

## MEMORANDUM

TO: Representative William G. Batchelder  
Representative Vernon Sykes  
Co-Chairs, Ohio Constitutional Modernization Commission

FROM: Dennis P. Mulvihill, Chair  
Constitutional Revisions and Updating Committee

DATE: November 5, 2013

RE: Committee Report

The Constitutional Revisions and Updating Committee, a Subject Matter Committee of the Ohio Constitutional Modernization Commission, met on October 10, 2013. The quorum of the members of the Subject Matter Committee was present and the minutes of the previous meeting were approved.

As mentioned in my previous Report, it appears that this Subject Matter Committee's primary area of responsibility seems to be narrowly focused on two questions: whether the initiative and referendum process should be limited or expanded, and, whether any procedural improvements should be suggested depending on how the previous question is answered. To that end, the Committee invited Don McTigue from McTigue & McGinnis, a Columbus law firm that specializes in election law, to address the Committee. Mr. McTigue has had a great deal of experience with the initiative and referendum processes and has counseled many clients over the years that have put initiatives and referenda on the ballot. Additionally, the committee heard from Scott Tillman who is the National Field Director for Citizens in Charge, which is a national advocacy organization dedicated to protecting and expanding initiative and referendum rights of every American citizen. I attach the written testimony of Mr. McTigue and Mr. Tillman as Exhibit A and B respectively to this Memorandum.

Briefly, however, it was Mr. McTigue's position that the Ohio Constitution has it just about right with respect to citizens' access to the ballot with the initiative and referendum processes. He did not advocate a change to the number of signatures, the few subject matter exclusions, or the procedures contained in the Constitution. However, he did state that the biggest obstacles facing those who actually want to put initiative and referenda on the ballot concern the filing deadlines contained in the Ohio Revised Code, which this Commission has not been authorized to address.

However, Mr. McTigue's primary constitutional concern was that the General Assembly should not be burdening the exercise of a constitutional right with changes in the laws that make pursuing an initiative or a referendum more difficult. (See his written testimony, paragraph No. 1). As a result, Mr. McTigue advocated that the Commission beef up the constitutional provision that states that the General Assembly may facilitate, but not burden, the exercise of constitutional rights (Article 2, Section 1g).

Mr. McTigue spent most of his time addressing issues in the Revised Code that make it onerous on citizens who want to get initiatives and referenda on the ballot. Specifically, he was most critical of the changes to the law with respect to referendum and limited time frame that citizens have to challenge acts of the General Assembly.

When asked about the financial costs of utilizing this constitutional process, Mr. McTigue told the committee that a referendum typically costs approximately \$2,000,000, and an initiative costs about \$750,000 - \$1,000,000.

Mr. McTigue mentioned that most of his clients prefer to change the Constitution, rather than initiate a new law, because by the time they begin the process of proposing an amendment, they will have already unsuccessfully approached the General Assembly in an effort to get the law passed. He also mentioned an additional benefit of choosing an initiated amendment: the General Assembly has the ability to change or repeal an initiated law.

Mr. McTigue also said he would provide a redline draft of any constitutional provision that he thought might be improved in order to help citizens who want to engage in the initiative and referendum process.

Scott Tillman, the National Field Director from Citizens in Charge, gave a brief presentation that focused primarily on the importance of keeping the initiative and referendum process open and available to citizens. He stated that in a recent poll, the initiative and referendum process was very popular among voters, with a 5-to-1 favorability margin.

Mr. Tillman also thought that the constitutional amendment route is more popular among citizens because, if passed, that amendment cannot be undermined by subsequent General Assemblies who would have the power to change or repeal the initiated law. He

also indicated that if Ohio wished to encourage people to initiate laws as opposed to initiating constitutional amendments, that Ohio consider some of the protections enacted in other states that defend against legislative tampering with initiated laws. Specifically, he gave examples from Michigan, which he testified requires 75% of its legislature to vote to repeal an initiated law, and Montana, which prohibits the legislature from changing, modifying, or repealing an initiated law for three years.

Mr. Tillman was also critical of recent efforts by the General Assembly, specifically Senate Bill 47, which he thought made it more difficult for citizens to participate in initiatives and referenda.

DPM/msd

Attachment

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION Outline of Testimony of Donald J. McTigue October 10, 2013

**INTRODUCTION:** The rights of citizen initiative & referendum currently in the Ohio Constitution should not in any manner be curtailed or made more difficult to exercise. Rather, amendments should be made to: a) overturn many burdens placed upon the exercise of the rights by the Ohio General Assembly; b) strengthen existing language to forestall enactment of new burdens; c) correct unintended consequences of the 2008 amendments; and d) clarify certain existing requirements.

1. Undue burdens placed on the exercise of the rights of citizen initiative & referendum by the General Assembly.
  - Required summary & OAG certification for referendum petitions
  - Form 15 requirements and penalties
  - Electronic copy requirement
  - Numbering requirement
  - Index requirement
  - Limitation of period to circulate supplemental petition
  - Limitation on access to unique petition for supplemental signatures
  - Limitation on access to petitions checked by boards of elections
  - In state residency for circulators
  - Limitation of one amendment or law on a petition
  - Attempts to exclude legislation from referendum
2. 2008 Amendments Unintended Consequences
  - Time line for law proposed by initiative petition
  - Computation of deadlines back from date of “the election”
  - Jurisdiction of the Ohio Supreme Court to hear “challenges”
  - Overlap of challenge to first petition and supplemental petition period
3. Clarifications to Existing Provisions
  - Period to circulate petition for supplemental signatures
  - More than one amendment or law on a petition
  - Meaning of verified
  - Effective date of a law in case of insufficient referendum petition
4. Reform redistricting to Decrease the Number of Initiatives & Referenda

TESTIMONY OF SCOTT J. TILLMAN  
NATIONAL FIELD DIRECTOR, CITIZENS IN CHARGE

BEFORE THE CONSTITUTIONAL REVISION COMMITTEE  
OF THE  
OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

OCTOBER 10, 2013

Good afternoon members of the Constitutional Revision Committee of the Ohio Constitutional Modernization Commission and thank you for affording me this opportunity to testify today on the issue of Initiative and Referendum. I'm Scott Tillman, National Field Director for Citizens In Charge, the only national advocacy organization dedicated to protecting and expanding the Initiative and Referendum rights of every American, without regard to politics or party.

The Ohio Constitution reserves to the citizens of this state the right to initiate both constitutional amendments and statutes by petition, and likewise to refer statutes passed by the legislature to a vote of the people to be approved or rejected. Initiative and Referendum is extremely popular among Ohioans, with citizens supporting the process by a greater than five-to-one margin, 66 percent in favor compared to only 13 percent opposed.

The initiative gives citizens a voice when the General Assembly will not take up their cause. In fact, the referendum process exists to provide a way for citizens to block the legislature's lawmaking, when deemed necessary, and through the initiative to bypass the Ohio General Assembly and Governor.

Through Initiative and Referendum, the people of Ohio are not just theoretically "in charge" of their government, but can actually take the driver's seat. In considering revisions to the constitution, Citizens in Charge urges this committee to do all it can to protect this essential citizen-based democratic power. Let me present some ideas on how Ohio's process can be improved for everyone.

**Initiating amendments vs. statutes**

Ohio provides little incentive for citizens to pursue a statutory initiative as opposed to an initiative constitutional amendment. Often the proponent's decision between the two approaches is based less on the legal nature of the particular measure and more on the likelihood that state legislators will undermine the initiative measure.

Currently, voter-enacted statutes are afforded no protection from immediate changes or even repeal by the Ohio Legislature. This provides a significant incentive to pursue a constitutional amendment over an initiative statute.

Conversely, eight of the twenty-one states with statutory initiatives provide some level of protection against legislative repeal or even changes to statutory measures passed by voters – either requiring voters to approve any changes or a supermajority of legislators or providing that legislators must wait two or more years before making any changes. In recent years, initiatives have also been filed in Colorado, Missouri and Montana to enact significant protections for statutory initiatives against legislative amendment or repeal.

Citizens in Charge recommends that Ohio reduce the opportunity for what academics call “legislative tampering,” by not allowing any change or repeal of a voter-approved initiative statute except by a majority vote of the people or a 3/4ths majority of both Houses of the legislature.

### **Other State Examples**

- Arizona law requires that any change to an initiative statute be approved by the voters, except that a 75% supermajority can make changes if the change “furthers the purpose of the measure.”
- The Michigan State Legislature cannot repeal or amend statutory ballot initiatives except by a 75% supermajority vote of each house or as otherwise provided for in the initiative.
- The Nevada State Legislature cannot repeal or amend initiated statutes for three years after they go into effect.

### **Respect First Amendment Rights**

Earlier this year, the Ohio Legislature passed Senate Bill 47 and Governor John Kasich signed it into law. The new law reinstates a residency requirement that was previously struck down as unconstitutional by the federal Sixth Circuit Court of Appeals. Citizens in Charge has filed suit in federal court to overturn this senseless restriction on First Amendment rights.

The Ohio Constitution should prohibit any legislation found to frustrate, rather than facilitate the ability of citizens to petition their government through the Initiative and Referendum process.

### **A clear problem in Ohio’s referendum process**

Ohio law requires that proponents of a referendum submit an official summary of the referendum, prior to collecting signatures. But the time it takes the Attorney General to approve the summary can take 20 days away from the 90 days to collect signatures on a referendum petition provided in the state constitution. In addition, the Attorney General may reject the summary, starting the process over and taking away another 20 days. This results in referendum petitioners not having enough time to circulate petitions.

A reasonable solution would allow for 90 days to gather signatures after the AG provides the petition language.

## Ohio Survey of 500 Likely Voters Conducted June 3, 2010 By Pulse Opinion Research

	Total		Gender		Age				
	LV's		Male	Female	18-29	30-39	40-49	50-64	65+
Favor or Oppose Initiative and Referendum Process?	66%		71%	62%	59%	68%	72%	66%	61%
Oppose	13%		17%	11%	20%	16%	10%	14%	14%
Not sure	20%		13%	27%	22%	16%	18%	20%	26%

	Race			Party		
	White	Black	Other	Republican	Democrat	Other
Favor or Oppose Initiative Process?	67%	57%	73%	70%	60%	72%
Oppose	14%	13%	1%	10%	18%	11%
Not sure	19%	30%	26%	20%	22%	17%

	Ideology			Married		Children at Home	
	Conservative	Moderate	Liberal	Yes	No	Yes	No
Favor or Oppose Initiative Process?	74%	71%	47%	66%	66%	65%	67%
Oppose	10%	13%	21%	14%	13%	13%	14%
Not sure	16%	17%	33%	20%	21%	22%	20%

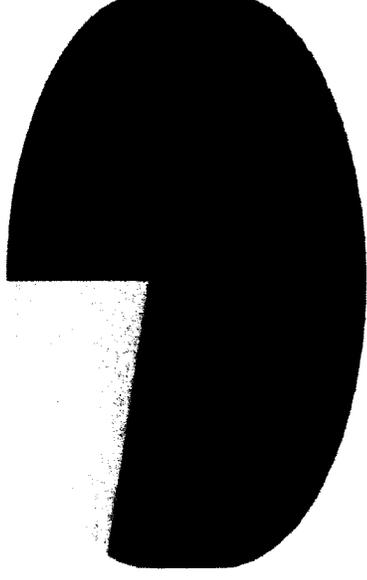
	Income						
	Under \$20K	\$20K-\$40K	\$40K-\$60K	\$60K-\$75K	\$75K-\$100K	\$100K+	Not sure
Favor or Oppose Initiative Process?	70%	67%	67%	74%	61%	66%	54%
Oppose	9%	13%	14%	12%	13%	17%	15%
Not sure	22%	20%	19%	14%	26%	16%	31%

## Citizens Want a Direct Say in Government

*In 26 states, citizens can sign a petition to put laws or constitutional amendments on the ballot to be decided by the voters at a statewide election. This process is known as initiative & referendum. Would you favor or oppose the initiative & referendum process in your state?*

### Ohio

Favor 66%  
Oppose 13%  
Not Sure 20%



Poll conducted by *Pulse Opinion Research* - May 26 to July 19, 2010

Sample: 500 registered voters

Margin of Error: +/- 4.5%

Full poll results available at [CitizensInCharge.org](http://CitizensInCharge.org) & [CitizensInChargeFoundation.org](http://CitizensInChargeFoundation.org)

 **CitizensInCharge**  **CitizensInCharge**  
F O U N D A T I O N A 501(c)4 Citizen-Powered Advocacy Organization

Hello, I'm Scott Tillman Director of Field Operations for Citizens In Charge a 501 (c) (4) citizen-powered advocacy organization that serves to protect and expand the initiative and referendum process. Steven Steinglass asked that Citizen in Charge give testimony on the initiative process today.

The right to initiate laws both Constitutional Amendments and Statutes is reserved to the citizens of Ohio. Initiative and Referendum is extremely popular among citizens. Initiative gives citizens a voice when the general assembly will not take up their cause. This is why citizens typically use the initiative process in Ohio to circumvent, avoid or bypass the Ohio General Assembly and Governor. I will present some ideas on how the process can be improved for everyone.

### **Initiating amendments vs. statutes**

Citizens can use the initiative to both amend the constitution as well as propose statutes. They choose the amendment process to protect their work from legislative changes. The initiative process is expensive. The general assembly currently has the power to overturn and easily change initiated statutes. Constitutional Amendments must be sent back to the voters before they can be overturned.

### **How can the initiated statute process be made more attractive to citizens?**

- Protect initiated statutes from legislative tampering
- Require a super majority in both houses of the General Assembly to overturn statutes
- Require a vote of the people to overturn citizen initiated statutes
- Restrict legislative amendment or repeal for a designated number of years
- Extend the signature gathering window
- Lower signature requirements

### **Examples**

- The North Dakota Legislative Assembly may not repeal or amend an initiative for seven years without a 2/3 majority votes.
- The Michigan State Legislature can repeal and amend ballot initiatives by a 75% supermajority vote of each house or as otherwise provided by the initiative.
- The Nevada State Legislature can only repeal or amend initiated state statutes three years after they have been enacted.

### **Things to avoid (have been overturned in Federal Courts)**

- Restrictions on circulators
- Pay per signature bans

### **A clear problem in Ohio**

The lack of time constraint on the AG's office regarding ballot wording for referendums. Currently referendums must be filed within 90 days of the laws approval. The AG is not reasonably limited in creation of petition wording. This results in referendum petitioners not having enough time to circulate petitions. A reasonable change would allow for 90 days to gather signatures after the AG provides the petition language.