OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Constitutional Revision and Updating Committee

Dennis P. Mulvihill, Chair
Charles F. Kurfess, Vice-chair

January 12, 2017

Ohio Statehouse
Room 018

OCMC Constitutional Revision and Updating Committee

Chair	Mr. Dennis Mulvihill
Vice-chair	Mr. Charles Kurfess
	Ms. Janet Abaray
	Mr. Roger Beckett
	Rep. Robert Cupp
	Sen. Kris Jordan
	Mr. Chad Readler
	Rep. Emilia Sykes
	Mr. Mark Wagoner

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

THURSDAY, JANUARY 12, 2017
1:30 P.M.
OHIO STATEHOUSE ROOM 018

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meetings of November 10, 2016 and December 15, 2016

  [Draft Minutes – attached]

IV. Reports and Recommendations

- None scheduled

V. Presentations

- None scheduled

VI. Committee Discussion

- Article II, Sections 1 through 1i, 15 and 17 – Constitutional Initiative, Statutory Initiative, and the Referendum

  The chair will lead a continuation of the committee's working session regarding draft language to amend the provisions on the constitutional initiative, the statutory initiative, and the referendum.

[Revised Draft of Article II, Sections 1 through 1i, 15, and 17 (V6) (Constitutional Initiative, Statutory Initiative, and Referendum) – attached]

[Revised Memorandum by OCMC Staff titled "Additional Considerations Related to the Draft Initiative and Referendum Sections of Article II," dated December 1, 2016 – attached]

VII. Next Steps

- The chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

  [Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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.

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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.[1] 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

[1] *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.

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair

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 at any time after the last day of May of an odd-numbered year and before the first day of June in the following year, by filing with the secretary of state an initiative petition proposing an amendment to the constitution.

(B) Whoever seeks to propose a constitutional amendment by initiative petition shall submit to the attorney general, in the manner prescribed by law, an initial petition containing the proposed constitutional amendment, a summary of it that contains a fair and truthful statement of the proposed constitutional amendment, and a proposed title and proposed explanation for the constitutional amendment. The petition shall contain only one proposed constitutional amendment, so as to enable the electors to vote on each proposal separately.

(1) The attorney general shall examine the summary in the initial petition to ensure that it is a fair and truthful statement of the proposed constitutional amendment.

(2) Prior to the collection of signatures on any petition, the Ohio ballot board shall determine, in the manner prescribed by law: (a) whether the petition contains only one proposed constitutional amendment; (b) whether the proposed constitutional amendment violates or is inconsistent with division (B)(1) or (2) of Section 1h of this article, and; (c) whether the proposed ballot title and proposed explanation are such as to mislead, deceive, or defraud the voters.

(3) A petitioner or group of petitioners who are aggrieved by the determinations of the attorney general or the ballot board 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.

(C) 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.

(D) 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.

(E) 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.

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

(G) If conflicting proposed amendments to the constitution are approved at the same election by 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.

(H) An amendment that is approved by the electors shall be published by the secretary of state.

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

(A) The people reserve the power to propose a law, and may do so at any time after the last day of May and before the first day of February of the following year, by filing with the secretary of state an initiative petition proposing a law to the General Assembly.

(B) Whoever seeks to propose a law by initiative petition shall submit to the attorney general, in the manner prescribed by law, an initial petition containing the proposed law, a summary of it that contains a fair and truthful statement of the proposed law, and a proposed title and proposed explanation for the proposed law. No law proposed by petition shall contain more than one subject.

(1) The attorney general shall examine the summary in the initial petition to ensure that it is a fair and truthful statement of the proposed law.

(2) Prior to the collection of signatures on any petition, the Ohio ballot board shall determine, in the manner prescribed by law: (a) whether the law proposed by petition contains only one subject, and (b) whether the proposed ballot title and proposed explanation are such as to mislead, deceive, or defraud the voters.

(3) A petitioner or group of petitioners who are aggrieved by the determinations of the attorney general or the ballot board 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) 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.

(H) 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.

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

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

(K) 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 house of the general assembly.

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 signed by the governor and filed with the secretary of state, by filing with the secretary of state 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: “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 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.

(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 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 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 referendum.

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.

(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.

(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 a petition and the signatures on a petition.

(C) A challenge to ~~a petition or signatures on a petition~~ the secretary of state's determination of validity, invalidity, sufficiency or insufficiency 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 valid and 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 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 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 referendum petition, shall be prepared together with an argument or explanation, or both, against and for the law, section, or item. The name of the person who prepares the argument or explanation, or both, against the law, section, or item may be named in the petition submitted. The name of the person who prepares the argument or explanation, or both, for the law, section, or item 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 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 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)(l) 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)(l) of Section lh 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.

(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]***

(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 when filed by the governor with the secretary of state.

(V6)

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MEMORANDUM

TO:	**Chair Dennis Mulvihill, Vice-chair Charles F. Kurfess and Members of the Constitutional Revision and Updating Committee**
FROM:	**Steven C. Hollon, Executive Director** **Shari L. O'Neill, Counsel to the Commission** **Steven H. Steinglass, Senior Policy Advisor**
DATE:	**December 1, 2016**
RE:	**Additional Considerations Related to the Draft Initiative and Referendum Sections of Article II**

To assist the committee in its consideration of the draft initiative and referendum sections in Article II as reviewed by the committee at its October and November 2016 meetings ("draft"), this revised memorandum provides background information and poses questions for committee discussion. Initially provided to the committee at the November 2016 meeting, the memorandum now is revised to remove discussion related to a proposal no longer under consideration that would have required citizen initiatives to be placed on the ballot in two consecutive elections.

I. Preliminary Review Process

Current Sections 1a, 1b, and 1c of the Ohio constitution and draft Sections 1a(A), 1b(A), and 1c(A) indicate that persons wishing to propose a constitutional amendment or law through the filing of an initiative petition, or who wish to challenge a law by filing a referendum petition, shall file the appropriate petition with the secretary of state. However, neither the current constitutional provisions nor the draft sections address a preliminary procedure that currently exists in statute. That procedure, which we shall refer to in this memorandum as a "preliminary review process," is described at R.C. 3519.01.

Constitutional and Statutory Initiative Petitions

Under R.C. 3519.01(A), those who wish to circulate a petition for a constitutional amendment or proposed law must first do the following:

- File with the attorney general a copy of the petition that proponents intend to circulate under the requirement of the constitution. The preliminary petition is required to contain the signatures of not less than 1,000 electors, the proposed amendment or law, and a summary of it.

- The attorney general reviews the preliminary petition to determine if the summary of the proposed amendment or law is "fair and truthful."

- The attorney general certifies the preliminary petition and sends it to the ballot board for its determination of whether the petition meets the "one proposal" requirement as prescribed by R.C. 3519.01(A) and R.C. 3505.062 (and as further discussed in Sections III and IV of this memorandum).

    - If the petition does not meet the one proposal requirement, the ballot board divides the petition, certifies that to the attorney general, and the petitioners must resubmit summaries for each of the petitions to the attorney general for review.

    - If the petition meets the one proposal requirement, the ballot board sends it to the attorney general.

- The attorney general then sends the petition to the secretary of state as a "certified" petition and the petitioners may then start their drive to obtain the number of signatures required by the constitution.

Under the current and draft constitutional provisions, the proponents of either a constitutional or a statutory initiative file their completed petitions with the secretary of state. In both the current and draft versions, the secretary of state, after verifying the signatures on the petitions, submits the proposed constitutional amendment to the voters at an election. Under the current and draft versions, the secretary of state transmits the statutory initiative petition to the General Assembly for its consideration.

Referendum Petitions

Under R.C. 3519.01(B), those who wish to circulate a referendum petition to challenge a law must first do the following:

- File with the attorney general and secretary of state, at or near the same time, a copy of the petition that proponents intend to circulate under the requirement of the constitution. The preliminary petition is required to contain the signatures of not less than 1,000 electors, the law being challenged by referendum, and a summary of it.

- The attorney general has ten days to determine if the summary is fair and truthful, and certify the same.

- The secretary of state has ten days to verify the signatures and the accuracy of the text of the law.

The preliminary review process in R.C. 3519.01(B) allows the petition to be submitted for review by the secretary of state and the attorney general at the same time, rather than serially. The preliminary review process for the referendum does not require the ballot board's participation.

The current and draft constitutional provisions indicate that a completed referendum petition is to be filed with the secretary of state at any time within 90 days after the law has been signed by the governor and filed with the secretary of state. The current and draft provisions do not mention a preliminary review process, nor do they mention a requirement that the referendum petition be submitted to the attorney general.

Questions for Consideration

Questions the committee may wish to consider regarding the statutorily required preliminary review process include:

- Should the requirements of the preliminary review process located in R.C. 3519.01 be inserted into the constitution?

- Should the current 90-day constitutional time period for filing a referendum petition be altered to accommodate the ten-day preliminary review by the secretary of state and the attorney general?

II. Limitation on Certification of Petition or Petition Circulation Period

Ohio does not limit the length of the petition circulation period for constitutional and statutory initiatives. Thus, a petition for a proposed amendment that the attorney general determines contains a fair and truthful summary of the proposed amendment or law may be circulated for signatures indefinitely. The only other states without limitations on the circulation period are Arkansas and Utah.[1]

In 2002, the Final Report and Recommendation of the National Conference of State Legislatures' Initiative and Referendum Task Force recommended that a circulation period be limited. California, for example, has a 150-day circulation period, but the most common circulation periods are between one and two years. The limitation on the length of the circulation period may be achieved by including language providing an expiration date for the attorney general's fair and truthful certification, should the committee decide to recommend constitutionalizing the preliminary review process.

Questions for Consideration

The committee may wish to consider the following questions:

[1] For more information on petition circulation periods, see http://www.ncsl.org/research/elections-and-campaigns/petition-circulation-periods.aspx (last visited Nov. 1, 2016).

- If the committee determines it would like to add the preliminary review process to the constitution, should there be an expiration date for the "certification" of the preliminary petition?

- Alternatively, should there be a limitation on the time that a petition can be circulated once certified?

III. One Amendment Rule

The committee may wish to clarify that the requirement that a proposed constitutional amendment only address one subject is applicable to initiated amendments as well as to legislatively-proposed amendments.

Current Requirements

Article XVI, Section 1, which relates to constitutional amendments proposed by joint resolution of the General Assembly, provides, in the last sentence, that "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." The language is original to the 1851 constitution.

Meanwhile, Article II, Section 1 generally applies the same limitations on the General Assembly to the citizens' initiative and referendum process, providing that "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."

The relationship between these two provisions was the subject of *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, in which the Supreme Court of Ohio addressed whether the ballot board correctly split a proposed constitutional amendment into two ballot questions after determining that the proposed ballot language violated the one amendment rule. After applying the relevant test, which asks whether each of the individual subjects contained in a proposal "bears some reasonable relationship to a single general object or purpose," the Court granted a writ of mandamus based on its conclusion that the ballot board improperly split the amendment. *Id.* at ¶ 42 [citations omitted]. Specifically, the Court held "all the sections contained [in the proposed amendment] bear some reasonable relationship to the single general purpose of preserving Ohioans' freedom to choose their health care and health-care coverage." *Id.* at ¶43. The test outlined in *Liberty Council* does not appear in the Ohio Constitution.

R.C. 3519.01(A) provides that "Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately." Additionally, R.C. 3505.062(A) requires the ballot board to "examine, within ten days after its receipt, each written initiative petition received from the attorney general under [R.C. 3519.01] to determine whether it contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately." The statute further requires the board to divide the petition into individual petitions if the board

determines the petition contains more than one proposed law or amendment.[2] The preview procedure must be completed before the petitioners circulate their petitions.

In June 1978, voters approved a ballot measure that added the following sentence to Article II, Section 1g: "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." This amendment resulted from a ballot question asking voters whether they wanted to require the ballot board to write the ballot language for initiative and referendum petitions. The measure was approved by a vote of 65.53 percent to 34.47 percent. Arguably, the 1978 amendment allows the ballot board to review and split a petition that does not comply with the one amendment rule as a part of its preliminary review process (as described above). On the other hand, as noted above, the constitution does not expressly provide for a preliminary review process.

Questions for Consideration

Questions the committee may wish to consider regarding the one amendment rule include:

- Should the constitution expressly provide that an initiated petition for a constitutional amendment comply with the one amendment rule?

- If the answer to the preceding question is "yes," should the determination of the question continue to be made by the ballot board in the preliminary review process noted in the preceding section of this memorandum?

- If the preliminary review process is constitutionalized, should the ballot board continue to have the constitutional authority to split the petition into separate petitions?

IV. One Proposal of Law for Initiated Statutes

The committee may wish to constitutionalize the statutory requirement that a petition for an initiated statute only propose one law.

Current Requirements

As described in the preliminary review process (see Section III above), a petition for an initiated statute is subject to a process whereby the ballot board determines whether the petition contains only one proposal of law. This requirement is prescribed in R.C. 3519.01(A), which indicates

[2] There is no equivalent statute requiring the ballot board to divide a ballot question posed by the General Assembly. Instead, R.C. 3505.062(B) merely provides that the ballot board prescribes the ballot language for constitutional amendments proposed by the General Assembly, "which language shall properly identify the substance of the proposal to be voted upon." In enacting R.C. 3505.062, the General Assembly may have concluded that it should be able to determine for itself whether a proposed amendment bears some reasonable relationship to a single general object or purpose. In fact, the one amendment rule is similar to the "one subject rule" in Article II, Section 15(D), a provision with which the legislature is well-acquainted.

"only one proposal of law * * * to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on the proposal separately." The ballot board's inquiry in relation to this requirement is described at R.C. 3505.062 (A), which states that the ballot board shall:

> Examine, within ten days after its receipt, each written initiative petition received from the attorney general under section 3519.01 of the Revised Code to determine whether it contains only one proposed law * * * so as to enable the voters to vote on a proposal separately.
>
> * * *
>
> If the board determines that the initiative petition contains more than one proposed law * * * , the board shall divide the initiative petition into individual petitions containing only one proposed law * * * so as to enable the voters to vote on each proposal separately 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 petitioners shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board's division of the initiative petition, and the attorney general then shall review the resubmissions as provided in division (A) of section 3519.01 of the Revised Code.

Currently, there is no explicit constitutional requirement that a statutory initiative petition be limited to one proposed law, nor is there provision for a ballot board review of that question. The closest analogous provision might be a portion of Section 1g, which states 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 apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution." However, Article XVI, Section 1 relates solely to constitutional amendments, and does not address statutory law.

When the General Assembly enacts law, it is bound by the requirements of the "one subject rule" contained in Article II, Section 15(D), which reads, in part: "No bill shall contain more than one subject, which shall be clearly expressed in its title." The one subject rule has been variously interpreted over the years, and case precedent provides no "bright line test" for when a statute violates that principle. While not specifically referencing the one subject rule, the last sentence of Article II, Section 1 indicates that "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."

Questions for Consideration

- Should the constitution expressly provide that only one proposal of law be contained in an initiated petition for a statutory law, as is currently required by R.C. 3519.01(A)?

- Is Article II, Section 1's statement extending the limitation on the law-making power of the General Assembly to the people sufficient to indicate the one subject rule applies to both?

V. Supermajority

Over the last several months, the committee has looked at several alternatives in considering whether to set a higher standard for passing an initiated constitutional amendment other than a simple majority.

The committee has considered whether the ballot question should be approved by a supermajority of those voting on the issue, such as 55 percent or 60 percent. The issue also has been raised whether to require a simple majority, but add a further requirement that at least 35 percent of the people voting in the election need to vote affirmatively to approve the ballot question.

Questions for Consideration

Questions the committee may wish to consider in finalizing its position on voting requirements on initiated constitutional amendments include:

- Does the committee wish to recommend a supermajority requirement such as a passage rate of 55 percent or 60 percent?

- In the alternative to requiring a super-majority, does the committee wish to keep the standard a simple majority, but add an additional requirement by setting a minimum threshold of people voting in the election to approve the issue, such as 35 percent?

VI. The Ballot Board and the Monopoly Questions

In Section I of this memorandum, the committee is presented with the question of whether it wishes to constitutionalize the current statutory procedure in which the attorney general and the ballot board conduct a preliminary review before proponents can start circulating an initiative petition for a constitutional amendment. Under this procedure the ballot board is looking at the specific question of whether the proposed amendment is consistent with the one amendment requirement.

In addition, current Section 1e(B)(2) and draft Section 1h(B)(2)(c), as discussed in Section VII of this memorandum, requires the ballot board to determine if it believes a proposed constitutional amendment would create a monopoly, and, if so, the board must prescribe two separate questions to appear on the ballot – the monopoly questions. This review by the ballot board occurs after signatures are collected and petitions are filed with the secretary of state.

Question for Consideration

If the committee determines the preliminary review process should be constitutionalized, a question the committee may wish to consider is:

- Should the ballot board be required to address the monopoly issue during its preliminary review before the petition is circulated, or should the ballot board address the monopoly issue close to the end of the process, when the requisite number of petition signatures has been obtained and verified?

VII. Determining Whether an "Appropriation" is Subject to the Referendum

Current language states at Section 1c that "any law, section of any law or any item in any law appropriating money passed by the General Assembly" is subject to challenge by referendum. This language is carried over to draft Section 1c(A). Meanwhile, language at the end of current Section 1d states that "appropriations for the current expenses of the state government and state institutions" are *not* subject to the referendum. This language is carried over to draft Section 1c(G).

The language contained in these sections appears, at first blush, to be contradictory. One section appears to suggest that any item in any law appropriating money is subject to the referendum, while the other section clearly states that appropriations for the current expenses of the state government and state institutions are not subject to the referendum.

The word "appropriation" is not defined in the constitution. As a result, we have to turn to case law to seek guidance on the question. A recent Supreme Court of Ohio case addressed an argument that a statutory scheme was not subject to the referendum because it was an appropriation for the current expenses of state government.

In *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, a citizens' group sought a writ of mandamus to compel the secretary of state to treat video-lottery-terminal (VLT) provisions of the biennial budget bill as subject to the referendum. A key aspect of the case was the General Assembly's declaration that the subject provisions were exempt from referendum because they "are or relate to" an appropriation for current expenses under Article II, Section 1d. The secretary of state followed this rationale in rejecting the referendum petition, but petitioners argued the VLT provisions were not appropriations for current state expenses, did not make expenditures or incur obligations, and were not temporary measures necessary to effectuate an appropriation. *Id.* at ¶ 9.

In concluding the VLT provisions did not meet the requirements for an appropriation, the Ohio Supreme Court followed the statutory definition of an appropriation as being "an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes." *Id.* at ¶ 28, citing R.C. 131.01(F). The Court further noted precedent establishing an appropriation bill as "a measure before a legislative body which authorizes the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure." *Id.* [citations omitted]. The Court reasoned:

> The VLT provisions of H.B. 1 are not themselves appropriations for state expenses because they do not set aside a sum of money for a public purpose; neither R.C. 3770.03 nor 3770.21 as amended by H.B. 1 makes expenditures or incurs obligations. Rather, they authorize the State Lottery Commission to operate VLT games and to promulgate rules relating to the commission's operation of VLT games, specify that the provisions of R.C. Chapter 2915 criminalizing gambling activities are inapplicable, bar political subdivisions from assessing new license or excise taxes on VLT licensees, and purport to vest this court with exclusive, original jurisdiction over any claim that the provisions are unconstitutional.

Id. at ¶ 29.

Further considering the question of whether the VLT provisions relate to an appropriation, the Court observed that Section 1d does not expressly include an exception for laws that relate to appropriations for the current expenses of the state government. Therefore, the Court determined the VLT provisions were subject to referendum because, by only being part of a law designed to generate revenue that can be appropriated, they merely related to an appropriation. *Id.* at ¶ 34.

Question for Consideration

One question the committee may wish to consider regarding these two seemingly contradictory provisions is:

- Should the language in the draft be revised to provide greater clarity in what appropriation can or cannot be challenged, thereby reducing ambiguity on the question?

VIII. Withdrawal of Petition if Legislature Acts

Current constitutional language does not provide a mechanism for those who present an initiative petition proposing a constitutional amendment or statute to withdraw the amendment or statute if the General Assembly takes action on the proposal. This issue, however, is addressed in the Revised Code, which permits the initiative proponents to withdraw proposed initiatives and referenda. R.C. 3519.08(A).

In draft Section 1b(E), language is provided that allows the General Assembly to pass a law setting out a procedure for proponents of a statutory initiative to withdraw their petition, should they choose, before the next steps are taken to present the question to the electors of the state. The proponents may choose to do this if the General Assembly passes the proposed law as the proponents filed it with the secretary of state or in a substantially similar format. This mechanism has been described in committee meetings as an "off ramp."

At the committee's October 2016 meeting, a question was raised whether similar language should be inserted in draft Section 1a to allow the proponents of an initiated constitutional

amendment to withdraw their petition if the General Assembly enacts a statute or proposes an alternative constitutional amendment that resolves the matter.

Question for Consideration

The question for the committee is:

- Should there be a provision in draft Section 1a that allows the General Assembly to provide by a law a procedure where proponents of an initiated constitutional amendment can withdraw their petition?

IX. Effective Date of Initiated Constitutional Amendment

Current language in Section 1b of the Ohio constitution provides that a constitutional amendment proposed by initiative petition and approved by majority of the electors shall take effect 30 days after the election at which it is approved. Language in draft Section 1a(E) repeats this language and continues this requirement. In thinking about this issue, one might envision a process where the proponents wish to have the constitutional amendment take effect at a time later than 30 days after the election.

Question for Consideration

The question for the committee is as follows:

- Should the current 30-day requirement be continued in the draft section or should an alternative be inserted into the language that allows for the amendment to take effect either 30 days after the election or at a time later than 30 days if set forth in the proposed amendment or in an accompanying schedule presented to voters?

Constitutional Revision and Updating Committee

Planning Worksheet
(Through December 2016 Meetings)

Article II – Legislative (Select Provisions)

Sec. 1 – In whom power vested (1851, am. 1912, 1918, 1953)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1a – Initiative and referendum to amend constitution (1912, am. 2008)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1b – Initiative and referendum to enact laws (1912, am. 2008)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1c – Referendum to challenge laws enacted by General Assembly (1912, am 2008)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1d – Emergency laws; not subject to referendum (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1e – Powers; limitation of use (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1f – Powers of municipalities (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 1g – Petition requirements and preparation; submission; ballot language; Ohio ballot board (1912, am. 1971, 1978, 2008)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article XVI - Amendments

Sec. 1 – Constitutional amendment proposed by joint resolution of General Assembly; procedure (1851, am. 1912, 1974)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – Constitutional amendment proposed by convention; procedure (1851, am. 1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 3 – Question of constitutional convention to be submitted periodically (1851, am. 1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14