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Before the Constitutional Revision and Updating Committee of
The Ohio Constitutional Modernization Commission

Written Testimony of Donald J McTigue

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Thank you for the opportunity this morning to present both written and oral comments regarding Version 5 of the Committee's draft changes to Ohio's constitutional provisions governing citizen rights of initiative and referendum. In addition to this written testimony, I have also submitted proposed changes to Version 5 in a red lined document. I will address those changes in my oral testimony.

In this written testimony, I wish to add a few additional topics that are not contained within the red lined document. I will address these and the reasons for them during my oral testimony.

1. Constitutional amendments proposed by initiative petition currently may appear on the general election ballot in any year. The Committee's Version 5 document changes this to even-number year general elections. The right to submit a proposed amendment should not be limited to even numbered years, in particular given that the right of the General Assembly to submit constitutional amendments under Art. XVI is not similarly limited.
2. Currently the Constitution provides that citizens, whose initial initiative or referendum petition fails to contain sufficient valid signature after verification, are afforded a ten-day cure period. The Committee's Version 5 document eliminates this right except in the case where the deficiency is the result of a challenge to the secretary of state's determination of sufficiency.
3. The Committee should also address the standards for ballot language to be followed by the Ohio ballot board under Art. XVI.
4. The Committee should propose limiting the timing of elections at which the General Assembly may submit to the voters proposed constitutional amendments under Art. XVI to be the same as those at which citizen initiated amendments may appear on the ballot.

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. No provision shall be enacted or imposed that requires more than the original of the petitions set forth in this article to be filed as a condition for the petition's validity.

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

(A) The people reserve the power to propose an amendment to the constitution, independent of the General Assembly, and may do so at any time after the general election in an last day of May of an ~~an~~ even-numbered year and before the first day of June in the following even-numbered year, by filing with the secretary of state an initiative petition proposing an amendment to the constitution.

(B) 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.

(C) 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.

(D) 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.

(E) If the proposed amendment to the constitution is approved by a majority~~{55 percent or 60 percent}~~ of the electors voting on the issue, it shall take effect thirty days after it is approved.

(F) If conflicting proposed amendments to the constitution are approved at the same election by a majority~~{55 percent or 60 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.

The Ohio supreme court shall have exclusive jurisdiction to decide whether amendments approved by the electors at the same election conflict.

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

Section 1b. [Initiative to Enact Laws]

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

(B) 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. (C)

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.

(D) 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 the same or following day. 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.

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

(G) 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. The Ohio supreme court shall have exclusive jurisdiction to decide whether proposed laws approved at the same election conflict.

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

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

(J) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for five years after its effective date; ~~unless upon the affirmative vote of two-thirds of all members elected to each house of the general assembly;~~ but the general assembly may at a general election within such five year period submit to the electors for their approval or rejection a proposed amendment to such law, which shall become effective if affirmatively approved by a majority of the electors voting on the proposed amendment.

Section 1c. [Referendum to Challenge Laws]

(A) The people reserve the power through the referendum to challenge a law, section of law, or item in a law appropriating money, and may do so at any time within ninety days after the law has been signed by the governor and filed with the secretary of state, by filing with the secretary of state a referendum petition challenging the law, section of law, or item in a law appropriating money. No pre-conditions or requirements shall be enacted or imposed beyond those in this article that have the effect of shortening the ninety-day period for the circulation of such petition.

(B) The petition shall have printed across the top: "Referendum Petition to Challenge a Law Enacted by the General Assembly to be Submitted to the Electors" and shall set forth the full text of the law, section of law, or item in a law appropriating money being challenged.

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

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

(E) If a law, section of law, or item in a law appropriating money subjected to a challenge by referendum is approved by a majority of the electors voting on the issue, it shall go into effect thirty days after the election at which it is approved. If it is not approved, the general assembly shall not for five years following the election enact the same law, section of law or item in a law appropriating money; but the general assembly may at a general election within such five-year period submit the same to the electors for their approval or rejection.

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

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

Section 1d. *[Petition Requirements]*

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

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

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

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

Section 1e. [Verifying and Challenging Petitions]

(A) Within thirty days following the filing of an initiative or referendum petition, the secretary of state shall verify the validity or invalidity and sufficiency or insufficiency of the petition and the signatures on the petition pursuant to the requirements of this article.

(B) The Ohio Ssupreme Ccourt shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the validity, invalidity, sufficiency or insufficiency of a petition and the signatures on a petition.

(C) A challenge to ~~a petition or signatures on a petition~~ the secretary of state's determination of validity, invalidity, sufficiency or insufficiency shall be filed with the Ssupreme Ccourt within seven days after the secretary of state's determination of the sufficiency of the petition and the signatures on the petition. The Ssupreme Ccourt shall hear and rule on a challenge within fourteen days after the filing of the challenge with the court. If the Ssupreme Ccourt does not rule on the

challenge within fourteen days after the filing of the challenge to the petition and the signatures, the petition and signatures shall be deemed to be valid and sufficient in all respects.

(D) If the Ssupreme Ccourt determines the ~~petition or~~ signatures are insufficient, additional signatures to the petitions may be filed with the secretary of state within ten days following the Ssupreme Ccourt'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 Ssupreme Ccourt within seven days of the secretary of state's determination. The Ssupreme Ccourt 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 Ssupreme Ccourt does not rule on the challenge within fourteen days of the filing of the challenge, the petition and signatures shall be deemed to be valid and sufficient in all respects.

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

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

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

(A) A true copy of a proposed amendment to the constitution or a proposed law, submitted by initiative petition, shall be prepared together with an argument or explanation, or both, for the proposed constitutional amendment or proposed law. The name of the persons who prepares the argument or explanation, or both, for the proposed amendment to the constitution or proposed law, may be named in the ~~petition submitted~~ argument or explanation.

(B) A true copy of a law, section of law, or item in a law appropriating money submitted by referendum petition, shall be prepared together with an argument or explanation, or both, against and for the law, section, or item. The name of the person who prepares the argument or explanation, or both, against the law, section, or item may be named in the ~~petition submitted~~ argument or explanation. The name of the person who prepares the argument or explanation, or both, for the law, section, or item shall be named by the General Assembly, if in session, and, if not in session, then by the governor.

(C) An argument or explanation, or both, as prepared under this section, shall be three hundred words or less.

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

Section 1g. [Placing on the Ballot]

- (A) The secretary of state shall place on the ballot language for a proposed amendment to the constitution, proposed law, law, section of law, or item in a law appropriating money, presented by initiative or referendum petition to be submitted to the electors for a vote.
- (B) The ballot language shall be prescribed by the Ohio ballot board in the same manner and under the same terms and conditions as apply to issues submitted by the General Assembly under Article XVI, Section 1 of this constitution.
- (C) The secretary of state shall cause the ballots to be prepared to permit an affirmative or negative vote on each proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money.
- (D) The style of all constitutional amendments submitted by an initiative petition shall be: “Be it Resolved by the People of the State of Ohio.” The style of all laws submitted by initiative petition shall be: “Be it Enacted by the People of the State of Ohio.”

Section 1h. [Limitation of Use]

- (A) The powers of the initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation on the property or of authorizing the levy of any single tax on land, land values, or land sites at a higher rate or by a different rule than is or may be applied to improvements on the land or to personal property.
- (B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or

nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) Prior to circulation If a constitutional amendment to be proposed by initiative petition is certified to appear on the ballot shall be presented to the Ohio ballot board and if, 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 III of Article II of the Ohio Constitution,~~ be authorized to initiate a constitutional amendment that ~~grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license,~~ that is not available to other similarly situated persons?"
- (b) The second question shall describe the proposed constitutional amendment.
- (c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect. (C) The Supreme Court shall have original and exclusive jurisdiction in any action that relates to this section.

Section 1i.*[Application to Municipalities]*

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

