OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

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House District 28

Part II
Reports and Recommendations

June 8, 2017

Ohio Statehouse
Room 313

Ohio Constitutional Modernization Commission

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION
ARTICLE VII, SECTION 1

SUPPORT FOR PERSONS WITH CERTAIN DISABILITIES

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article VII, Section 1 concerning public institutions for persons with certain disabilities, specifically, the "insane, blind, and deaf and dumb." It is adopted pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that Article VII, Section 1 be changed to modernize outdated language and clarify the state's commitment to assisting persons with disabilities.

The Commission proposes that the current provision be revised to state the following:

> *Facilities for and services to persons who, by reason of disability, require care or treatment shall be fostered and supported by the state, as may be prescribed by the General Assembly.*

Background

Section 1 of Article VII reads as follows:

> Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly.

In addressing the topic of public institutions, the delegates to the 1850-51 Constitutional Convention devoted the greater portion of their discussion to the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.[1] Nevertheless, the consensus was that the state should play a role in assisting persons with disabilities, specifically, those who were "insane," "blind," and "deaf and dumb."

The General Assembly has broad power to create institutions for the benefit of persons with mental or physical disabilities even without the authority in Section 1. Indeed, Ohio had been providing for the care and treatment of the "insane" since the early 1800s.[2] The new provision, however, created a constitutional mandate that the state address this issue by providing that the institutions in question "shall always be fostered and supported by the state."

The initial version of Section 1 had respectfully referred to the intended beneficiaries of the institutions being created as "inhabitants of the State who are deprived of reason, or any of the senses * * *."[3] The use of the word "senses," however, was felt to be too broad and was replaced with language referring to the insane, blind, and deaf and dumb.

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended that Section 1 be retained without change.

The 1970s Commission engaged in extensive discussion, both at the committee and the Commission level, about how to describe the position of the state relative to the needs of persons with disabilities. Acknowledging the evolving state of "legal, and perhaps social, obligations to persons needing care," the 1970s Commission struggled with how to recognize the state's commitment as well as how to describe exactly which persons in need of care would be covered by the provision. The 1970s Commission recognized that the original language addressed only "the insane, blind, and deaf and dumb," while some of the revisions they considered expanded the subject population to others in need of assistance, such as the aged, and the developmentally and mentally disabled. The 1970s Commission additionally wondered whether the word "institutions" should be clarified so as to create an obligation to help in settings outside of a physical facility, or whether the original concept of the state's creating or funding schools, asylums, or other types of residential facilities should be maintained. The 1970s Commission also was concerned about using language that might suggest the state has an unlimited financial responsibility for the care of such persons. The committee of the 1970s Commission recommended the following language:

> Facilities and treatment for persons who, by reason of disability or handicap, require care, treatment, or habilitation shall be fostered by the State. Such persons shall not be civilly confined unless, nor to a greater extent than, necessary to protect themselves or other persons from harm. Such persons, if civilly confined, have a right to appropriate habilitation, treatment, or care.

Although a majority of the 1970s Commission approved this proposal, it failed to achieve the necessary two-thirds support, and therefore did not become a recommendation. As reported by the 1970s Commission, the major objections "appeared to be grounded in the uncertainty of the state's obligation as a result of the language," with the result that the inclusion of the phrase "right to treatment" suggested to some members that the state would be taking on a greater burden than it could assume.

The failure of the recommendation to obtain the supermajority necessary for adoption prompted a minority report that was supported by 17 members of the 1970s Commission. As described by those signing the report, the first sentence of the recommended change states the same principle as the present constitution, allowing for more modern, less stigmatizing language. The minority report further suggested that removing the word "support" from the original provision would indicate that the state was not extending a right to specific services or facilities. The minority report asserted that the second part of its recommendation was a statement of the state's obligations under federal constitutional, statutory, and case law to provide due process as well as a right to appropriate care, treatment, or habilitation.

Litigation Involving the Provision

In re Hamil, 69 Ohio St.2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a state agency serving the mentally ill was required to cover the cost of care of a juvenile at a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile's private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1's requirement that state institutions of this kind "shall always be fostered and supported," the Court interpreted this mandate as indicating the state's "strong responsibility to care for citizens placed in its public institutions." *Id.*, 69 Ohio St.2d at 99, 431 N.E.2d at 318. However, the Court found, "no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control." *Id.* The Court additionally observed that, historically, the phrase "benevolent institution" has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St.2d at 100, 431 N.E.2d at 318.

The Court rejected the parents' argument that a substantial portion of the expenses would be paid by insurance, so that the state's burden would be light. Instead, the Court reasoned that a decision solely based on the cost to the state would have negative repercussions, since in other cases the state would be called upon to "absorb the entire cost of treatment at an expensive private institution." *Id.*, 69 Ohio St.3d at 104, 437 N.E.2d at 321.

Presentations and Resources Considered

Kirkman Presentation

On September 8, 2016, the Education, Public Institutions, and Local Government Committee heard a presentation by Michael Kirkman, who is executive director of Disability Rights Ohio, on the history of Article VII, Section 1, relating to "Institutions for the Insane, Blind, and Deaf and Dumb."

Mr. Kirkman noted the word "institution" is ambiguous because an institution can be a physical place or a service, among other things. He added that the language of the section is not self-executing, requiring action by the General Assembly.

Describing the history of the state's involvement in the care of the mentally disabled, Mr. Kirkman said the earliest attempts to provide care reflected a lack of understanding. He noted that, in the 1800s, reformers Benjamin Rush and Dorothea Dix led campaigns to provide more humane treatment to mentally ill persons. He said during that period, twenty states expanded the number of mental hospitals. He noted that, prior to the passage of Section 1 in 1851, Ohio had provided for the care and treatment of the insane, although most responsibility fell to charities, counties, and churches. After 1851, the state population grew, and there came a need for the state to sponsor asylums to provide more humane treatment to the mentally ill. He said there was no scientific evidence that Dix's asylum model actually had a therapeutic value, but many believed asylums helped.

Mr. Kirkman commented that, as time went on, these institutions changed for the worse. Further problems were related to the philosophy behind the Eugenics Movement in the early 20th century, which regarded "feeblemindedness" as being genetic, and which was viewed as justification for mandatory sterilization. Mr. Kirkman noted examples of persons or groups who were institutionalized or sterilized solely because of race or economic status rather than due to actual mental incapacity.

Mr. Kirkman remarked that, in the 1960s, attitudes changed, and the field of psychiatry adopted new views on treating and institutionalizing the mentally ill. He said during that period the mental hospital was replaced with community care and neighborhood clinics. In the 1980s, he said, law evolved to the point where the state is now required to provide training to people in commitment, and the mentally ill are afforded equal protection and due process rights under the Fourteenth Amendment to the United States Constitution.

He commented there has been a significant depopulation of state hospitals since the 1980s, with the unfortunate result that many mentally disabled persons became homeless or were imprisoned. He further noted that assistance to that population is now governed by the Americans with Disabilities Act (ADA), which focuses on services in the community rather than institutionalization.

He said Ohio currently has six psychiatric hospitals with a total of 1,067 beds. He said as many as 70 percent of this population has been committed as a result of a criminal proceeding.

Mr. Kirkman emphasized that the language used to describe those with psychiatric disabilities is a "major focus in the mental health world." He said the word "insane" is offensive and discriminatory, with the current trend in the Ohio Revised Code being to identify people first and the disability second.

Mr. Kirkman suggested that, because Ohio does not operate any institution for the "blind" or the "deaf and dumb," and because the trend is away from institutionalizing the mentally incapacitated, Article VII, Section 1 could be eliminated. As further support, he noted that funding state institutions takes away from community-based services. He said eliminating the section would not affect treatment of persons in the criminal justice system because treatment for those persons is required by the U.S. Constitution and derives from the inherent authority of the state to prescribe criminal laws.

Addressing the phrase "deaf and dumb" in Section 1, Mr. Kirkman said that the deaf community does not like the word "dumb," and that many do not consider themselves as having a disability but rather that they simply have a different language. He said the main point is the deaf and blind are integrated into society now and are not institutionalized.

Mr. Kirkman described that the inherent authority to use public funds to assist the disabled lies with the general authority to provide for the general welfare of people in the state. But, he acknowledged, taking this language out could be viewed by some as eliminating a backstop.

Colker Presentation

On January 12, 2017, Ruth Colker, professor of law at the Ohio State University Moritz College of Law, presented to the committee in relation to the committee's review of Article VII, Section 1. Prof. Colker indicated her first recommendation would be to repeal Section 1 as unnecessary. Failing that, she said, her second recommendation would be to recommend new language that would meet the underlying purpose of the original section, but would be more respectful and consistent with other provisions. She said, in this regard, she would recommend changing the language to state:

> The state shall always foster and sustain services and supports for people with disabilities who need assistance to live independently; these services and supports will, to the maximum extent possible, be provided in the community, rather than in institutions.

Prof. Colker said, in formulating this language, she consulted with members of the disability rights community. She said the revision is more respectful, and offers a more functional definition of disability. She said another goal was to have the section be more consistent with modern notions under federal law and the United States Constitution.

Addressing the terms used in the current section to describe persons with disabilities, Prof. Colker said the disability rights community prefers "person first" language, thus persons with psychiatric impairment would not be described as "the insane." She said the thinking behind this

word choice is that disability status is only one aspect of personhood. She added that descriptors such as "insane" or "deaf or dumb" are not used. Instead, such persons would be described as being individuals with psychiatric, speech, sensory, visual, or intellectual impairments. Describing definitions that have been used at the federal level, she said no one definition would serve the purpose, and that the federal government has chosen different functional definitions depending on the context.

Prof. Colker emphasized considering the kind of assistance the state is saying it wants to provide. Noting federal case precedent, she said the United States Supreme Court and Congress have adopted the concept that people with disabilities should be integrated into communities as much as possible. She cited an example as being that the Individuals with Disabilities Education Act (IDEA) provides that states must have procedures assuring, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and that special or separate placement occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary assistance cannot be achieved satisfactorily. She said this has been the preference since 1975, and suggests a default principle that persons with disabilities be placed in an integrated environment.

Noting Section 1's use of the word "institutions," Prof. Colker said this word choice suggests a preference for an institutional setting, a concept that is no longer the prevailing view. She said she tried to craft language that would indicate an understanding that, aspirationally, the state would try to place people in a community setting, rather than have the default be placing them in institutions.

She said this approach is also reflected in the Americans with Disabilities Act, which was passed in 1990. Citing the case of *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), she said the ADA is violated when people who are able to live in the community are placed in institutions because, as the U.S. Supreme Court concluded, unjustified isolation is discrimination based on disability. She noted that principle is stated in the Court's finding that there is a presumption of deinstitutionalization, and that states are required to provide community-based treatment for persons with mental disabilities when it is determined "that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." *Olmstead* at 607.

Addressing whether her suggested language could be interpreted as creating a fundamental right, Prof. Colker said that would depend on what doctrine or rule of law applies. She said she relied on the language in the *Olmstead* decision indicating the resources of the state are a consideration. She said, as a result, her recommendation would be to describe the state's obligation as being "to the maximum extent possible." She said the definition of a fundamental right does not mean limitless support, but rather means a court would develop a pragmatic rule that is flexible. She said one goal in changing Section 1 would be to maintain the principle articulated in the current provision that the state should be doing something for people who cannot live without assistance.

Prof. Colker said the current language indicates the state only has an obligation to support people who are in an institutional setting. She said from a policy perspective that is wrong, and is also unconstitutional and illegal.

Asked whether, if Ohio did not have Section 1, the standard would be found in state law, Prof. Colker said eliminating Section 1 would not have a significant impact because *Olmstead* already requires the state to provide for the disabled. She said a constitution is aspirational, and that keeping and refining the obligation set out in Section 1 would continue that aspirational goal using language that is respectful and modern.

Discussing her recommendation that the provision be changed to include the phrase "assistance to live independently," Prof. Colker said it is important to recognize that each individual might need a different level of assistance. As to whether the proposed language would create an obligation the state could not fulfill in a budget crisis, Prof. Colker said the current provision mandates state support that would be important to maintain in any revision. She said, if rewriting the provision is not an option, her preference would be to delete it.

Pizzuti Presentation

Also on January 12, 2017, Marjory Pizzuti, who is president and chief executive officer of Goodwill Columbus, appeared before the committee to provide her organization's perspective on the state's support of people with disabilities. She said her organization serves more than 77,000 individuals, with 85 percent of those persons having a disadvantaging condition such as long-term unemployment, incarceration, low educational attainment, and physical or intellectual disabilities. She said Goodwill chapters throughout Ohio are partners and providers of services through many state agencies, including Opportunities for Ohioans with Disabilities, and the Ohio Departments of Aging, Jobs and Family Services, Developmental Disabilities, Rehabilitation and Corrections, and Mental Health and Addiction Services. She said her organization seeks to provide support to individuals with disabilities, and to assure that all citizens can be full and active participants in the community.

Addressing current Section 1, Ms. Pizzuti said the commitment to community-based integration may be fundamentally at odds with the intent of Section 1, which specifically references "institutions." She said Section 1 raises three issues: the wording used, the appropriateness of continuing to include a provision that focuses on institutionalizing people with disabilities, and the fundamental question of whether any reference to a specific population should be included anywhere in the Ohio Constitution.

With regard to the terminology used to describe persons with disabilities, Ms. Pizzuti said the current section is not only offensive but inappropriate based on the current understanding of illness and disabilities. She said, while this language was relevant at the time of adoption, it has no place in current or future revisions of the Ohio Constitution. However, she recognized that an attempt to revise the terminology is difficult and ultimately would not resolve the problem because society's perception of individuals with disabilities continues to evolve.

Ms. Pizzuti continued that the movement toward community integration has been reflected in the downsizing of the state's institutional facilities, the increase in competitive integrated employment, and the transition into community-based settings. She said this is an intentional and widely-acknowledged paradigm shift for the full integration of individuals with physical and intellectual disabilities into communities.

Acknowledging the good intentions of the drafters of Section 1 to protect and serve individuals with disabilities, she said the previous practice of institutionalizing people with disabilities has given way to policies that favor community-based support.

Ms. Pizzuti said there is a more fundamental question of whether a need to foster and support individuals with disabilities has a place in the constitution, and, if so, where it should be placed. She said it is possible such a "general welfare" statement could be incorporated in the Bill of Rights or the Preamble. She said Article VII, Section 1 provides an important voice for individuals with disabilities, although the notion of institutionalization and the language used is obsolete. She encouraged the committee to work toward balancing the need to modernize the language with the need to reaffirm the spirit of the intent of the provision, which is to provide assistance that "fosters and supports" opportunities for individuals with disabilities.

Hetrick Presentation

Finally, on January 12, 2017, the committee heard a presentation by Sue Hetrick, executive director of the Center for Disability Empowerment, to provide her agency's perspective on potential changes to Section 1. Ms. Hetrick described that her agency operates a center for independent living, and that such facilities have been around since the 1970s. She said the concept that persons with disabilities, with assistance, could be integrated into the community corresponded with the civil rights movement. She said her organization emphasizes consumer control, and that 51 percent of the board of directors is comprised of persons who are disabled.

Ms. Hetrick said disability is regarded as a neutral difference, meaning that it results from the interaction of the individual with his or her environment, rather than from other causes. She said, despite the emphasis on integrating persons into the community, Ohio continues to have a culture of institutions, maintaining schools for the deaf and for the blind, as well as nursing facilities sometimes being mental health institutions. She said any congregate setting can be an institution. However, she said, under *Olmstead*, if the appropriate supports and services are in place segregation is not necessary.

Asked whether, if Section 1 is not revised, it should be removed or kept as is, Ms. Hetrick remarked that, if the constitution is to provide sections protecting gender and religion, there should be a section acknowledging and protecting persons with disabilities. Thus, she said, if revision is not an option she would prefer that the section be left as is.

Discussion and Consideration by the Education, Public Institutions, and Local Government Committee

While all members of the Education, Public Institutions, and Local Government Committee agreed that the current references to "the insane" and the "deaf and dumb," are outdated and disrespectful, there was concern that alternate language may overly broaden the scope of the state's responsibility by expanding the population to be served.

In considering how to phrase the state's involvement in fostering and supporting care, committee members indicated a concern that state resources could be stretched beyond capacity if the constitutional provision were written or interpreted as requiring limitless support. Committee members also expressed concern that use of the term "disability" may be vague, preferring language to allow the General Assembly to determine which conditions will be subject to the provision.

The committee discussed whether the reference to "institutions" indicates that the state has an obligation to provide physical facilities, or whether, more broadly, it suggests a state obligation to accommodate the needs of persons with disabilities, whatever those needs may require. Committee members observed that the current trend is away from institutionalizing persons in need of care. Instead, for example, mentally ill persons often benefit from community-based treatment. In addition, children with vision or hearing impairments, with appropriate assistance, can attend public schools. Some members expressed support for a change that would indicate the state would provide support "to the maximum extent appropriate," which would allow the creation of facilities for persons requiring an institutional setting.

Some committee members expressed that Section 1 could be removed without eliminating the General Assembly's authority to enact laws assisting the subject populations. However, members acknowledged that a recommendation to repeal Section 1 should not be interpreted as suggesting that the state should no longer foster programs that support the disabled. In the end, the committee decided against recommending repeal of the section.

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017 and May 11, 2017, the committee voted unanimously to recommend that Article VII, Section 1 be replaced by the following language:

> Facilities for and services to persons who, by reason of disability, require care or treatment shall be fostered and supported by the state, as may be prescribed by the General Assembly.

Presentation to the Commission

On May 11, 2017, and June 8, 2017, Ed Gilbert, chair of the Education, Public Institutions, and Local Government Committee, presented a report and recommendation for Article VII, Section 1, indicating the history and purpose of the section, describing the presentations to the committee, and discussing the committee's proposed change to the section.

Action by the Commission

At the Commission meeting held June 8, 2017, _____ moved to adopt the report and recommendation for Article VII, Section 1, a motion that was seconded by _____. Upon a roll call vote, the motion _____ by a vote _____ in favor, with _____ opposed, and _____ absent.

Conclusion

The Ohio Constitutional Modernization Commission recommends that Article VII, Section 1 be _____.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on June 8, 2017, the Commission voted to _____ the report and recommendation on _____.

_____ _____

Senator Charleta B. Tavares, Co-chair Representative Jonathan Dever, Co-chair

Endnotes

[1] An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. *See* O'Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc (last visited Aug. 23, 2016).

[2] *See* Eagle and Kirkman, Ohio Mental Health Law, Section 1.11 (2nd Ed. Banks-Baldwin). *See generally* Kirkman, "Fostering" Institutions and People with Disabilities (Sept. 8, 2016) (presentation to the Ohio Constitutional Modernization Commission).

[3] As originally introduced, Section 1 provided as follows:

> The Institutions for the benefit of these classes of the inhabitants of the State who are deprived of reason, or any of the senses, shall always be fostered and supported by the State, and be regulated by law so as to be open to all classes alike, subject only to reasonable restrictions.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION
ARTICLE VII, SECTIONS 2 AND 3

DIRECTORS OF PUBLIC INSTITUTIONS

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article VII, Sections 2 and 3 concerning directors of public institutions. It is adopted pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that Article VII, Sections 2 and 3 be repealed as obsolete.

Background

Sections 2 and 3 of Article VII read as follows:

> Section 2
>
> The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the General Assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.
>
> Section 3
>
> The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.

Origin of Sections 2 and 3

In creating provisions about public institutions, the delegates to the 1850-51 Constitutional Convention were plowing new ground; no similar article or provisions were a part of the 1802 Constitution. While one apparent goal was to express support and provide for "benevolent institutions," understood as facilities for persons with diminished mental capacity as well as for the blind and deaf, the greater portion of the discussion centered on the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.[1]

Addressing proposals for Section 2, delegates immediately focused on whether directors of the penitentiary should be selected by the General Assembly, appointed by the governor, or directly elected by voters.[2] Some delegates supported allowing the General Assembly to make this determination. Others expressed that the rationale given for involving the governor – that the General Assembly had become unpopular – was not supported by fact, and, in any event, was not sufficient justification to have voters approve "every small office in the state."

Other delegates expressed that the importance of the role of directors of the penitentiary meant they should be elected, with one delegate, Daniel A. Robertson of Fairfield County, having previously supported that position in his previous role as a member of the New York Constitutional Convention in 1837, where he advocated the popular election of all public officers.[3] In fact, requiring all state offices to be elective had been a key plank in the platform of reforms advocated by Samuel Medary and others as justification for voting to hold the 1850-51 convention.[4]

Some delegates supported allowing the governor to appoint, with a requirement for obtaining the advice and consent of the Senate as a compromise measure.

Delegates then returned to the issue of how directors should be selected. G.J. Smith, a Warren County attorney, offered an amendment that would add at the close of Section 2 the words "and the question upon all nominations made by the Governor shall be taken by yeas[] and nays and entered upon the journal of the senate," which delegates approved.

D.P. Leadbetter, a Holmes County farmer, then proposed Section 3 to address how vacancies would be filled, as follows:

> The governor shall have power to fill all vacancies that may occur in the offices created by this article of the Constitution, until their successor in office shall be elected and qualified, or until the meeting of the ensuing legislature, and the successor confirmed and qualified.[5]

This addition was adopted, and the committee reported both sections back to the convention.

The discussions of Sections 2 and 3 resulted in provisions that assigned roles to the General Assembly and the governor in selecting penitentiary and benevolent institution directors, and

provided a procedure for filling director vacancies in penitentiaries and benevolent institutions. While a significant portion of the discussion dealt with the purposes of incarceration and compensation for prison labor, these topics did not culminate in a recommendation.

Although Sections 2 and 3 may seem overly concerned with how the officers of the institutions are selected, in 1850-51, a concern about legislative overreaching, as well as a related desire to elevate the role of the voter, heightened delegates' interest in the topic.[6] Indeed, a large part of the delegates' discussion about public institutions centered on which branch of government should control and regulate these institutions.

Aside from expressing general support for public institutions, the convention delegates' primary goal seems to have been to address the election-versus-appointment issue. The meandering discussion allowed delegates to express opinions on crime and punishment, racial segregation, and political power, but the discourse never ripened into a substantive policy statement or consensus for an approved recommendation. While one delegate attempted to expand the concept of "public institutions" to include a provision related to prison labor, his proposal was rejected. No other delegate appears to have attempted to propose a new amendment.

Relationship to Statutory Law

The provisions in Article VII, Sections 2 and 3 are not self-executing, and the General Assembly has adopted more detailed statutory provisions.

Article VII, Section 2 references "directors of the penitentiary" but does not create that role. The phrasing of Article VII, Section 2 suggests that the referenced positions already exist. Thus, its primary purpose, as well as that of Section 3, is not to create the roles but to describe how the roles are to be filled.

Under current statutory law, the most analogous position to that of the "directors of the penitentiary" is possibly the director of the department of rehabilitation and correction, a statutory department head role identified in R.C. 121.03, at subsection (Q). R.C. Chapter 5120 relates to the Department of Rehabilitation and Correction (DRC), providing under R.C. 5120.01 that the director is the executive head who has the power to prescribe rules and regulations, and who holds legal custody of inmates committed to the DRC. While R.C. Chapter 5145 generally concerns "the penitentiary," its current focus is on details related to managing the prison population, rather than the role of the director of the penitentiary.

In relation to Article VII, Section 3, R.C. 3.03 provides specific instructions for the governor's exercise of the power to appoint to fill a vacancy in office, with the advice and consent of the Senate.[7]

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended the repeal of Sections 2 and 3, finding them to be obsolete. As the committee of the 1970s Commission noted, the sections derived from a time when nearly all appointing power was

vested in the legislature, so that the provisions were deemed necessary to allow a transfer of that power to the governor, with the advice and consent of the Senate. However, the 1970s Commission observed that the office of the directors of the penitentiary is no longer in existence. The Commission report further noted that, by the 1970s, the only state institution that could be considered a "benevolent institution," the Ohio Soldiers' and Sailors' Orphans' Home, was governed by a statutory five-member board of trustees appointed by the governor with the advice and consent of the Senate. Thus, neither Section 2 nor Section 3 was deemed to be necessary for the state to carry out functions related to the incarceration of prisoners or the support of state "benevolent institutions."

Litigation Involving the Provision

In re Hamil, 69 Ohio St. 2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a "benevolent institution" included a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile's private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1's requirement that state institutions of this kind "shall always be fostered and supported," the Court interpreted this mandate as indicating the state's "strong responsibility to care for citizens placed in its public institutions." *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318. However, the Court observed that, historically, the phrase "benevolent institution" has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St. 2d at 100, 431 N.E.2d at 318. Therefore, the Court found, "no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control." *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318.

Presentations and Resources Considered

Furderer Presentation

On March 9, 2017, the Education, Public Institutions, and Local Government Committee heard a presentation by Darin Furderer, who is a corrections analyst at the Correctional Institution Inspection Committee, on the leadership arrangements for correctional facilities and the use of the term "director."

Mr. Furderer noted the title of "director" is not used to refer to the head of the penitentiary. He added that the DRC currently uses the term "warden" to refer to a person in charge of an adult correctional facility, and the Department of Youth Services uses the term "superintendent" to refer to a person in charge of a youth correctional facility.

Discussion and Consideration by the Education, Public Institutions, and Local Government Committee

The Education, Public Institutions, and Local Government Committee noted that the governor appoints a "director" of DRC, who is the head of the department rather than the head of the penitentiary. The DRC director then appoints the persons who run the correctional facilities.

Committee members agreed the sections appear to be obsolete, noting that they focus on who appoints the heads of these institutions, an issue that has been settled for a long time and is not relevant to any present procedure.

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017, and May 11, 2017, the committee voted unanimously to recommend repeal of Article VII, Sections 2 and 3.

Presentations to the Commission

On May 11, 2017, and on June 8, 2017, Ed Gilbert, chair of the Education, Public Institutions, and Local Government Committee, presented a report and recommendation for Article VII, Sections 2 and 3, indicating the history and purpose of the provision, describing the presentation to the committee, and discussing the committee's deliberations on the question of whether the sections were obsolete.

Action by the Commission

At the Commission meeting held June 8, 2017, _____ moved to adopt the report and recommendation for Article VII, Sections 2 and 3, a motion that was seconded by _____. Upon a roll call vote, the motion _____, by a vote of _____ in favor, with _____ opposed, and _____ absent.

Conclusion

The Ohio Constitutional Modernization Commission recommends that Article VII, Sections 2 and 3 be _____.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on May 11, 2017, and June 8, 2017, the Commission voted to _____ the report and recommendation on _____.

Senator Charleta B. Tavares, Co-chair

Representative Jonathan Dever, Co-chair

Endnotes

[1] An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. *See* O'Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc (last visited Aug. 23, 2016).

[2] As originally introduced, Section 2 provided as follows:

> The Directors of the Penitentiary, and the Trustees of the Benevolent Institutions, now elected by the General Assembly of the State, with such others as may be hereafter created by subsequent Legislative enactment shall, under this constitution, be appointed by the Governor, by and with the advice and consent of the Senate.

[3] *See* David M. Gold, *Judicial Elections and Judicial Review: Testing the Shugerman Thesis,* 40 Ohio N. L. Rev. 39, 51 (2013).

[4] *See* Barbara A. Terzian, *Ohio's Constitutional Conventions and Constitutions,* in The History of Ohio Law 40, 52 (Michael Les Benedict and John F. Winkler, eds., 2004).

[5] Currently, Section 3 provides: "The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified."

[6] As Steinglass and Scarselli note: "Over the course of five decades under the first constitution * * * the people began to see the legislature as the source of many, if not most, of the problems of government, and the new constitution reflected this general distrust of legislative power. * * * [T]he new constitution took the appointment power away from the General Assembly. All key executive branch officers became elected officials, as did all judges." Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 35 (2nd prtg. 2011).

[7] R.C. 3.03 provides:

> When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a regular session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next regular session of the senate, and, if the senate advises and consents thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made. A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the adjournment sine die of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION

GENDER-NEUTRAL LANGUAGE

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding the incorporation of gender neutral language in the Ohio Constitution. It is adopted pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that gender-specific language currently in the constitution be replaced with gender-neutral language, if appropriate, as part of one comprehensive amendment.

Background

The constitution currently contains numerous examples of gender-specific nouns and pronouns used in situations where a gender-neutral word would be appropriate. This language is scattered throughout multiple articles and sections of the constitution. There are a few examples of both genders (e.g., "he or she") being used in more recent constitutional amendments, but its usage is inconsistent.

In 1975, the issue of gender-specific language in the constitution was raised to the Ohio Constitutional Revision Commission (1970s Commission) by the National Organization for Women.[1] However, the Education and Bill of Rights Committee of the 1970s Commission did not believe there was a "demonstrated need" to change gender-specific language:

> Changes for the sake of modernizing language or spelling, omitting obsolete provisions, rearranging, and similar matters are not recommended. A proposal to change sex-specific words – for the most part, the use of the masculine gender – to neutral words or to rewrite the sections involved so that references to a particular gender could be eliminated was rejected.[2]

Also during the 1970s, the issue of gender-specific language was raised to the Task Force for the Implementation of the Equal Rights Amendment (Task Force).[3] The primary purpose of the Task Force, established by Governor John Gilligan in 1974,[4] was to review the Revised Code and recommend both language and substantive adjustments to accomplish the purpose of making the effect of state law equal for both men and women.[5] While the Task Force did recommend gender-specific language changes for the Revised Code,[6] it did not discuss the Ohio Constitution at all, likely due to the fact that the 1970s Commission was operating simultaneously.

Presentations and Resources Considered

Steinglass Memoranda

The Coordinating Committee received two memoranda from Senior Policy Advisor Steven H. Steinglass identifying gender-specific words currently in the text of the Ohio Constitution.

The first memo, dated September 26, 2016, identified where gender-specific pronouns occur in various provisions of the constitution. Additionally, the memo described two possible approaches to changing gender-specific language to be gender-neutral. The first approach was for the General Assembly to create a single, comprehensive amendment that proposes changes to the specific wording, and to submit the amendment to the voters. The second approach was to delegate the responsibility for making the specific language changes to a particular entity. The memo provided the example of Vermont, which delegated this task to its Supreme Court.

The second memo, dated October 18, 2016, supplemented the September memo by adding examples of gender-specific nouns and suggesting specific wording changes to make both the pronouns and nouns gender-neutral.

Gawronski Presentation

On March 9, 2017, Christopher Gawronski, legal intern for the Commission, presented to the Coordinating Committee on the topic of how other states have addressed a need to provide gender neutral language in their state constitutions.

Mr. Gawronski indicated that, since 1974, numerous states have attempted to adjust the language of their constitutions in order to make some or all of the constitutional provisions gender-neutral. He said 13 such attempts made it to ballot, where ten passed and three were defeated. Describing how the constitutional language was changed, Mr. Gawronski said states have approached the task in three basic ways. He said some states use a legislative proposal, by which the legislature proposes specific gender-neutral language amendments to the constitution to be approved by voters. He said other states have made the changes through a constitutional convention or commission process, in which the legislature or citizens created a body to generally revise the constitution, including gender-neutral language, for approval by voters. Finally, he said, gender neutralization has been accomplished by delegation, by which states have proposed a constitutional amendment that delegates the task of revising the constitution to be gender-neutral to an existing office or entity without additional voter approval.

Further describing the process, Mr. Gawronski said that, in states following the legislative proposal approach, the legislature proposed the specific gender-neutral language as a constitutional amendment in accordance with the amendment procedures of their constitutions. He noted in some states only the language in certain sections of the constitution, rather than the whole constitution, was addressed in conjunction with other changes being made in those sections. In all cases, he said the proposed changes required voter approval.

Mr. Gawronski described that the states using the convention or commission approach did not accomplish the change through legislative proposal, but rather drafted new language to be gender neutral, and the substitute provisions were adopted as a part of the task of rewriting the constitution or proposing a series of substantive changes.

He said two states have approached the process of updating constitutional language by proposing to delegate the responsibility to a particular state office or entity: the state supreme court (Vermont) or the secretary of state (Nebraska). He noted that, in both cases, the delegation was proposed as a constitutional amendment that needed to be approved by the voters. Once approved, the specified office or entity would be responsible for making non-substantive language changes purely for the purpose of replacing gendered language with gender-neutral language and publishing a revised constitution without further approval from the voters.

Discussion and Consideration by the Coordinating Committee

In considering the general issue of how to make the constitution's language gender-neutral, the Coordinating Committee first decided to separate the question of changing current constitutional language from ensuring that future constitutional amendments maintain gender-neutrality. The committee assigned the question of ensuring that future amendments are gender-neutral to the Constitutional Revision and Updating Committee as part of its discussion on the initiative process. After additional consideration, the committee decided to retain for itself the question of how to address changing the current constitutional language to be gender-neutral.

After receiving the memos and presentation, the committee felt that a single, comprehensive amendment would be the best approach to making changes to the current constitutional language. Committee members pointed out that the existing gender-specific language includes both nouns and pronouns that require modification. The committee agreed to provide a list of examples of existing gender-specific language as part of its report and recommendation (see Attachment A).

Some members were concerned with the mechanics of proposing a single amendment due to the single-subject rule for amendments, and the requirement for notice and publication of all proposed amendments. The committee was assured that a single amendment to change all gender-specific language would be considered a single subject, even though it would mean a modification to multiple sections of the constitution. However, the publication of all modified sections might be required, which may result in significant costs.

Members also discussed the general approach to be taken to selecting replacement language, wondering, for example, whether "he" would simply be replaced with "he or she." It was pointed out that the Legislative Service Commission (LSC) would be drafting the amendment for

consideration by the General Assembly, so the suggestion was made to allow LSC to propose the specific language for the amendment using the same approach that it uses in drafting language for the Revised Code.

Action by the Coordinating Committee

After formal consideration on April 13, 2017 and May 11, 2017, the Coordinating Committee voted unanimously to recommend that all instances of gender-specific language in the constitution be replaced with gender-neutral language as part of a single, comprehensive amendment.

Presentation to the Commission

On May 11, 2017 and on June 8, 2017, Kathleen Trafford, chair of the Coordinating Committee, presented a report and recommendation regarding gender-neutral language, indicating the committee's discussion and consideration of the issue of how gender-specific references in the constitution might be addressed, and describing the committee's conclusions in relation to the topic.

Action by the Commission

At the Commission meeting held June 8, 2017, _____ moved to adopt the report and recommendation regarding gender-neutral language, a motion that was seconded by _____. Upon a roll call vote the motion _____, by a vote of _____ in favor, with _____ opposed, and _____ absent.

Conclusion

The Ohio Constitutional Modernization Commission recommends that gender-specific language currently in the constitution be replaced with gender-neutral language, if appropriate, as part of one comprehensive amendment.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on June 8, 2017, the Commission voted to _____ the report and recommendation on _____.

_____ _____

Senator Charleta B. Tavares, Co-chair Representative Jonathan Dever, Co-chair

Endnotes

[1] Ohio Constitutional Revision Commission (1970-1977), Proceedings / Research, Vol. 8, at 4374-4378, http://www.lsc.ohio.gov/ocrc/v8%20pgs%203850-4328%20judiciary%204329-4394%20education-bill%20of%20rights.pdf (last visited Apr. 4, 2017).

[2] Ohio Constitutional Revision Commission (1970-1977), Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, 10 (Apr. 15, 1976), http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf (last visited Mar. 30, 2017).

[3] *A Report by the Ohio Task Force for the Implementation of the Equal Rights Amendment* (1975).

[4] *Id.* at vi.

[5] *Id.*

[6] *Id.* at viii-xvii (summary of the Task Force's recommendations).

ATTACHMENT A

Examples of Gender-Specific Language in the Ohio Constitution

Art.	Sec.	Gender-specific term	Location of term within current constitutional provision
I	1	men	All men are, by nature, free and independent, * * *
I	7	men, his	• All men have a natural and indefeasible right * * * • No person shall be compelled * * * against his consent * * * • No religious test * * * on account of his religious belief * * *
I	10	his, him, himself	• * * * attendance of witnesses in his behalf * * * • * * * but his failure to testify * * * • * * * cause of the accusation against him * * * • * * * be a witness against himself * * *
I	11	his	Every citizen may freely speak, write, and publish his sentiments on all subjects, * * *
I	16	him, his	All courts shall be open, and every person, for an injury done him in his land, * * *
II	1g	his, himself, he	• * * * after his name the date of signing and his place of residence. • * * * or township of his residence. • * * * the street and number, if any, of his residence * * * • * * * written in ink, each signer for himself. • To each part of such petition * * * that he witnessed * * *
II	4	he	• No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, * * * • No member of the general assembly shall, during the term for which he was elected, or for one year * * *, during the term for which he was elected.
II	5	he	No person hereafter convicted of an embezzlement * * *, until he shall have accounted for, and paid such money into the treasury.
II	11	he	• No person shall be elected * * *, unless he meets the qualifications set forth in this Constitution * * * • * * * for the term for which he was so elected.
II	15	his	(E) * * * forthwith to the governor for his approval.
II	16	he, his, him	• If the governor approves an act, he shall sign it, * * * • If he does not approve it, he shall return it with his objections in writing * * * • * * * after being presented to him, it becomes law in like manner as if he had signed it * * * • * * * after such adjournment, it is filed by him, with his objections * * *

			• * * * every bill not returned by him to the house of origin that becomes law without his signature.
II	20	his	* * * salary of any officer during his existing term * * *
II	33	material men	Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues * * *
II	35	workmen	For the purpose of providing compensation to workmen and their dependents, * * *
II	37	workmen	* * * for workmen engaged on any public work * * *
III	1b	him	The lieutenant governor shall perform such duties in the executive department as are assigned to him by the governor and as are prescribed by law.
III	2	his	The auditor of state shall hold his office for a term of two years from the second Monday of January, 1961 to the second Monday of January, 1963 and thereafter shall hold his office for a four year term.
III	6	he	He may require information, in writing, * * *
III	7	he	He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.
III	9	he	In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.
III	10	he	He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.
III	12	him	There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio."
III	20	his	* * * with his message to the General Assembly.
IV	5	him	(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification * * *
IV	6	his, he	(A) (3) * * *, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located * * * (C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years. Any voluntarily retired judge, or any judge who is retired under this section, may be assigned with his consent, * * * computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled.
IV	13	he	In case the office of any judge shall become vacant, before the

			expiration of the regular term for which he was elected, * * *.
IV	23	he	* * * until the end of the term for which he was elected.
V	1	he	* * * shall cease to be an elector unless he again registers to vote.
V	2a	his	* * * in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.
V	7	his	Each candidate for such delegate shall state his first and second choices for the presidency, but the name of no candidate for the presidency shall be so used without his written authority.
V	9	he or she	* * * a person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.
VII	3*		* * * until a successor to his appointee shall be confirmed and qualified.
VIII	2b*	he, his	• * * * and he shall make the transfer of one million dollars each month to the World War II compensation * * * • * * * the tax lists of his county for the year in which such levy is made and shall place same for collection on the tax duplicates of his county * * * • * * * if such deceased person's death was service-connected and in line of duty, his survivors as hereinbefore designated, * * *
VIII	2d*	his	• * * * the tax lists of his county for the year in which such levy is made and shall place the same for collection on the tax duplicates of his county * * * • * * * by the Veterans Administration of the United States government, his survivors as herein designated, * * *
VIII	2j	his	• * * * result of injuries or illness sustained in Vietnam service his survivors as herein designated, * * * • * * * and receiving a bonus of an equal amount upon his being released or located.
VIII	9	his	* * * transmit the same with his regular message, * * *
XI	12	he	Repealed eff. Jan. 1, 2021
XIII	3	him or her	* * * but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her * * *
XIII	5	men	* * * which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

* These sections have been recommended for repeal by other committees

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

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

THE OHIO STATUTORY AND CONSTITUTIONAL INITIATIVE

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article II, Sections 1 to 1i, 15(G) and 17 of the Ohio Constitution concerning the statutory and constitutional initiative. It is adopted pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

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

Article II, Sections 1 to 1g, currently contains some of the most confusing and difficult to understand language in the Ohio Constitution. In addition to the substantive changes designed to encourage the use of the statutory initiative as contrasted to the constitutional initiative, this report and recommendation proposes to make these provisions more readable by reorganizing this portion of Article II, by removing difficult to understand language, and by using appropriate subsections and divisions. As part of this reorganization, the report and recommendation proposes non-substantive changes that move provisions currently in Section 1f (Power of Municipalities) and Section 1e (Limitations on Use) to new Sections 1h and 1i, respectively. In addition, it proposes non-substantive changes that move provisions concerning emergency laws to a new Section 15(G), and that move provisions dealing with the effective date of laws to the currently unused Section 17.

The report and recommendation:

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

Summary of Affected Provisions of Current Constitution

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

Article II (Current Provisions)

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

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

Background[1]

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

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

Indirect Statutory Initiative

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

days to determine whether "the summary is a fair and truthful statement of the proposed law * * * ." *Id.*

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

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

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

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

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

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

If the voters approve a proposed initiated statute by a majority of votes on the issue, the law becomes effective 30 days after the election.[12] Any initiated statute approved by voters must conform to the requirements of the Ohio Constitution.[13] The governor may not veto a law

adopted by initiative, but such laws are subject to the referendum and may be amended by the General Assembly.[14]

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

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

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

Constitutional Initiative

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

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

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

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

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

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

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

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

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

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

A majority of the delegates elected to the convention had pledged support for direct democracy before the start of the convention,[28] but during the debates there were sharp disagreements about the shape of direct democracy among its supporters. Ultimately, the delegates approved a compromise that rejected the use of a fixed number of required signatures on at at-large basis in favor of a fixed statewide percentage with a geographic distribution requirement – ten percent for constitutional initiatives and an initial three percent for the statutory initiative. They also proposed the use of an indirect statutory initiative (with the requirement of an additional three percent of signatures collected on a supplementary petition), but they rejected an effort by

opponents of the statutory initiative to include a "poison pill" that would have removed the property tax exclusion and single-tax bar from the statutory initiative, thus preventing the statutory initiative from being used to enact the economic policies of the 19th century economist Henry George.[29] Finally, the delegates rejected a proposal that would have permitted the initiative to be used to call constitutional conventions.[30]

Ultimately, the voters approved the amendment to adopt the statutory initiative, the constitutional initiative, and the referendum by a vote of 312,592 to 231,312. [31]

The Constitutional Initiative in Ohio[32]

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

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

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

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

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

2000S	3	8	11
2010-2016	1	2	3
Total	18	51	69

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

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

Proposed Amendments – 1913 to 2015

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

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

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

The Ohio Statutory Initiative in a National Context[37]

Supplementary Petitions

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

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

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

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

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

Signature Requirements for the Statutory Initiative[41]

State	Signatures Required	Direct/Indirect and Signature
Alaska	10 percent of votes in last general election	Direct initiative only
Arizona	10 percent of votes for governor	Direct initiative only
Arkansas	8 percent of votes for governor	Direct initiative only
California	5 percent of votes for governor	Direct initiative only
Colorado	5 percent of votes for secretary of state	Direct initiative only
Idaho	6 percent of registered voters	Direct initiative only
Maine	10 percent of votes for governor	Direct initiative only
Massachusetts	3 percent of votes for governor	Indirect; additional .5 percent

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

Safe Harbor

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

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

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

The Ohio Constitutional Initiative in a National Context[42]

Overwhelmingly, states require only a simple majority vote for the approval of constitutional amendments, and only two states – Florida and New Hampshire – have true across-the-board supermajority requirements. Florida does not have a statutory initiative but requires a 60 percent vote for legislatively-proposed amendments, for amendments proposed by initiative, and for amendments put directly on the ballot by constitutional revision commissions under Florida's unique policy. Florida also requires a two-thirds vote on new taxes. New Hampshire, which also does not have a statutory initiative, requires a two-thirds vote for the approval of proposed amendments.[43] One state, Colorado, now requires a 55 percent vote but only on amendments proposed by initiative.

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

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

One state, Nevada, requires approval by the voters at two consecutive general elections in even-numbered years.[44]

The Preference for the Constitutional Initiative in Ohio

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

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

Amendments, Proposed Amendments, and Other Review

Summary of Post-1912 Changes in the Initiative

Since 1912, there have been ten proposed amendments to revise the provisions in Article II on the initiative and the referendum, and the voters approved six of them. Two of the amendments approved in 1918 and 1953 involved only the referendum; one approved in 2015 involved only the constitutional initiative. The other three amendments approved in 1971, 1978 and 2008, addressed the procedures for gathering signatures and placing proposals on the ballot and affected both the statutory and constitutional initiative.

Review of Approved Amendments

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

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

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

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

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

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

Review of Rejected Constitutional Amendments

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

In 1915, the voters rejected a proposed initiated "Stability Amendment" supported by the liquor interests that would have created a six-year bar on proposing constitutional amendments that had been defeated twice.[53]

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

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

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

1970s Commission Proposals

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

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

Facilitating Legislation

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

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

Litigation Involving the Statutory and Constitutional Initiatives

Pre-Election Judicial Review

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

One Amendment/Separate Vote Requirement

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

The Ohio Supreme Court has not decided whether the 1978 amendment extended the one amendment, separate vote requirement to initiated amendments, but in *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, the court held that state law "imposes a similar requirement on citizen-initiated proposed constitutional amendments

* * * ."[69] The court then equated the constitutional and statutory requirements, stating that "[b]ecause this [statutory] separate-petition requirement is comparable to the separate-vote requirement for legislatively initiated constitutional amendments under Section 1, Article XVI of the Ohio Constitution, our precedent construing the constitutional provision is instructive in construing the statutory requirement."[70] The court then held that the ballot board had acted inappropriately in dividing a proposed amendment concerning healthcare into two separate amendments.[71]

Statutory Initiative

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

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

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

Presentations and Resources Considered

Coglianese Presentation

On June 13, 2013, the Constitutional Revision and Updating Committee heard from Richard N. Coglianese, principal assistant attorney general, who provided a broad overview of the role of the attorney general concerning the initiative and the referendum. Mr. Coglianese identified possible technical changes to the Revised Code and the constitution, including dividing Article II into paragraphs, defining appropriations in Section 1d relating to the referendum, and including an expiration date for the attorney general's "fair and truthful" certification of summaries of proposed initiatives.

Schuster Presentation

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

Steinglass Presentations

On August 6, 2013, Steven H. Steinglass, Senior Policy Advisor, presented an overview of the initiative and the referendum, including remarks related to the ability of the General Assembly to repeal initiated statutes, the existence of ways to prevent "non-constitutional" issues from being initiated as constitutional provisions, the signature requirements (including the geographic distribution requirement), the use of supermajority requirements for voter approval, and the absence of a time limit on the petition circulation period.

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

Thompson Presentation

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

McTigue Presentation

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

Subsequent Presentations by McTigue and Thompson

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

Mr. McTigue noted in some cases only a constitutional amendment will satisfy the goal of the petitioners. In addition, he expressed concern about revisions to the process that were adopted in

2008. He asserted those two requirements, working together, make it impossible to meet the 125-day requirement before an election. Thus, a proposed statute presented to the General Assembly prior to the beginning of its January session could not get on the ballot until November of the following year.

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

Tillman Presentation

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

Cain Presentation

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

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

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

Dinan Presentation

On February 13, 2014, John Dinan, professor of politics and international affairs at Wake Forest University, provided the full Commission an overview of state constitutions and recent state constitutional developments. Regarding the initiative and referendum process, Prof. Dinan said, beginning in the late 20th century, the citizen's initiative process allowed the inclusion in the constitution of provisions that were blocked or otherwise unobtainable in the legislature on topics such as minimum wage and casino gambling. He said that all states have a process for legislatively-referred constitutional amendments, but some states require that process to occur through a bare majority of the legislature in a single session before being submitted to the voters, while other states require a two-thirds supermajority approval in the legislature, sometimes even in consecutive sessions, before being submitted to the voters. He added some states also require approval of a majority of voters voting in that particular election, not just on that question, or may require approval by a certain percentage of voters, such as 60 percent or two-thirds.

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

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

Rosenfield Presentation

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

Kuruc Presentation

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

Yost Presentation

On May 14, 2015, the committee received a presentation by Dave Yost, Ohio Auditor of State, regarding the involvement of special interest groups with the Ohio initiative process. Mr. Yost said he is critical of the way the Ohio initiative process has been hijacked by business interests, suggesting a constitutional revision that would prevent the constitution from being used to confer a benefit, either directly or indirectly. He said any interest conferred by the constitution must be available to all people who are similarly situated.

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

McTigue Presentations

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

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

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

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

Mr. McTigue said his biggest complaint is that the General Assembly passes laws that do not facilitate the process but rather restrict the right of citizens to propose initiated amendments, laws, and referenda. He said it is important to address a specific law requiring that, in addition to filing the petition, a proponent must simultaneously file a full electronic copy and sign a verification that it is a true copy. He said the problem with this requirement is that it adds expense because proponents have to scan everything. He said there may be 20,000 part petitions, but every page must be scanned and submitted electronically, which is an expensive process.

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

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

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

Commenting on the staff edits to the draft, Mr. McTigue said there is no reason to go to the attorney general. He said there is also no need for a 300 word argument or explanation. He said he would recommend getting rid of the summary requirement and require submission of proposed ballot language instead. He said he would recommend keeping the requirement that

the ballot board prescribe the ballot language. He also suggested adding some tight time frames for filing a challenge with the Ohio Supreme Court. He said the one subject/separate vote requirement is purely statutory, and because that determination is made up front by statute, it should be rolled into that same process. Mr. McTigue said the draft should reinstate a ten-day cure period in the situation in which the initial petition as certified by the secretary of state has insufficient signatures.

Henkener Presentation

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

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

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

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

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

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

Turcer Presentation

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

Discussion and Consideration by the Constitutional Revision and Updating Committee

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

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

Purpose of State Constitutions

At the outset of its review of the initiative, members of the committee were concerned that many constitutional provisions proposed by initiative did not seem appropriate for a state constitution. The inclusion in the constitution of issues more appropriate for the Ohio Revised Code was seen as contributing to the burgeoning length of the Ohio Constitution (now at approximately 56,800 words, the tenth longest in the nation) and as making it more difficult for the General Assembly to legislate in areas that are most properly in their purview.

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

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

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

Limitations on Amendments

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

Strengthening the Statutory Initiative

A threshold question for the committee was why Ohio petitioners overwhelmingly chose the constitutional initiative over the statutory initiative. Relying on presentations by legal

practitioners and interested parties, staff research, and committee discussions, the committee concluded that citizens generally prefer the constitutional initiative to the statutory initiative process because of the permanence provided by success at the polls. Additionally, the use of the statutory initiative, despite its lower signature requirement, was more burdensome because of the supplementary petition and the fact that the results of a successful statutory initiative could easily be reversed by the General Assembly, thus nullifying the significant effort and expense undertaken by statutory initiative proponents. The committee also learned that the time frame applicable to the statutory initiative process created a difficult barrier for proponents.

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

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

Constitutional Initiative

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

voter turnout and the percentage of voter approval. The committee agreed on a recommendation requiring constitutional initiatives to be placed on the ballot only in even-numbered years, and a passage rate of at least 55 percent.

Timing

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

Constitutional Foundation

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

Transparency

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

Technology

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

Signature Requirement

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

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

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

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

Section-by-Section Review of Proposed Revisions

Article II (Proposed Provisions)

New Provision	Title	Summary/Commentary [Source/Destination]
Section 1	Legislative Power	• Continues to provide that the legislative power of the state is vested in the General Assembly but the people reserve the power to propose laws and amendments and to reject laws. • Language on self-executing and on power of General Assembly to enact facilitating legislation taken from current 1g.
Section 1a	Initiative to Amend the Constitution	• Permits the use of the initiative to amend the constitution and describes the process to be followed. • Adds language from the Revised Code requiring an initial petition and giving the attorney general power to make "fair and truthful" determination. • Requires use of gender-neutral language • Requires early action by ballot board regarding title, explanation, ballot language. • Requires 55 percent votes for approval • Limits vote to general elections in even-numbered years.
Section 1b	Initiative to Enact Laws	• Permits the use of the initiative to adopt statutes and describes the process to be followed. • Adds language from the Revised Code requiring initial petition and giving the attorney general power to make "fair and truthful" determination. • Requires use of gender-neutral language. • Requires early action by ballot board regarding title, explanation, ballot language. • Clarifies dates for submission. • Increases signatures from 3 percent to 5 percent. • Eliminates the supplementary petition. • Creates a five-year safe harbor for initiated laws.
Section 1c	Referendum to Laws	• Permits the use of the referendum to

		challenge laws passed by the General Assembly. • Adds language from the Revised Code requiring initial petition and giving the attorney general power to make "fair and truthful" determination. • Requires early action by ballot board regarding title, explanation, ballot language. • Moves provision barring the use of the referendum to challenge laws providing for tax levies and emergency laws to Section 17.
Section 1d	Petition Requirements	• Describes the process for collecting signatures. • Provision taken from current 1g. • Provision on laws not subject referendum moved to Section 17.
Section 1e	Verifying and Challenging Petitions	• Describes the process for verifying and challenging petitions and signatures. • Provides periods to cure insufficient signatures. • Calculates time limits from time of action rather than backwards from time of election. • Provides the Ohio Supreme Court with original and exclusive jurisdiction. • Provisions generally taken from current 1g. • Provision in current Section 1e imposing limits on the use of the initiative moved to Section 1i.
Section 1f	Explanation and Publication of Ballot Issue	• Provisions re preparation of true copies of proposed laws and amendments and challenged laws. • Provisions re preparation of explanation • Provisions taken from current 1g. • Provision permitting the General Assembly to prescribe electronic publication. • Provision in current 1f guaranteeing initiative and referendum to people of municipalities moved 1i.
Section 1g	Placing on the Ballot	• Describes the process for prescribing ballot language and preparing ballots. • Requires ballot language to be prescribed in the same manner as issues submitted by the General Assembly.

		• Provisions taken from current 1g.
Section 1h	Limitation of Use	• Bars the use of the statutory initiative to adopt laws that classify property for tax purposes and authorize a single tax on land. • Limits the use of the constitutional initiative to create monopolies, to determine tax rates, and to confer special benefits. • Provision from current 1e.
Section 1i	Application to Municipalities	• Guarantees the right of the initiative and referendum to the people of each municipality. • Provision moved from current 1f.
Section 15(G)	How Bills Shall Be Passed	• Describes the constitutional requirements for passing bills. • Describes the procedures for adopting emergency law. • Taken from current 1d.
Section 17	Effective Date of Laws	• Bars the use of the referendum to challenge laws providing for tax levies and emergency laws. • Provision taken from current 1d.

Action by the Constitutional Revision and Updating Committee

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

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

Presentations to the Commission

On May 11, 2017, and on June 8, 2017, Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, presented a report and recommendation for Article II, Sections 1 to 1i, 15(G), and 17, indicating the history and use of the provisions, and describing the changes being recommended by the committee.

Action by the Commission

At the Commission meeting held June 8, 2017, _____ moved to adopt the report and recommendation for Article II, Sections 1 to 1i, 15(G), and 17, a motion that was seconded by _____. Upon a roll call vote, the motion _____ by a vote of _____ in favor, with _____ opposed, and _____ absent.

Conclusion

The Ohio Constitutional Modernization Commission recommends that _____.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on May 11, 2017, and June 8, 2017, the Commission voted to _____ the report and recommendation on _____.

_____ _____

Senator Charleta B. Tavares, Co-chair Representative Jonathan Dever, Co-chair

Endnotes

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

[2] Isaac F. Patterson, *The Constitutions of Ohio*, 121 (Cleveland: Arthur H. Clark Co. 1912).

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

[4] R.C. 3519.01(A).

[5] Ohio Const. art. II, § 1g

[6] *Id*.

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

[8] Ohio Const. art. II, § 1b.

[9] *Id*.

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

[11] Ohio Const. art. II, § 1b.

[12] *Id*.

[13] *Id*.

[14] *Id*.

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

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

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

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

[19] Ohio Const. art. II, § 1b.

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

[21] Ohio Const. art. II, § 1e(B)(2).

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

[23] *See* Hoyt Landon Warner, *Progressivism in Ohio 1897–1917*, at 295 (1964).

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

[25] *See* Warner, *supra*, note 23 at 318–19.

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

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

[28] *See* Hoyt Landon Warner, *Ohio's Constitutional Convention of 1912*, 61 Ohio St. Archeological & Hist. Q. 11, 17 (1952).

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

[30] *See* 2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1368 (1912).

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

[32] This portion of the report and recommendation focuses only on the constitutional initiative because there has been so little use made of the statutory initiative.

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

[34] Prior to the 1912 Convention, amendments proposed by the General Assembly had to receive more than 50 percent of the vote at the election (not on the issue), thus making constitutional revision difficult. Indeed, prior to 1912, Ohio voters approved only 11 of the 37 amendments proposed by the General Assembly, but 19 of the rejected amendments received more affirmative than negative votes. *See* Steinglass, *Constitutional Revision: Ohio Style*, *supra*, note 1, at 309-10. The 1912 Convention proposed and the voters approved the elimination of this supermajority requirement, thus permitting legislatively-proposed amendments to be approved when they receive 50 percent or more votes on the issue. *Id.*

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

[36] *See id*.

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

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

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

[40] *See* Mich. Const. art. II, §9; Nev. Const. art. 19, § 2(3).

[41] Adapted from M. Dane Water, *Initiative and Referendum Almanac* 28-29 (2003).

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

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

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

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

[46] *Id.*

[47] *See* Ohio Const. art. II, § 1g (amended 1971).

[48] *See id.* art. XVI, § 1 (amended 1974).

[49] *See id.* art. II, § 1g (amended 1978).

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

[51] *See* Ohio Const. art. II, § 1g (amended 2008).

[52] *See Ohio Initiated Monopolies Amendment, Issue 2 (2015)*, Ballotpedia, https://ballotpedia.org/Ohio_Initiated_Monopolies_Amendment,_Issue_2_(2015) (last visited Apr. 11, 2017); *see also* Steinglass, *Constitutional Revision: Ohio Style*, *supra*, note 1, at 326-29.

[53] *See* Steinglass, *Constitutional Revision: Ohio Style*, *supra*, note 1, at 315.

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

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

[56] *See id.*

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

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

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

[60] *See id.* at 188-191.

[61] Ohio Const. art. II, § 1g ("The foregoing provisions of this section shall be self-executing, except as herein otherwise provided.").

[62] *Id.* ("Laws may be passed to facilitate their operation but in no way limiting or restricting either such provisions or the powers herein reserved.").

[63] Ohio Rev. Code Ann. § 3519.01(A) (West Supp. 2015).

[64] *Id.*

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

[66] Ohio Rev. Code Ann. § 3519.01(A)(West Supp. 2015).

[67] Ohio Const. art. XVI, § 1 (1851) ("When more than one amendment shall be submitted at the same time, they shall be so submitted, as to enable the electors to vote on each amendment, separately.").

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

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

[70] *Id.* at 416.

[71] *Id.* at 416-17.

ARTICLE II, SECTIONS 1 THROUGH 1g

Section 1 – In Whom Power Vested

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Section 1a – Initiative and Referendum to Amend Constitution

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

Section 1b – Initiative and Referendum to Enact Laws

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

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

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

The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

Section 1d – Emergency Laws; Not Subject to Referendum

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public

peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

Section 1e – Powers; Limitation of Use

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

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

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

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

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

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

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

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

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

Section 1f – Power of Municipalities

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

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

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

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

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

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

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

ARTICLE II

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

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

(B) The provisions of this article concerning the initiative and referendum shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein preserved.

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

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

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

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

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

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

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

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

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

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

(3) Prepare the explanation of the proposed amendment**.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Prepare the explanation of the proposed law**.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Prepare the explanation of the proposed referendum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Prior to circulation, a constitutional amendment to be proposed by initiative petition shall be presented to the ballot board and if, in the opinion of the ballot board, the amendment would conflict with division (B)(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 at least 55 percent of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by at least 55 percent of the electors voting on it, then the constitutional amendment shall not take effect.

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

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

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

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

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

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

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

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

(C) When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a

referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

(V10b) (5-3-2017) (5-11-2017)