Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District

Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

CONSTITUTIONAL REVISIONS AND UPDATING COMMITTEE AGENDA

DATE: Thursday, October 9, 2014

TIME: 1:00 pm

ROOM: Statehouse Room 114

- Call to Order
- Roll Call
- Approval of July 10, 2014 Minutes
- Initiative and Referendum

  Presenters:
  Donald J. McTigue, Esq.
  McTigue and McGinnis LLC.

  Maurice A. Thompson, Executive Director (tentative)
  1851 Constitutional Law Center
- Future topics
  - Discussion
- Adjourn

QUESTIONS FOR PRESENTERS MCTIGUE AND THOMPSON

October 9, 2014 Meeting
Constitutional Revisions and Updating Committee

1. Should the constitution be amended to increase the percentage of affirmative votes required to approve constitutional amendments proposed by initiative or by the General Assembly? Should the same percentage be required for both?

2. Should the constitution be amended to strengthen the direct statutory initiative by prohibiting the General Assembly from repealing or amending a statute adopted by initiative during the five year period after its adoption other than by a two-thirds vote?

3. Should the constitution be amended to alter the timetable for presenting amendments to the voters in such a way as to permit the General Assembly to propose an alternative amendment to an amendment that is being proposed to the voters by initiative?

4. Should the constitution be amended to undo some of the impediments the General Assembly has placed on the initiative and referenda processes over the years?

5. Is there anything else the committee ought to be considering as we evaluate the constitutional side of the initiative and referenda processes?

MCTIGUE & MCGINNIS LLC
ATTORNEYS AT LAW

Donald J. McTigue
Mark A. McGinnis
J. Corey Colombo

545 EAST TOWN STREET
COLUMBUS, OHIO 43215

TEL: (614) 263-7000 | FAX: (614) 263-7078 | WWW.MCTIGUELAW.US

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

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

1. Undue burdens placed on the exercise of the rights of citizen initiative & referendum by the General Assembly.
   - Required summary & OAG certification for referendum petitions
   - Form 15 requirements and penalties
   - Electronic copy requirement
   - Numbering requirement
   - Index requirement
   - Limitation of period to circulate supplemental petition
   - Limitation on access to unique petition for supplemental signatures
   - Limitation on access to petitions checked by boards of elections
   - In state residency for circulators
   - Limitation of one amendment or law on a petition
   - Attempts to exclude legislation from referendum

2. 2008 Amendments Unintended Consequences
   - Time line for law proposed by initiative petition
   - Computation of deadlines back from date of "the election"
   - Jurisdiction of the Ohio Supreme Court to hear "challenges"
   - Overlap of challenge to first petition and supplemental petition period

3. Clarifications to Existing Provisions

   - Period to circulate petition for supplemental signatures
   - More than one amendment or law on a petition
   - Meaning of verified
   - Effective date of a law in case of insufficient referendum petition

4. Reform redistricting to Decrease the Number of Initiatives & Referenda

MCTIGUE MCGINNIS & COLOMBO LLC
ATTORNEYS AT LAW

545 EAST TOWN STREET
COLUMBUS, OHIO 43215

TEL: (614) 263-7000 | FAX: (614) 263-7078 | WWW.MCTIGUELAW.US

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
Answers provided by Donald J. McTigue to proffered questions
October 9, 2014

(1) Should the constitution be amended to increase the percentage of affirmative votes required to approve constitutional amendments proposed by initiative or by the General Assembly? Should the same percentage be required for both?

No. What purpose would that serve except to insure that fewer amendments proposed by either method are not adopted. Only 18 of 80 (22.5%) amendments proposed by petition have been approved since 1912. During the same period 102 of 150 (68%) amendments proposed by the General Assembly have been adopted, meaning 32% still were not adopted. [See Steinglass memo dated 4/19/14.] The higher percentage passage rate for amendments proposed by the General assembly is due to the noncontroversial nature of many of the proposals, such as bond issues. Requiring a supermajority for passage also runs counter to the fundamental premise of American style democracy, i.e., that governmental decisions are decided by a simple majority. Supermajorities are reserved for extraordinary situations where the supermajority requirement serves a specific purpose.

(2) Should the constitution be amended to strengthen the direct statutory initiative by prohibiting the General Assembly from repealing or amending a statute adopted by initiative during the five year period after its adoption other than by a two-thirds vote?

Yes. However, this is only one and not the major reason that citizens opt to propose constitutional amendments rather than laws. In some cases there is not a choice because it is necessary to amend the Constitution so as not to be barred by existing constitutional provisions, such as with gambling. When there is a choice between the two methods, from my experience, the decision is driven more often by the greater difficulties in achieving ballot access, than concern about the General Assembly changing a law passed by the voters. Once the decision is made based on ability to gain access to the ballot, it becomes necessary to write a detailed amendment that looks more like a law to insure that the amendment will be implemented as intended. The two major ballot access obstacles for proposing initiated laws are the potential very long time line before the issue will appear on the ballot, due to an unintended consequence of the 2008 amendments proposed by the General Assembly, and the tight 90 day period for collecting signatures on a supplementary petition. These provisions must be made more citizen friendly if the goal is to see more proposed laws and fewer proposed amendments.

Currently, if my client filed an initiative petition this year proposing a law to the General Assembly, it very likely would not appear on the ballot until November 2016 based on the timeline adopted in 2008 because the four month period for General Assembly consideration combined with the 90 day period for filing a supplementary petition will result in the petition being filed less than 125 days before the November 2015 election—thus pushing the issue to November 2016. The General Assembly has also enacted petition requirements that effectively reduce the 90 day period in which to circulate a supplementary petition by up to 5 days due to the need to consecutively number each part-petition by

county, scan each part-petition to produce an electronic version and create a searchable index of the electronic copy.

Further, because the ability of the General Assembly to change a law enacted by the voters is a factor considered by petitioners, the five year period should be ten years. Petitioners will not want to have to face the high cost and exhaustion of conducting a statewide petition effort and campaign again after only five years. A longer period is necessary for the no amendment provision to have an actual impact on the calculus.

(3) Should the constitution be amended to alter the timetable for presenting amendments to the voters in such a way as to permit the General Assembly to propose an alternative amendment to an amendment that is being proposed to the voters by initiative?

No. The General assembly already has a much shorter time period for proposing amendments (90 versus 125 days before the election), is not prohibited from placing a proposed amendment on the same ballot, and is permitted to place proposed amendments on the ballot on any date, not just the at a general election.

(4) Should the constitution be amended to undo some of the impediments the GA has placed on the Initiative and Referenda processes over the years?

Yes. This was a significant part of my earlier testimony to the Commission. The General Assembly has placed many burdens on the exercise of citizens' constitutional rights of initiative and referendum despite the fact that the provisions in the Constitution are declared to be self-executing and the constitution expressly states that the General Assembly may only pass laws that facilitate the exercise of these rights and in no way limit or restrict them. These burdens have significantly increased the financial costs of the petition process and deprived citizens of the full time periods allowed them by the constitution to exercise their rights. This Commission should propose language that requires that any law adopted by the General Assembly under its authority to enact laws to facilitate the exercise of the rights must be reviewed by the Ohio Supreme Court in a proceeding similar to a declaratory judgment action with the right of participation by third parties before the provisions become effective. The Court is the body that currently has the authority to ultimately decide challenges to these provisions. However, challenges are not brought by would be or actual petitioners due to questions of original jurisdiction, standing, and ripeness and the long delay and added expense that litigation would cause on commencing the petition process.

(5) Anything else we ought to be considering as we evaluate the constitutional side of the I & R processes?

Yes. Please refer to the attached outline I provided October 10, 2013, which will I be pleased to amplify with a specific red lined proposal.

1851 CENTER FOR CONSTITUTIONAL LAW

October 9, 2013

Ohio Constitutional Modernization Commission
Constitutional Revision & Updating Committee

RE: Proposed Alterations to the Ohio Constitution's Initiative and Referendum Guarantees

Mr. Chairman and Members of the Commission:

Today we will briefly review my initial input to this committee, answer questions that have arisen since the time of our original meeting one year ago, and review a model amended Section 1b, Article II (the initiated statute).

Review of Initial Input

On September 12, 2013, I appeared before you to share the following conclusions:

(1) Access to I&R gives Ohioans the capacity to behave as civic adults, rather than as civic children of legislators and other public officials.

(2) I&R advances public education on and responsibility for public policy.

(3) I&R provides an additional check on government.

(4) Driving up the costs of I&R will only foreclose participation by average grass-roots volunteers

(5) Reducing access to I&R aggrandizes the Legislative branch.

(6) Paternalism is unnecessary.

Pursuant to these thoughts, I made the following recommendations to the Commission regarding how to improve Ohio's I&R system:

(1) Review how frequently *government,* not citizens, initiate ballot issues.

(2) Even the playing field between the Ohio General Assembly and the citizens.

(2) Even the playing field between the Ohio General Assembly and the citizens.

(3) Render initiated statutes a better investment through the following actions:

- Significantly lower the signature threshold for initiated statutes.
- Forbid legislative amendment or elimination for a significant period of time, or require a super-majority to overturn it.
- Forbid referendum of an initiated statute.
- Remove the requirement that initiated statutes supplemental petitions be submitted 125 days prior to the election (*where the General Assembly sits on the statute for four months, this gives advocates between 30 and 50 days to gather approximately 115,000 valid signatures - - a very difficult task for a paid effort, and an impossible one for a volunteer organization, particularly with petition approval procedures*).

(4) The 125 day requirement for constitutional amendments simply isn't necessary, and hurts grass-roots efforts.

(5) Address local initiatives, as permitted by Section 1f, Article II.

I concluded that concern over the *dilution* of the Ohio Constitution should cause this commission not to *reduce* initiative and referendum rights, but instead to *enhance the accessibility of the initiated statute* in the ways outlined above.

In September 2013, you asked me to provide a rewritten version of Section 1b of Article II of the Ohio Constitution (establishing the Initiated Statute). I have done so in the attached Appendix below.

Current Questions

Since that time, you have posited further questions. They, and our respective responses, are as follows:

1. "Should the constitution be amended to increase the percentage of affirmative votes required to approve constitutional amendments proposed by initiative or by the General Assembly? Should the same percentage be required for both?"

- Constitutional amendments proposed by the general assembly should be required to appear on the November ballot rather than any other ballot to expand the number of *gross* votes cast for or against the measure, and to guard against the political gamesmanship of the recent past.
- Constitutional amendments proposed by the general assembly should perhaps be required to garner a supermajority of the votes cast (three-fifths or two-thirds) prior to enactment, to provide a greater check against legislative overreach through ballot issue.
- By no means should the General Assembly be permitted to amend the constitution through a percentage of votes *lower* than that required of average citizens.

- Because of the heavy investment required to carry out a citizen-initiated constitutional amendment, less deterrence, rather than more, is required. Since 1913, the Ohio General Assembly has initiated 150 constitutional amendments, while citizens have only initiated 68 - - less than half as many. This is despite the fact that the General Assembly already maintains lawmaking power. Either it is too easy for the GA to initiate, or too difficult for citizens to initiate; or perhaps some of each. This commission should strive to create greater parity, since the entire purpose of I&R is to improve citizens' influence, rather than legislators.

- Query regarding requiring a super-majority for *future* constitutional amendments: does it not give undue preference to past constitutional amendments passed by a simple majority? If they were approved by 51 percent, and 59 percent now prefers to alter them, they nevertheless remain fixed.

- We would be supportive of requiring a two-thirds majority for any tax or spending increases (akin to Florida) on mandates on individuals or business.

2. "Should the constitution be amended to strengthen the direct statutory initiative by prohibiting the General Assembly from repealing or amending a statute adopted by initiative during the five year period after its adoption other than by a two-thirds vote?"

- Yes, absolutely, although six years rather than five, and it is far too easy for the General Assembly to muster a two-thirds majority, and consequently, that method must be disallowed, if the initiated statues is to be taken seriously.

- Currently the difference in signatures requirements between the Constitutional Amendment and the initiated statute is marginal: Six percent, or roughly 230,000 signatures for a statute that could simply immediately be altered, repealed, or subject to referendum, versus roughly 380,000 signatures for a constitutional amendment. Further, the General Assembly can maneuver to defeat an initiative by sitting on it for four months, leaving very little time to then gather the needed 115,000 signatures to qualify for the ballot; or it can change the proffered statute in several substantive areas, and thereby puncture, fracture, and hobble the advocates' political movement. This risk-reward trade-off likely explains while only 12 initiated statues, versus 218 constitutional amendments, have seen the ballot since 1913. I advise my investors to steer clear of the initiated statute - - for the most part, if not useless, it's at least a bad investment.

3. "Should the constitution be amended to alter the timetable for presenting amendments to the voters in such a way as to permit the General Assembly to propose an alternative amendment to an amendment that is being proposed to the voters by initiative?"

- Absolutely not. This would entirely discourage use of the initiated Constitutional Amendment because there is little doubt that the General Assembly could always craft a sufficiently politically-triaged amendment to defeat the citizen-initiated-amendment.

4. "Should the constitution be amended to undo some of the impediments the GA has placed on the Initiative and Referenda processes over the years?"

- Yes. First and foremost, the recent movement of the petition turn-in date from 90 days to 125 days has significantly deterred and hampered efforts. Further, certain formalities, regarding Attorney

General approval of the summary, and the sizes of certain fonts, etc. places an unnecessary burden on those attempting to use I&R in Ohio.

5. "Anything else we ought to be considering as we evaluate the constitutional side of the I & R processes?"

- The easier and more efficacious the initiated statute, the less likely we are to experience abuse of the citizen-initiated constitutional amendment process.

- Do not overlook *local* ballot issues provided for the by the Ohio Constitution.

- No proposed constitutional amendment or statute should appear before voters other than at the general election, when other critical matters appear on the ballot. Government, whether the general assembly or local school boards, frequently, perhaps purposefully, place ballot issues before voters *at primary and special elections*, where voter turnout is extraordinarily low. This results in the passage of tax increases and constitutional amendments that may not pass on the November general election ballot, and may not reflect Ohio voters' will. Such important issues should be removed from special and primary election ballots, and only permitted on general election ballots.

- Do not forget that driving up the costs of I&R will only foreclose participation by average grass-roots volunteers. It will do nothing to foreclose participation by large, well-organized, and politically-connected corporate and labor interests, who have the economic clout to deal with these hurdles. This is antithetical to the very purpose of I&R, which is to empower average citizens, who may not have as much access to the legislature and political levers as is enjoyed by these larger interests.

APPENDIX

In September 2013, you asked me to provide a rewritten version of Section 1b of Article II of the Ohio Constitution (establishing the Initiated Statute). I have done so below:

PROPOSED AMENDED VERSION OF SECTION 1b, ARTICLE II - VERSION 1

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~~ ONE 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~~ THREE 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~~ ONE 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~~ 150 days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of ~~four~~ FIVE 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~~ NINETY 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.

NO LAW APPROVED BY THE MAJORITY OF THE ELECTORS VOTING THEREON SHALL BE SUBJECT TO REFERENDUM, REPEAL, AMENDMENT, OR OTHER INFRINGEMENT FOR A PERIOD OF SIX YEARS SUBSEQUENT TO ENACTMENT.

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.

Alterations: Our over-arching goal is to create an initiated statute process that incentivizes its use, as against the initiated constitutional amendment.

(1) We lowered the signature threshold. It is still significant, requiring approximately 40,000 valid signatures prior to submission.

(2) We eliminated the capacity of the initiated statute to be repealed through referendum - - a primary deterrent that causes policy advocates to choose to utilize the initiated Constitutional Amendment tool.

(3) We reduced the time for General Assembly deliberation from four to three months. This permits one additional month for circulation of petitions, which is critical in expanding access and use.

(4) We reduced the signature requirement, for the second round of signatures, from three percent to one percent (.5 percent in Massachusetts). This requirement could also be eliminated entirely. *See version 2.*

(5) We increased the amount of time to gather signatures to five months/150 days. This is largely academic, since the July-August pre-election deadline is more determinative. For instance, if the General Assembly rejects or allows the proposal to lapse on April 1, the deadline for submission of an additional one percent would be September 1. However, the proposed deadline of 90 days prior to the election (the first week of August) will control, since almost all efforts will attempt to appear on that year's ballot, rather than taking the extra month and holding over until the next year. Only if the General Assembly moved quickly, rejected the law by February 1, for instance, would this deadline become relevant: petitions would be due in the first week of July, rather than the first week of April. This anomaly can be entirely reconciled by altogether eliminating any reliance on the date upon which the General Assembly rejects the law or permits it to lapse. *See version 2.*

(6) We moved deadline from 125 days back to 90 days, meaning petitions would be due, at the latest, during the first week of August rather than the first week of July. This was the deadline for approximately one century, until recently, and it appeared to function without problems. This renders petition circulation safer and more effective because July features better weather, county fairs and other public events, etc.

(7) We deleted the capacity for the General Assembly to substantively alter the proposed statute prior to its placement before the voters.

(8) We added a clause prohibiting repeal, referendum, or amendment of an initiated statute for at least six years. Ohio Judges serve six year terms to check instantaneous majoritarian political pressures, so there is precedent for this in the Ohio Constitution. This measure is absolutely necessary to incentivize use of the initiated statute rather than the initiated constitutional amendment. (Akin to Arizona "anti-tampering").

PROPOSED AMENDED VERSION OF SECTION 1b, ARTICLE II - VERSION 2

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~~ ONE 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 THREE 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~~ ONE ~~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~~ 150 ~~days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four~~ FIVE ~~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~~ NINETY 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.

NO LAW APPROVED BY THE MAJORITY OF THE ELECTORS VOTING THEREON SHALL BE SUBJECT TO REFERENDUM, REPEAL, AMENDMENT, OR OTHER INFRINGEMENT FOR A PERIOD OF SIX YEARS SUBSEQUENT TO ENACTMENT.

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.

Alterations:

This version amends the prior *proposed* version by deleting the requirement for additional signatures after a proposed statute is rejected by the General Assembly. It therefore also deletes all references to a time for submitting further signatures. This method significantly simplifies and clarifies the law, and could be coupled with an increase in the initial signature requirement to guard against frivolity.

This parallels the processes in Michigan and Nevada.

Co-Chair
Vernon Sykes, Representative
34th House District

Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

To: Members, Constitution Revision Committee:

From: Steven H. Steinglass
Senior Policy Advisor

Re: Indirect Constitutional Initiative

Date: December 10, 2013

This memorandum provides some basic information about the indirect constitutional initiative, a method for giving the legislative branch a role in the process by which amendments can be initiated by the voters. Under the indirect constitutional initiative, a proposed amendment is first presented to the legislature, which is then given an opportunity to propose an alternative amendment to the voters.

Eighteen states permit their constitutions to be amended through the initiative. *See generally* John Dinan, State Constitutional Developments in 2012, Book of the States, Ch. 1, p. 16, Table 1.3 (Council of State Governments 2013), Of these 18 states, 16 (including Ohio) have a direct constitutional initiative in which proposed amendments (assuming all signature-related and other requirements have been met) go directly to the ballot. Two states—Mississippi and Massachusetts—have a variation that is known as the ***indirect*** constitutional initiative. This memorandum briefly reviews the operation of the indirect constitutional initiative in these states.

MISSISSIPPI

Background for the Mississippi Indirect Constitutional Initiative

The voters in Mississippi adopted the constitutional initiative in the early 1900s, but in 1922, the Mississippi Supreme Court held that its adoption was unconstitutional under the state's single-subject rule. *See* ***Power v. Robertson***, 130 Miss. 188, 93 So. 769 (1922). In 1992, the Mississippi Legislature proposed and the voters approved the current Mississippi initiative, which only deals with constitutional amendments. Mississippi does not have a statutory initiative of any kind.

Mississippi Indirect Constitutional Initiative

The key steps in the Mississippi indirect constitutional initiative are contained in Art. 15, sec. 273 of the Mississippi Constitution and are described below.

(1) All proposed initiated constitutional amendments must be submitted to the legislature before they can be put on the ballot.

(2) If the proposed initiated constitutional amendment is adopted or rejected by the legislature, or if the legislature takes no action within four months of receiving the proposed initiated amendment, the proposed amendment is placed on the ballot for the next statewide general election.

(3) If the proposed initiated amendment is amended by the legislature as an alternative to the initiated proposal, the voters are asked to vote on two separate parts of the initiative issue.

(4) Under this two-step process, the voters first have to choose if they want to approve one of the measures, or if they want to vote against them both. Voters who vote in favor of approving one of the measures are then required to vote on which of the alternatives they prefer. If a majority of those voting on the first issue is for the approval of either measure, then the proposed language receiving a majority of the votes on the second issue is approved as an amendment to the constitution (assuming it also receives at least 40% of the total votes cast at the election). Voters who vote against approving either alternative are not required to vote on which of the alternatives they prefer but are permitted to do so, and their votes count in determining whether the proposed amendment has received a majority of votes cast and 40% of the total vote.

(5) If the majority of those voting on the first issue votes against both measures, then both measures fail, but in that case the votes on the second issue is still counted and made public.

(6) This alternative procedure is described in Art. 15, sec 273(8), and the key language is as follows:

> If an initiative measure proposed to the Legislature has been rejected by the Legislature and an alternative measure is passed by the Legislature in lieu thereof, the ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately two (2) preferences: First, by voting for the approval of either measure or against both measures, and, secondly, by voting for one measure or the other measure. If the majority of those voting on the first issue is against both measures, then both measures fail, but in that case the votes on the second issue nevertheless shall be carefully counted and made public. If a majority voting on the first issue is for the approval of either measure, then the measure receiving a majority of the votes on the second issue and also receiving not less than forty percent (40%) of the total votes cast at the election at which the

> measure was submitted for approval shall be law. Any person who votes for the ratification of either measure on the first issue must vote for one (l) of the measures on the second issue in order for the ballot to be valid. Any person who votes against both measures on the first issue may vote but shall not be required to vote for any of the measures on the second issue in order for the ballot to be valid.

Use of the Mississippi Indirect Initiative

The Mississippi indirect constitutional initiative has been used infrequently until recently. In the two decades since its adoption in 1992, five initiatives were presented to the voters, three of which failed and two of which were approved. Those that failed involved term limits (1995 and 1999) and personhood (2011); those that the voters approved involved voter id (2011) and eminent domain (2011). **In none of these instances did the legislature present an alternative proposal to the voters, so the alternative ballot procedure has never been tested.**

MASSACHUSETTS

Massachusetts Indirect Constitutional Initiative

In Massachusetts, all initiated constitutional amendments must be "laid before" the state legislature, which is known as the General Court, to give it an opportunity to vote on the proposed amendment. The proposed initiated constitutional amendment must be approved in a joint session of both houses a total of two times for the proposal to be put on the ballot. After the proposed initiated amendment is submitted to the General Court, both houses vote on it in a joint session. If at least one-fourth f the members vote in the affirmative, the issue will be tabled until the next General Court is seated. The next General Court must also approve the amendment in another joint session with at least one-fourth of the votes in the affirmative before the amendment is placed on the ballot, where it must approved by a majority of the voters.

The General Court may also amend the proposed amendment by a three-fourths vote when it is in the joint session, and the amended initiated amendment must then go through the same process as any other initiated amendment in two different General Courts. By a majority vote, the General Court may formulate an alternative proposal of its own, which will then be placed on the on the ballot with the initiative amendment as an alternative choice.

For whatever the reasons—possibly the complexity of the process or the length of time required to get an amendment through two separate sessions of the General Court—the Massachusetts initiated amendment process has only resulted in proposed amendments being on the ballot three times since its adoption in 1919. The voters approved initiated amendments in 1938 (involving biennial sessions of the General Court) and in 1974 (involving highway taxes); they rejected a proposed amendment in 1994 (authorizing a graduated state income tax). In none of these cases did the General Court propose an alternative amendment.[1]

[1] In one instance, the General Court attempted to place an alternative constitutional amendment on the ballot, but the Supreme Judicial Court of Massachusetts held the proposed substitute was improper. *See Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 202, 355 N.E.2d 806, 811 (1976) ("In short, we cannot countenance the

The experience of Massachusetts with its indirect constitutional initiative can be contrasted with its experience with the indirect ***statutory*** initiative. There have been 72 proposed statutes on the ballot since the adoption of the indirect statutory initiative, and the voters approved 32 of these proposed statutes. Presumably, this is in addition to the statutes proposed by initiative and adopted by the General Court.

Finally, there does not seem to be any protections built into the Massachusetts Constitution to limit the ability of the General Court to amend or even repeal initiated statutes that have been approved by the voters. Nonetheless, the General Court may be reluctant to amend or repeal initiated statutes for political reasons, and there does not seem to be any evidence that the General Court makes anything other than minor corrective changes in initiated statutes.

---

emasculation of the initiative petition by the attempt to substitute a measure with objectives at variance with those which the plaintiffs have proposed.").

To: Constitutional Revisions & Updating Committee

From: Steven H. Steinglass, Senior Policy Advisor
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 and 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 Constiutional 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 provison 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.

Reviewed As To Form By
Legislative Service Commission

LSC 130 2454

130th General Assembly
Regular Session
2013-2014

. J. R. No.

JOINT RESOLUTION

Proposing to amend Sections 1b and 1g of Article II of the Constitution of the State of Ohio to modify the requirements to propose a statute by initiative petition.

Be it resolved by the General Assembly of the State of Ohio, three-fifths of the members elected to each house concurring herein, that there shall be submitted to the electors of the state, in the manner prescribed by law at the general election to be held on November 3, 2015, a proposal to amend Sections 1b and 1g of Article II of the Constitution of the State of Ohio to read as follows:

ARTICLE II

Section 1b. 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.

For a period of five years after a law proposed by initiative petition is approved by the voters, the general assembly shall not amend or repeal that law except by a vote of two-thirds of the members elected to each branch of the general assembly.

Section 1g. (A) 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.

(B) 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.

(C) 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.

(D) 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~~

(E)(1) Except as otherwise provided in division (E)(2) of

this section, 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~~

(2) Upon all initiative and supplementary petitions proposing a law, it shall be necessary to file from each of one-quarter 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.

(F) 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~~

(G) 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~~

(H) 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~~

(I) 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~~

(J) 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~~

(K) 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.

EFFECTIVE DATE AND REPEAL

If adopted by a majority of the electors voting on this proposal, Sections 1b and 1g of Article II as amended by this proposal take effect immediately and existing Sections 1b and 1g of Article II of the Constitution of the State of Ohio are

repealed from that effective date.

To: Constitutional Revision Committee

From: Steven H. Steinglass, Senior Policy Advisor
Ohio Constitutional Modernization Commission

Re: Strengthening Ohio's Statutory Initiative

Date: April 9, 2014

Members of the committee have been discussing whether the adoption by Ohio of a more robust statutory initiative could contribute to the decrease in the use of the state's direct constitutional initiative. This memorandum reviews the relationship between Ohio's indirect statutory initiative and its direct constitutional initiative. In addition, the memo looks at the 14 states that have both a direct constitutional initiative and a statutory initiative as well as at the states that have only a statutory initiative.

Background and Key Features of the Indirect Statutory and Constitutional Initiatives

In 1912, the Ohio voters approved the direct constitutional and the indirect statutory initiative, both of which were proposed by Ohio's Fourth Constitutional Convention, the Convention of 1912. As adopted, both initiatives require the gathering of signatures that are a percentage of votes in the last gubernatorial election (10% for constitutional initiatives and an initial 3% plus and an additional 3% in a supplementary petition for statutory initiatives) with 5% (for constitutional initiatives) and 1.5% (for initial and supplemental petitions for statutory initiatives) of the required signatures from 44 (which is half of Ohio's 88 counties).

Direct Constitutional Initiative

Ohio is one of 16 states with a direct constitutional initiative in which signatures are gathered and a proposed amendment is placed directly on the ballot. In Ohio and in 10 other states, a majority of votes on the proposed amendment is required. The other states have a variety of provisions some of which require a percentage of the total votes at the election.[1] Since 1912, 80 amendments to the Ohio Constitution have been proposed by initiative, and Ohio voters

[1] The other five states with direct constitutional initiatives have the following super-majority requirements:

Florida	three-fifths vote except a two-thirds vote on new taxes
Illinois	majority voting in the election or three-fifths voting on the amendment; subject- matter limitations to the use of the initiative
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

approved 18 of them. During this same period, Ohio voters approved 102 of 150 amendments proposed by the General Assembly.

Indirect Statutory Initiative

Twenty-one (21) states including Ohio, have a statutory initiative, but six of those states do not permit the initiation of constitutional amendments.

States with Statutory and Constitutional Initiatives

Of the 15 states that have both a constitutional and a statutory initiative, 11 have a direct statutory initiative under which proponents may put proposed statutes directly on the ballot without first presenting the proposed statute to the legislature. The remaining four states--Ohio, Michigan, Massachusetts**,** and Nevada--have 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 may go to the ballot after the legislature has failed to act without the collection of supplemental signatures. *See* Mich. Const. Art. II, sec. 9; Nev. Const. Art. 19, sec. 3. In Massachusetts, there is a modest additional signature requirement of .5% of the votes in the last gubernatorial (in addition to the 3% required initially). In Ohio, the proponents of the original statute must file a supplementary petition with 3% of the vote of the last gubernatorial election. Since Massachusetts has only an indirect constitutional initiative, Ohio is the ***only*** state with both a statutory initiative and a *direct* constitutional initiative) in which the proponents are required to collect additional signatures.

States with Statutory Initiatives but without Constitutional Initiatives

There are six states that have a statutory initiative but do not have either a direct or an indirect constitutional initiative.

In four of these states—Alaska, Idaho, Maine, and Wyoming—there is a ***direct*** statutory initiative, thus proponents may put proposed statutes directly on the ballot w**ithout first presenting the proposed statute to the legislature**.

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 obtaining additional signature.

Likewise, Utah has both a direct and an indirect statutory initiative. The initial signature requirement for direct statutory initiatives in Utah is 10% 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 5% of the votes in the last presidential election, but they must get an additional 5% on a supplemental petition if the legislature does not adopt the proposed statute.

The Indirect Statutory Initiative in Ohio

In Ohio, 12 proposed statutes have gone to the voters after the General Assembly failed to adopt proposed initiated statutes; and the voters approved only three of these statutes. [2]

When the General Assembly adopts the legislation proposed by the indirect statutory initiative, there obviously is no need for the matter to go to the voters. Unfortunately, it is not clear how many proposed initiated statutes have been adopted by the General Assembly, thus obviating the need to take the issue to the voters. Nor is information readily available on how many times the General Assembly did not approve the proposed statute but the proponents—for whatever reason—did not take the issue to the voters.

Can the Ohio General Assembly Amend or Repeal Initiated Statutes? Can Legislatures in Other States?

In Ohio and six other states with both a direct constitutional initiative and a statutory initiative--Colorado, Missouri, Montana, Oklahoma, Oregon, and South Dakota--the state legislature has complete discretion to amend or repeal statutes that have been adopted by initiative.

In the seven other states with both a direct constitutional initiative and a statutory initiative, there are "anti-tampering" constitutional limitations on the power of the legislature to amend or repeal initiated statutes. These are limitations in time, limitations of a super-majority voting requirement, or combinations of the two. These limitations are summarized in the chart below (along with the limitations in those states with the statutory initiative but no constitutional initiative—Alaska, Washington, and Wyoming.)

In a 2002 report, the National Council of State Legislatures noted that providing an indirect initiative process that impedes legislative interference in some way would make the indirect initiative process more attractive to citizens seeking to get an initiative on the ballot.

The table below describes the "anti-tampering" provisions in states that have limited the power of the legislature to repeal or amend initiated statutes. This table includes both states that have a direct constitutional initiative and those that do not.

[2] The three statutes approved by Ohio voters after the General Assembly failed to adopt proposed initiated statute were provided aid to aged persons (1933), permitted the manufacture and sale of colored oleomargarine (1949), and restricted smoking in places of employment and most places open to the public (2006).

LIMITATIONS ON THE POWER OF THE LEGISLATURE TO AMEND OR REPEAL INITIATED STATUTES

State	Measures Taken
Alaska*	No repeal within 2 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 3 years of enactment
North Dakota	2/3 vote required to amend or repeal within 7 years of effective date
Washington*	2/3 vote required to amend or repeal within 2 years of enactment
Wyoming*	No repeal within 2 years of effective date; amendment by majority vote anytime

* no constitutional initiative

In three of the six states—Alaska, Washington, and Wyoming—with a statutory initiative but no direct constitutional initiative, there are also limitations on the power of the General Assembly to amend or repeal initiated statutes. In the other three states with a statutory initiative but no direct constitutional initiative—Idaho, Maine, and Utah—there are no limitations on the state legislature.

Comparison of Ohio to Other States

Ohio is unique in the country among the 14 states with both a direct constitutional and statutory initiative in terms of the preferred route of those taking issues to the voters. In Ohio, 85% of the initiated issues are for constitutional amendments. This means that of 80 attempts to initiate positive law (*i.e.*, either a statute or a constitutional amendment) proponents have elected to go the constitutional route in 68 instances. The next closest states hover around the high 60% level.

Why is Ohio an Outlier?

Some commentators have hypothesized that Ohio is an outlier in the "over-utilization" of the constitutional initiative as compared to its statutory initiative because: (a) Ohio does not limit the

power of the General Assembly to amend initiated statutes, and (b) the burden of collecting additional signatures in a supplemental petition.

Initial Conclusion, Correlation and Future Research

There is a strong correlation between Ohio's heavy use of the constitutional initiative and the unfettered ability of the General Assembly to amend or repeal initiated statutes and the requirement of a supplemental petition. But it is premature to conclude that these features of Ohio's statutory initiative explain the relatively infrequent use of the statutory initiative. What is necessary is a content-based review of all 68 proposed constitutional initiatives as well as the motivations of the proponents in order to determine which issues might have been pursued through the vehicle of a more robust statutory initiative. In addition, it would be useful to have a better grasp as to how the statutory initiative has actually worked in other states.

REVIEW OF PROPOSED INITIATED AMENDMDNTS

> [***This memo should be expanded to include a content-based review of Ohio's 68 proposed constitutional amendments to determine, to the extent possible, whether a more robust statutory initiative might have provided an plausible alternative route for the proponents of the issue. In addition, there should be a review of the 12 statutory initiatives that the proponents took to the voters to determine why they selected the statutory as contrasted to the constitutional route. Finally, a full review of this issue should include a review of the use of the statutory initiative in other states.***]

Conclusion

A conclusion about the likely impact of the creation of a more robust statutory initiative should wait the above-described content-based review of proposed constitutional amendments and statutory initiatives in Ohio as well as a review of the use of the statutory initiative in other states.