



**SENATOR
JOE SCHIAVONI**
MINORITY LEADER
33RD DISTRICT

June 11, 2015

Dear Chair Mulvihill, Vice Chair Kurfess, and members of the Constitutional Revision and Updating Committee,

I thank you for this opportunity to write and have my views presented by staff on the proposed special interest limitation amendment. I am not opposed to such an amendment in concept, but as with any change to the constitution it should be fully examined before adoption. I wish to share three areas of concern: first, the language describing the limitation; second, the practical mechanism of evaluating a submitted amendment; and finally the timing of this debate and draft.

First, the language proposed as paragraph (A) in Professor Steinglass's draft is broad and its impact is not entirely clear. The choice of words such as "may" and "directly or indirectly" could lead to a variety of interpretations on what initiatives would be barred. There is a long case law history defining what it means for individuals to be "similarly situated" which should also be taken into account. The suggestion from the prior meeting that existing amendments to the constitution be reviewed as examples of how this section could be applied is a good one. The results of that review should then be evaluated prior to any action on this issue by either this commission or the General Assembly.

Second, I wish to offer suggestions on changes to when and how a possible amendment would be evaluated for violation of the special interest standard. Auditor Yost raised the issue of avoiding a "notwithstanding" trump card in a proposed amendment through a procedural bar. That option is preferable because we need to respect those who undertake the initiative process. To avoid unnecessary expenditure of resources and potential confusion of voters, an evaluation of whether an amendment creates a prohibited special interest should occur early on.

We currently have statutory language in the Ohio Revised Code that can serve as a guide for how we evaluate an amendment. It is my recommendation, that we include such language within this proposed constitutional amendment. The Attorney General already reviews proposed language at the initial stage of the process to ensure the summary is a fair reflection of the language. The Ballot Board already determines if an initiative is appropriately a single issue or multiple issues. Either of these entities, or potentially the Secretary of State, could be charged with determining if a proposed amendment creates a special interest and is thus barred from appearing on the ballot.

This would protect the initiative process from those pursuing such interests while allowing a change to an amendment that inadvertently ran afoul of these limitations before significant resources have been expended and hundreds of thousands of citizens have signed petitions.

Third, I wish to briefly address the timing of this discussion of special interest amendments. I agree entirely with sentiments previously expressed by Chair Mulvihill that the role of the Constitutional Modernization Commission is to consider what is best for our constitution over many years, not to respond to the hot button political issues of the moment. Too often, the General Assembly is reactive and we must be wary when proposing constitutional amendments. I would not want opposition to a particular proposed constitutional amendment—no matter how valid the criticism—to result in a hastily conceived addition to our constitution with unknown consequences. The voters have the ultimate say on amendments and we should respect their role by carefully considering anything we ask them to approve.

Thank you for your work reviewing our constitution and the opportunity to share these thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Schiavoni". The signature is written in a cursive, slightly slanted style.

Senator **Joe Schiavoni**
Senate Minority Leader
Ohio District 33