

To: Constitutional Revisions & Updating Committee

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Ohio Constitutional Modernization Commission

Re: The Use of the Constitutional Initiative in Ohio and the Nation

Date: June 10, 2014

Eighteen states, including Ohio permits its voters to initiate constitutional amendments. This memorandum will focus on the Ohio direct constitutional initiative and compare it to the constitutional initiatives in the other states. In the course of this review, the memo will also address some issues concerning the statutory initiative.

Background and Key Features of Ohio's Constitutional Initiative

In 1912, Ohio voters approved the direct constitutional initiative (as well as the indirect statutory initiative). These features of direct democracy were proposed by Ohio's Fourth Constitutional Convention, the Convention of 1912. These were probably the most controversial and important of the measures recommended by the Convention, and there were numerous roll call votes on them.

Signature and Geographic Distribution Requirements

As ultimately proposed by the Convention and adopted by the voters, both the constitutional and statutory initiative require the gathering of signatures that are a percentage of votes in the most recent gubernatorial election (10% for constitutional initiatives and an initial 3% plus an additional 3% in a supplementary petition for statutory initiatives). A current chart with the required number of signatures is maintained on the Secretary of State's website.

There is also a geographic distribution requirement, and proponents of a constitutional initiative must obtain signatures of 5% of the voters in the last gubernatorial election from each of 44 of Ohio's 88 counties. Proponents of a statutory initiative must initially obtain signatures of 3% of the voters in the last gubernatorial election from 44 of Ohio's 88 counties. Of these signatures, 1.5% of the signatures must come from each of 44 of Ohio's 88 counties. If the General Assembly does not adopt the proposed statute, the proponents may have it placed on the ballot by obtaining the signatures of an *additional* 3% of the voters in the last gubernatorial election with at least 1.5% of the signatures coming from each of 44 counties.

General Election and Simple Majority in Ohio

Both initiated constitutional amendments and initiated statutes may only be on the fall general election ballot. Both are subject to a simple majority requirement. That is, to be enacted they must receive more positive than negative votes on the particular issue without regard to the total number of voters who vote on the initiative. The governor plays no role in the adoption of

initiated amendments or initiated statutes. There are no explicit subject matter restrictions on what constitutional amendments may be proposed by initiative, but there are some subjects that may not be enacted by statutory initiative. See Art. II, sec. 1e (laws authorizing classification of property for purposes of taxation). Finally, the statutory initiative is subject to the referendum. See Art. II, sec. 1(b).

Direct Constitutional Initiative & the Voting Percentage for Amendment Approval

Of the 18 states with constitutional initiatives, only two—Massachusetts and Mississippi—have indirect constitutional initiatives in which the proposed amendment must first be submitted to the legislature, and the legislature is given the opportunity to present an alternative amendment to the voters. As noted in an earlier memorandum, the Massachusetts procedure is very cumbersome and is rarely used; the Mississippi procedure is relatively new and has never been used.

The following 16 states have a direct constitutional initiative.:

- Arizona
- Arkansas
- California
- Colorado
- Florida generally a 3/5 vote; a 2/3 vote on new taxes
- Illinois majority vote or 3/5 voting on amendment
- Michigan
- Missouri
- Montana
- Nebraska majority vote on the amendment, which must be at least 35% of total vote in the election
- Nevada majority vote on the amendment in two consecutive general elections
- North Dakota
- Ohio
- Oklahoma
- Oregon majority vote on the amendment unless a supermajority is required in the proposed amendment
- South Dakota

In 11 of the above 16 states with a direct constitutional initiative, including Ohio, only a simple majority of votes on the proposed amendment is required. That is, more yeas than nays.

The other 5 states listed below have a variety of provisions some of which require a percentage of the total votes at the election. A careful review of these states, however, shows that with the exception of Florida (which has had a 60% requirement since the early 1990s) and Nevada (which requires submission to the voters in two consecutive general elections) the other three states are effectively majority states:

- Florida generally a 3/5 vote; a 2/3 vote on new taxes

- Illinois majority vote or 3/5 voting in the election
- Nebraska majority vote on the amendment, which must be at least 35% of total vote in the election
- Nevada majority vote on the amendment in two consecutive general elections
- Oregon majority vote on the amendment unless a supermajority is required in the proposed amendment

Do States With Constitutional Initiatives Have Different Voting Policies for Legislatively-Proposed Amendments?

All 18 of the states with direct and indirect constitutional initiatives permit their state legislatures to propose amendments, and with the limited exceptions of Nevada and Oregon, these states with apply the same policies to initiated amendments and to legislatively-proposed amendments.

In Nevada, amendments proposed by the legislature need not be submitted to the voters in two consecutive general elections. In Oregon, there is a special emergency provision for amendment proposed by the legislature. Thus, Nevada appears to be the only state that has a significantly different voting procedure for amendments proposed by the state legislature as contrasted to those proposed by initiative.

States Without the Constitutional Initiative—Voting Policies

With only minor exceptions, the balance of the states require only a simple majority of those voting on the amendment. The additional exceptions are:

- Delaware constitutional amendments need not go to the voters
- Minnesota majority of those voting in the election
- New Hampshire 2/3 vote on the amendment
- Tennessee majority of those voting in the election
- Wyoming majority of those voting in the election

Initiated Constitutional Amendments in Ohio

Since the adoption of the direct constitutional initiative in Ohio in 1912, there have been 68 amendments proposed to the voters by initiative. Of this number, the voters approved 18 of them. Attached is a chart listing all these approved amendments along with the vote on them, the percentage in favor and against the proposed amendment, the number of voters on the highest turnout election of the particular cycle, and the drop-off from those who voted in the highest turnout election and those who voted on the proposed amendment.

During this same period, including the May 2014 election, Ohio voters approved 103 of the 151 amendments proposed by the General Assembly.