and their collective view is that these changes work.

Sen. Sykes separately moved to adopt amendments numbered 1, 2, 3, and 4, with Mr. Beckett seconding those motions. There were no objections to adopting the amendments.

Mr. Mulvihill asked for discussion on the report and recommendation.

Representative Bob Cupp observed that the re-write, at various points, alternates between the use of the word “shall” and the word “may.” He wondered whether a revision was in order to create consistency. Chair Mulvihill said the point was to give petitioners an option to submit language to the ballot board at their discretion.

Mr. Steinglass said there are areas of the re-write where drafting could be improved. He acknowledged, however, that there will be edits undertaken when the General Assembly takes up the matter and those types of issues can be corrected at that time.

Chair Mulvihill noted that the first sentence of the report and recommendation needs to match with the title of the report.

He also noted an issue with the first line of the second paragraph, wondering if it should reference “Section 17.” Mr. Steinglass said the committee had to address a couple of issues in the latter part of Article II that were buried in the initiative and referendum. He said the change does not affect the substantive policy.

Mr. Steinglass commented that the committee has not yet addressed Article XVI.

Mr. Beckett commented that the report and recommendation will be reviewed before it leaves the Commission, allowing technical issues to be corrected.

Chair Mulvihill asked for a motion to approve the report and recommendation. Ms. Abaray so moved, with Mr. Beckett seconding the motion. A voice vote was taken and the motion passed.

Complimenting Chair Mulvihill, Mr. Kurfess said the ponderous work of the committee to meet exactly what it set out to do is in large part to Chair Mulvihill’s commitment. He thanked Chair Mulvihill not just for getting everyone involved, but in giving his own personal time, study, and input. He said “I think that we can be confident in what we have done and a sense of pride. I want to personally thank you for your effort and I hope it will be received appropriately by the General Assembly.”

Chair Mulvihill thanked Mr. Kurfess for his compliment and for his help.

Mr. Kurfess also thanked staff for its assistance.

Sen. Sykes said he agrees with Mr. Kurfess that the committee has done a lot of work. He said, reviewing the current budget, he does not believe that the legislature acknowledges or appreciates the work of the committees, but that should not take away from the efforts of this committee and its leadership.

Chair Mulvihill then called for a roll call vote on the motion to approve the report and recommendation. The vote was as follows:

Mulvihill – yea

Kurfess – yea

Abaray – yea

Beckett – yea

Cupp – yea

Holmes – yea

Sykes – yea

The motion passed, with seven in favor, none opposed, and two absent.

Chair Mulvihill said it is not confirmed that the committee will meet next month. He said one of the amendments he received that was not brought forward today deals with Article XVI, which is part of the committee's charter. He said if the committee does meet in June, there will be an opportunity to give that due consideration.

Mr. Steinglass said that the General Assembly had identified review of the amendment process as one of the purposes for creating this Commission. As part of this review, the committee has been addressing the initiative process. Article XVI is the other part of the constitution that governs the amendment process, but the committee has not yet considered this article. He said he and the chair had discussed the need to address issues concerning constitutional conventions and possibly even constitutional revision commissions. He said it is also possible to look at the experiences of other states in amending their constitutions. He encouraged committee members to think about better ways to address the amendment process.

Mr. Beckett said there are two issues to focus on: one is the parity question indicating that rules that apply to the legislature should apply to the people. He said a second question relates to the requirement of a convention call every 20 years, observing that many states are replacing that requirement with commissions.

Ms. Abaray said Mr. Beckett's contributions to the report and recommendation should be acknowledged, as well as the public interest groups that have contributed.

Chair Mulvihill agreed and thanked them for their service.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 11:48 a.m.

**Approval:**

The minutes of the May 11, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the June 8, 2017 meeting of the committee.

*/s/ Dennis P. Mulvihill*  
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Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*  
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Charles F. Kurfess, Vice-chair

### **Adding timeframe for Attorney General Action**

#### *Language Change:*

Within Section 1a (B)(1) on page 2 after the word “shall” insert “, within ten days, ”.

Within Section 1b(B)(1) on page 5 after the word “shall” insert “, within ten days, ”.

#### *Effect:*

Establishes a timeframe for the Attorney General to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. The 10-days suggested in this amendment aligns with current law and the language for review of a referendum petition in 1c.

#### *Rationale:*

A time frame for review is important to protect the rights of petitioners. Under current law the requirement is 10 days and though there are reasonable scheduling rational to extend the ballot board review timeframe to 14 days, no such reason exists for Attorney General Review. This amendment creates consistency within the recommended new language and avoids unintended changes to current law.

**Petition Requirements Conflict Correction**

*Language Change:*

Within Section 1d (A) on page 11 after “a full and correct copy of the” strike the remainder of the sentence “summary approved by the attorney general.” And insert “title and ballot language prescribed by the ballot board.”

*Effect:*

This amendment creates consistency between 1d(A) which deals only with petition requirements and 1a(C)(2), 1b(C)(2), and 1c(E)(1) which require the ballot language to be printed as part of the petition and explicitly state no other summary is required. 1d(A) without this amendment directly conflicts with that provision.

*Rationale:*

Since the ballot language is what electors will be met with in the booth, it makes sense to have the ballot language be part of the petition process. Nothing in the amendment would preclude circulators from sharing the attorney general approved summary with electors.

**Annual Deadline to File a Proposed Initiated Statute**

*Language:*

Within section 1b(F) on page 6 and the top of page 7 replace each “February” with “April”.

Within section 1b(H) on page 7 replace “June” with “July”.

*Effect:*

Delays by two months the deadline for an initiated statute to appear at the next available election and delays by one month the deadline for the General Assembly to act or the petition to be withdrawn.

*Rationale:*

This amendment is supportive of the goal of making the initiated statute more attractive as compared to the constitutional amendment. The General Assembly will still have 3 months on which to work on the proposal before it is placed on the ballot. It is appropriate to avoid undue delay in when a certified question is placed before the voters. This still leaves more than 125 days for preparation for the issue to be presented to electors.

**Annual Deadline to File a Proposed Constitutional Amendment***Language:*

Within section 1a(F) at the top of page 4, replace "June" with "July"

*Effect:*

Delays by one month the deadline for an initiated constitutional amendment to appear at the next available election.

*Rationale:*

Under current law, initiated amendments must be filed at least 125 days before next general election. This always falls in early July. It is appropriate to avoid undue delay in when a certified question is placed before the voters. In addition, moving the title and ballot language process to the front end will simplify what needs to occur after certification and before an issue is submitted to the voters.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JUNE 8, 2017

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:37 a.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Beckett, Cupp, Holmes, Jordan, Sykes, and Wagoner.

#### **Approval of Minutes:**

The minutes of the May 11, 2017 meeting of the committee were approved.

#### **Discussion:**

*Article II, Sections 1 through 1i, 15 and 17  
(Constitutional Initiative, Statutory Initiative, and the Referendum)*

Chair Mulvihill began the meeting by describing what is likely to be happening on this proposal at the Commission meeting this afternoon. He expressed his belief that Senator Vernon Sykes would be introducing an amendment to apply the same even-year 55 percent threshold applies to both citizen-initiated amendments and legislatively-initiated amendments.

He noted that this is an issue that almost all the comments have addressed. He further stated that the committee unanimously approved the report and recommendation last month without that parity or equalization. He indicated that the committee had discussed the parity issue several times and decided that it did not want to go that route, noting a built-in bipartisan nature to the General Assembly proceeding, with the requirement of a 60 percent vote in each house. He said no such requirement applies to citizen-initiated amendments, which do not go through the same bipartisan process incorporating the give-and-take that General Assembly amendments go

through. He said there has been no suggestion from any of the presenters that there has been any abuse of the process of amendments proposed by the General Assembly. He also said there has been no suggestion that the General Assembly is somehow over-using the constitutional amendment process. He said nearly 70 percent of all amendments proposed by the General Assembly are approved by the voters, but only about a quarter of citizen-initiated amendments are approved. Still, he said he understands that the Committee will have a full discussion on that at the meeting. He said he understands the attraction to symmetry and synchronization but that the committee's proposal is subject to the argument that the recommendation treats treating the public differently than politicians.

Chair Mulvihill mentioned the good work that has been done to develop this proposal. He said many of the groups he has heard from like much of what the committee has done but have problems with part of it. He said the committee has been able to offend every imaginable constituency but that everybody likes most of what the committee is doing. For example, he said the Chamber of Commerce likes what the committee is proposing on the constitutional initiative, but not on the statutory initiative. He noted the League of Women Voters likes the proposal on the statutory initiative, but not some aspects of the proposal on the constitutional initiative. He observed that it is not possible to please everyone all of the time, and that, in the aggregate, the recommendation is a good proposal; it protects the ability of citizens to use the initiative and protects the process from political interference to the extent possible.

Chair Mulvihill then opened the issue to discussion by the members of the committee before the committee discusses Article XVI.

Representative Bob Cupp asked Steven H. Steinglass, senior policy advisor, how often the voters approved initiated amendments with less than 55 percent of the vote. Mr. Steinglass pointed out that in the last 70 or 80 years, only one of the 12 initiated amendments that the voters approved received less than 55 percent of the vote; that was the casino gambling initiative in 2009, which received a 53 percent positive vote. He said the others introduced during this period generally received more than 60 percent of the vote. He noted the votes were closer in the early part of the 20<sup>th</sup> century in the years after the 1912 approval of the initiative. With respect to the number of General Assembly proposed amendments that received less than 55 percent, Mr. Steinglass said he has not compiled that data.

Chair Mulvihill pointed out that a few years ago the committee reviewed the experience with amendments proposed by the General Assembly. He noted that in 2015, the anti-monopoly amendment proposed by the General Assembly did not receive more than 55 percent of the vote. Mr. Steinglass agreed that in 2015 the anti-monopoly amendment proposed by the General Assembly was approved by approximately 52 percent of the voters.

Chair Mulvihill recognized committee member Roger Beckett, who introduced his daughter, Laura Beckett, who was accompanying her father.

Rep. Cupp said that he is not one who wishes to change the percentage for amendments proposed by the General Assembly. He said, if one wants to look for symmetry, it is there because it takes a 60 percent vote in the General Assembly to propose an amendment and then there is a majority vote of the people. He said, for initiated amendments, it is the opposite. In these cases, the supermajority requirement is on the approval end, not at the beginning of the process. Rep.

Cupp observed that one could say the proposal is not symmetrical and that we could raise the voting percentage for initiated amendments to 60 percent to make it symmetrical with the voting requirement in the General Assembly. Additionally, he said, limiting when the General Assembly may put a proposed amendment on the ballot to every fall election in even years could be a problem when there is an emergency and a need to put an amendment on the ballot without waiting as long as two years. He said that is another reason the committee should not tinker with the framework of amendments proposed by the General Assembly.

Mr. Beckett stated that one reality is that the committee is at the last-minute stage. He said the Commission is advisory to the legislature, which will have to sort out the details of the recommendation. He said the committee has worked through these questions for years and has come up with an impressive proposal to fix something that everyone knows is broken. But, he said, the committee does not have the time to weigh new language and to change how legislatively-proposed amendments go to the people. Generally, he said, people want the same rules to apply to amendments proposed by initiative and those by the legislature. But, he asked whether the amendment should also apply to limit the people to put proposals on the ballot through constitutional conventions.

Mr. Beckett added his belief that this is a serious issue. He said he believes that the report should be revised to identify what the committee has heard about equalization and these other issues, and leave the rest to the legislature.

Chair Mulvihill raised the question of whether a parity amendment would be a deal-breaker.

Committee member Mark Wagoner pointed out the committee spent a lot of time coming up with a grand bargain. He noted that everyone may not be happy with all of it, but by and large there is support for what the committee is trying to do. But, he said, there are problems if the committee starts pecking away at it.

Vice-chair Charles Kurfess raised a question about the voting turnout on issues that are on the ballot and expressed interest in hearing more about this.

Chair Mulvihill responded by pointing out that there is little drop-off in turnout on proposed initiated amendments, pointing out that 96 percent of those voting in 2015 also voted on the marijuana proposal. He further noted that, on the last four initiated amendments that the voters approved, the turnout on the issue as a percentage of the total of those voting was: health care 95.3 percent; casino gambling 98.2 percent; minimum wage 93.5 percent; and same-sex marriage 94.3 percent. So, he said, it seems that the voters are paying attention and that there is not much drop-off.

Chair Mulvihill summed up the discussion concerning what may be happening at the full Commission meeting. He again expressed interest in the committee's proposal on the initiative moving forward. He noted that there is not enough time to make the changes suggested at this meeting, but said, if the Commission continues, he hopes that the report could reflect the concerns that have been raised.

Sen. Sykes recognized the work that the committee had done over the years, expressing interest in future efforts to address these issues.

*Article XVI (Amendments)*

Chair Mulvihill then recognized Mr. Steinglass for the purpose of reviewing the memorandum that had been circulated to the committee on developments and issues related to Article XVI, which deals with the methods of amending the constitution other than by initiative.

Mr. Steinglass stated that it had been the plan to get to Article XVI after the committee wrapped up its work on Article II on the initiative. He reminded the committee that when the General Assembly created the Commission, one of the four purposes was to look at the way the constitution is amended. He said this committee is the only one to have an explicit portion of its charge included in the enabling legislation. He said time has not been a friend to the committee, and it has taken a long time to work through the proposals on the statutory and constitutional initiative. He said the committee never got to matters like the local initiative other than changing its section number.

Mr. Steinglass stated that he had prepared for the committee and the record a memorandum that reviews Article XVI and raises discussion questions.

Mr. Steinglass then summarized the key points from the memorandum, noting that since 1802 there has been a pattern, a trajectory, of liberalizing the ways in which the constitution is amended. This is reflected not only in Article II, which the committee has reviewed, but also in Article XVI.

He continued that, in 1802, the constitutional convention approved the original Ohio Constitution and did not send it to the voters for approval. The 1851 constitution created additional methods for amending the constitution, including the mandatory 20-year vote on whether to have a convention. The 1851 Constitution also gave the General Assembly the power to propose amendments by a three-fifths vote.

Mr. Steinglass indicated that, in 1912, the constitutional convention proposed and the voters approved the initiative. The 1912 convention also proposed that the ballot for the election of delegates to a convention be a non-partisan ballot and that proposed amendments be on the ballot as a separate issue without party designations. He said the 1912 delegates had been elected on a non-partisan ballot as a result of legislation, but the constitution was amended to require a non-partisan ballot. He said the most significant change beside the initiative in 1912 was the elimination of the supermajority requirement for amendments proposed by the General Assembly. He continued that, under the supermajority requirement, proposed amendments must receive a majority of those voting at the election. That requirement ended up dooming many amendments between 1851 to 1911. According to Mr. Steinglass, during this period, the voters approved 11 of 37 amendments, and, of the 26 amendments that the voters rejected, 19 received more positive than negative votes. He said, after 1912, all that was required to approve an amendment proposed by the General Assembly was a majority of those voting on the issue. He said this change accounts for the very high level of success that amendments proposed by the General Assembly have had since 1913, when the voters approved 68 percent of the legislatively-proposed amendments.

Mr. Steinglass continued, saying there has not been much discussion in Ohio as to whether changes should be made in Article XVI concerning the methods of amending the constitution.

He said the memorandum to the committee includes some history and raises some questions, for example, questions about what a convention might look like.

Mr. Steinglass noted that constitutional conventions, once the primary method for amending constitutions, have been in decline for the last 60 or 70 years. The last state constitutional convention that produced a constitution that was approved by the voters was the 1986 convention in Rhode Island, which presented multiple proposals to the voters, some being approved but others rejected.

He said state constitutional revision commissions have become more popular, but they too have had a mixed record. He said, if the committee had more time, it could fully examine the experience of state constitutional revision commissions and try to identify what circumstances led to successful experiences. He summarized that the success of commissions appears to depend on timing, leadership, bipartisanship, and a healthy dose of serendipity.

Finally, Mr. Steinglass pointed to two interesting proposals made in 1912.

First, he said there was a proposal that would have permitted the people to initiate a constitutional convention. Now a convention may be proposed to the voters by a two-thirds vote in the General Assembly or by the voters at the 20-year mandatory convention call. In 1912, however, he said a delegate submitted a proposal to permit the initiative to be used to call conventions. He said a handful of states currently permit conventions to be initiated, noting this has been an issue in California (which does not permit the initiation of conventions) where the state has been caught in a huge constitutional gridlock.

Second, he said there was a proposal in 1912 that recognized that conventions were expensive and proposed that conventions be abolished entirely and that there be a mandatory 20-year vote on creating a commission. Neither the proposal for initiating conventions nor the proposal for a mandatory vote on a commission gained any traction, and the delegates rejected both of them by significant votes.

Mr. Steinglass pointed out that the 1912 amendment to Art. XVI included details about the non-partisan nature of the ballot and required that persons running for delegate be nominated by petition.

In response to a question, Mr. Steinglass stated that the states with the initiative require the same percentage for approval of initiatives as they require for approval of amendments proposed by the legislature. He noted that, on page 11 of the report and recommendation approved by the committee, it is stated that Colorado in 2016 increased the required voter approval level for initiated amendments from 50 percent to 55 percent, but that the 50 percent requirement remained for amendments proposed by the legislature. He said this statement is inaccurate, as the Colorado amendment applied the 55 percent requirement to initiated amendments and to legislatively-proposed amendments. Generally speaking, he noted, most states use a simple majority with the major exceptions being Florida, New Hampshire, and Colorado, which have higher thresholds.

A member of the committee noted that in Nevada constitutional amendments must be approved by voters in two elections. There was also a question raised as to whether Florida required a 60

percent vote on all amendments, or only on initiated amendments. Mr. Steinglass said he would follow up on this, noting that Florida, which also uses constitutional revision commissions, permits its commissions to put matters directly on the ballot.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:23 p.m.

**Approval:**

The minutes of the June 8, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the \_\_\_\_\_ meeting of the committee.

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair

# **Appendix 3**

## **Constitutional Revision and Updating Committee**

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### **Status of Assigned Constitution Sections**

## **Status of Assigned Constitution Sections**

When Commission created its subject matter committees, it charged each committee with the responsibility for reviewing certain assigned sections of the Ohio Constitution. In turn, each committee maintained a planning worksheet to track its progress in addressing each of its assigned sections. The following document is the final planning worksheet for this committee. It indicates all of the sections for which the committee was responsible and the final status of its reports on those sections. The status is based on the approval steps required in the OCMC Rules of Procedure and Conduct.

The status categories indicated on the worksheet are as follows:

Draft Status	The current status of a draft report & recommendation
Committee 1 <sup>st</sup> Pres.	First presentation to the committee of the draft report & recommendation
Committee 2 <sup>nd</sup> Pres.	Second presentation to the committee
Committee Approval	Approval by the committee of the report & recommendation
CC Approval	Approval by the Coordinating Committee
OCMC 1 <sup>st</sup> Pres.	First presentation to the Commission
OCMC 2 <sup>nd</sup> Pres.	Second presentation to the Commission
OCMC Approved	Adopted by the Commission

## Constitutional Revision and Updating Committee

### Planning Worksheet (Through June 2017 Meetings)

<b>Article II – Legislative (Select Provisions)</b>							
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Sec. 1 – In whom power vested (1851, am. 1912, 1918, 1953)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1a – Initiative and referendum to amend constitution (1912, am. 2008)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1b – Initiative and referendum to enact laws (1912, am. 2008)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1c – Referendum to challenge laws enacted by General Assembly (1912, am 2008)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1d – Emergency laws; not subject to referendum (1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1e – Powers; limitation of use (1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1f – Powers of municipalities (1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

Sec. 1g – Petition requirements and preparation; submission; ballot language; Ohio ballot board (1912, am. 1971, 1978, 2008)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.13.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>5.11.17</b>	<b>6.8.17</b>	

**Article XVI - Amendments**

Sec. 1 – Constitutional amendment proposed by joint resolution of General Assembly; procedure (1851, am. 1912, 1974)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 2 – Constitutional amendment proposed by convention; procedure (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 3 – Question of constitutional convention to be submitted periodically (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved