



**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**  
**CONSTITUTIONAL REVISION AND UPDATING COMMITTEE**

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**THURSDAY, APRIL 9, 2015**  
**2:30 PM**  
**SOUTH MEETING ROOMS B & C, 31<sup>ST</sup> FLOOR**  
**RIFFE CENTER FOR GOVERNMENT AND THE ARTS**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes – Meeting of December 11, 2015  
*[Draft minutes attached]*
- IV. Presentations
  - A. “Subject Matter Limitations on the Constitutional Initiative”  
  
Steven H. Steinglass  
Senior Policy Analyst  
  
*[Memorandum by Steven H. Steinglass titled “Subject Matter Limitations on the Constitutional Initiative”, dated April 1, 2015, attached]*  
  
*[Memorandum by Steven H. Steinglass titled “The Use of the Constitutional Initiative in Ohio and the Nation”, dated June 10, 2014, attached]*
  - B. “NCSL Report on the Initiative and Referendum in the 21<sup>st</sup> Century”  
  
Steven C. Hollon  
Executive Director  
  
Shari L. O’Neill  
Counsel to the Commission

*[Report of the NCSL Initiative and Referendum Task Force dated April 2002  
previously circulated by email of April 2, 2015]*

*[Recommendations by the NCSL Initiative and Referendum Task Force, dated  
April 2002, attached]*

*[Reference Guide to Ohio Constitutional Provisions on Initiative and Referendum  
& Amending the Constitution, dated April 2015, attached]*

V. Reports and Recommendations

As required

VI. Committee Discussion

As required

VII. Old Business

VIII. New Business

IX. Public Comment

X. Adjourn



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MEMORANDUM

**TO:** Chair Dennis Mulvihill, Vice Chair Charles Kurfess and  
Members of the Constitutional Revision and Updating Committee

**FROM:** Steven H. Steinglass  
Senior Policy Advisor

**DATE:** April 1, 2015

**RE:** Subject-Matter Limitations on the Constitutional Initiative

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This memorandum addresses the use of subject-matter limitations to limit the amendments that may be made to state constitutions through the use of the constitutional initiative.

First, it briefly reviews the history of the direct constitutional initiative and the indirect statutory initiative in Ohio and the limitations on their use. Second, it reviews the existence of subject-matter limitations on the constitutional initiative in other states. Finally, it reviews issues that have arisen concerning the validity of subject-matter limitations on the initiative.

#### **History of the Initiative in Ohio**

The Ohio Constitutional Convention of 1912 proposed and the voters approved an amendment permitting the voters to directly initiate constitutional amendments. At the same time, the voters also approved an indirect statutory initiative.

On the surface, the Ohio Constitution does not place any substantive limitations on the use of the state's direct constitutional initiative, but (in addition to procedural requirements concerning the signature gathering process,<sup>1</sup> the requirement that the summary be fair and truthful,<sup>2</sup> and the one-amendment rule<sup>3</sup>) the direct constitutional initiative is limited to proposals to "amend" the Ohio Constitution.<sup>4</sup> This provision does not address whether the constitutional initiative may be used to propose broader "revisions" of the Ohio Constitution. On the other hand, the provision authorizing constitutional conventions states that conventions may be used "to revise, amend, or change this constitution . . .". See Article XVI, Section 2 ("Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a convention, to revise, amend, or change this constitution . . ."). For a discussion of the distinction between constitutional amendments and constitutional revisions, see Appendix A to this memorandum.

The absence of explicit subject-matter limitations on the use of the constitutional initiative in Ohio can be contrasted with the presence of an explicit subject-matter restriction on the use of the indirect statutory initiative. Under this provision, the Ohio statutory initiative cannot be used to adopt different rates of taxation for property. This limitation is contained in Art. II, sec. 2e, and provides as follows:

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

The 1912 Constitutional Convention proposed this limitation on the use of the statutory initiative to assure that the statutory initiative could not be used to introduce what was seen as the radical approach to taxation that had been advocated by the late Tom L. Johnson, the former mayor of Cleveland and an apostle of the “single-tax” economic theories of Henry George.<sup>5</sup>

### **Subject-Matter Limitations on the Use of the Constitutional Initiative in Other States**

Eighteen states permit direct and indirect constitutional initiatives. Of these states, 15 do not place subject matter limitations on the use of the constitutional initiative. However, three states—Massachusetts, Mississippi, and Illinois—place significant limitations on the constitutional initiative.<sup>6</sup> The relevant constitutional provisions for each state are provided at Attachment B.

#### *Massachusetts*

In Massachusetts, the state’s indirect constitutional initiative lists matters that are not subject to the initiative. These include:

- Measures that relate to religion, religious practices or religious institutions;
- Measures that relate to the appointment, qualification, tenure, removal, recall, or compensation of judges; or to the reversal of judicial decisions; or the powers, creation, or abolition of courts;
- Specific appropriation of state money;
- The 1917 anti-aid amendment extending the ban on public funding of education to all private schools;
- The initiative process ;
- Propositions inconsistent with individual rights to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

Mass. Const. Amend. Article XLVIII, Section 2 (Excluded Matters).

### *Mississippi*

In Mississippi, the state's indirect constitutional initiative may not be used:

- For the proposal, modification or repeal of any portion of the Bill of Rights of the constitution;
- To amend or repeal any law or any provision of the constitution relating to the Mississippi Public Employees' Retirement System;
- To amend or repeal the constitutional guarantee that the right of any person to work shall not be denied or abridged on account of membership or non-membership in any labor union or organization; or
- To modify the initiative process for proposing amendments to the constitution.

Miss. Const. Article 15, Section 273(5)(a) to (d).

### *Illinois*

In Illinois, the state's direct constitutional initiative may not be used to address subjects other than the structure and procedures of the legislature. *See* Ill. Const. Article XIV, Section 3 ("Amendments shall be limited to structural and procedural subjects contained in Article IV [the Legislative Article].")

### **Litigation Concerning Limitations on the Initiative**

The adoption of substantive limitations by states on the use of the initiative has led to litigation, and many commentators have viewed the limitations as infringing on the First Amendment.<sup>7</sup> However, the few courts that have addressed these issues have rejected federal constitutional challenges to the limitations.

The leading case addressing the validity of subject matter limitations on the use of constitutional initiatives is *Wirzburger v. Galvin*, 412 F.3d 271 (1<sup>st</sup> Cir. 2005), *cert. denied*, 546 U.S. 1150 (2006). The plaintiffs wanted to amend the Massachusetts Constitution to allow public financial support for private, religiously affiliated schools, but the state constitution prevented initiatives on this subject. The United States Court of Appeals for the First Circuit held that the state constitutional provisions prohibiting ballot initiatives on this subject constituted a restriction on speech subject to intermediate scrutiny. Nonetheless, the court rejected the challenge to state limitations on the constitutional initiative.

The other principal case involving limitations on the initiative involves a Utah limitation on the use of the statutory, rather than the constitutional initiative. In 1998, Utah amended its constitution to require a two-thirds majority for future ballot initiatives involving the taking of wildlife. This supermajority requirement was designed to protect Utah's wildlife practices from

special interest groups. This subject-specific supermajority requirement on the use of the statutory initiative was challenged as a violation of the First Amendment, but in *Initiative and Referendum Institute v. Walker*, 450 F.3d 1082 (10<sup>th</sup> Cir. 2006), *cert. denied*, 549 U.S. 1245 (2007), the United States Court of Appeals for the Tenth Circuit held “that a constitutional provision imposing a supermajority requirement for enactment of initiatives on specific topics does not implicate the freedom of speech.” *Id.* at 1085.

## A NOTE ON THE AMENDMENT VS. REVISION DISTINCTION

The distinction between the amendment and revision of state constitution may, at first, seem only semantic, but it is more than that. It is common for state constitutions to distinguish revision from amendment and to prohibit the use of the constitutional initiative for constitutional revision. Indeed, thirteen of the eighteen states that permit initiated constitutional amendments distinguish constitutional amendments from constitutional revisions and appear to bar the use of the initiatives to revise constitutions. See Henry S. Noyes, *The Law of Direct Democracy* 386 (2014). This issue has never risen in Ohio, though Ohio appears to be one of these thirteen states.

State courts of last resort that have addressed this distinction have embraced it and have limited the use of the initiative to achieve constitutional revision. See, e.g., *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999) (recognizing that “[t]he Framers of the Alaska Constitution distinguished between a revision and an amendment” and holding that a ballot proposition to limit the rights of prisoners to those afforded by the federal Constitution was a “revision” that could not be adopted through the initiative); *Holmes v. Applig*, 392 P.2d 636 (Ore. 1964) (accepting the distinction between an amendment and a revision of the constitution, and holding that the pending proposal was a revision that could not be adopted through the initiative); *Raven v. Deukmejian*, 801 P.2d 1077 (Cal. 1990) (holding that an initiated constitutional provision restricting the independent judicial interpretation of enumerated state constitutional rights arising in criminal cases is a revision that cannot be accomplished through the initiative); *McFadden v. Jordan*, 196 P.2d 787 (Cal. 1948) (“[T]he power to propose and vote on ‘amendments to the Constitution’ is reserved directly to the people in initiative proceedings, while leaving unmentioned the power and the procedure relative to constitutional revision, which revisional power and procedure, it will be remembered, had already been specifically treated in . . . [another section]. . . . [The] contention that any change less than a total one is but amendatory would reduce to the rubble of absurdity the bulwark so carefully erected and preserved. Each situation involving the question of amendment, as contrasted with revision, of the Constitution must, we think, be resolved upon its own facts.”), *cert. denied*, 336 U.S. 918 (1949). But cf. *Legislature v. Eu*, 816 P.2d 1309 (Cal. 1990) (holding that the initiated adoption of a budgetary limitations and legislative term limits did not constitute a proscribed constitutional revision), *cert. denied*, 503 U.S. 919 (1992).

**STATE LIMITATIONS ON THE USE OF THE CONSTITUTIONAL INITIATIVE**

*Massachusetts*

**Mass. Const. Amend. Article 48, Initiative, Part 2, Section 2**

No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

**Mississippi Const. Article 15, Section 273. Amendment process**

(1) Amendments to this Constitution may be proposed by the Legislature or by initiative of the people.

(2) Whenever two-thirds ( $\frac{2}{3}$ ) of each house of the Legislature, which two-thirds ( $\frac{2}{3}$ ) shall consist of not less than a majority of the members elected to each house, shall deem any change, alteration or amendment necessary to this Constitution, such proposed amendment, change or alteration shall be read and passed by two-thirds ( $\frac{2}{3}$ ) vote of each house, as herein provided; public notice shall then be given by the Secretary of State at least thirty (30) days preceding an election, at which the qualified electors shall vote directly for or against such change, alteration or amendment, and if more than one (1) amendment shall be submitted at one (1) time, they shall be submitted in such manner and form that the people may vote for or against each amendment separately; and, notwithstanding the division of the Constitution into sections, the Legislature may provide in its resolution for one or more amendments pertaining and relating to the same subject or subject matter, and may provide for one or more amendments to an article of the Constitution pertaining and relating to the same subject or subject matter, which may be included in and voted on as one (1) amendment; and if it shall appear that a majority of the qualified electors voting directly for or against the same shall have voted for the proposed change, alteration or amendment, then it shall be inserted as a part of the Constitution by proclamation of the Secretary of State certifying that it received the majority vote required by the Constitution; and the resolution may fix the date and direct the calling of elections for the purposes hereof.

(3) The people reserve unto themselves the power to propose and enact constitutional amendments by initiative. An initiative to amend the Constitution may be proposed by a petition signed over a twelve-month period by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election. The signatures of the qualified electors from any congressional district shall not exceed one-fifth ( $\frac{1}{5}$ ) of the total number of signatures required to qualify an initiative petition for placement upon the ballot. If an initiative petition contains signatures from a single congressional district which exceed one-fifth ( $\frac{1}{5}$ ) of the total number of required signatures, the excess number of signatures from that congressional district shall not be considered by the Secretary of State in determining whether the petition qualifies for placement on the ballot.

(4) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program or programs whose funding must be reduced or eliminated to implement the initiative. Compliance with this requirement shall not be a violation of the subject matter requirements of this section of the Constitution.

(5) The initiative process shall not be used:

(a) For the proposal, modification or repeal of any portion of the Bill of Rights of this Constitution;

(b) To amend or repeal any law or any provision of the Constitution relating to the Mississippi Public Employees' Retirement System;

- (c) To amend or repeal the constitutional guarantee that the right of any person to work shall not be denied or abridged on account of membership or nonmembership in any labor union or organization; or
- (d) To modify the initiative process for proposing amendments to this Constitution.

*Illinois*

**Illinois Const. Article 14, Section 3**

**Section 3. Constitutional Initiative for Legislative Article**

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

## End Notes

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<sup>1</sup> See Article II, Section 1a & 1g.

<sup>2</sup> See R.C. 3519.01(A) (requiring the Attorney General to evaluate the proposed summary to determine whether it is a fair and truthful representation of the proposed initiative).

<sup>3</sup> See Article XVI, Section 2 (“When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.”).

<sup>4</sup> See Article II, Section 1a (referring only to proposals to amend the constitution).

<sup>5</sup> Herbert S. Bigelow, the president of the convention, the leader of the direct democracy camp, and a strong supporter of Henry George’s economic principles, explained why the proponents of direct democracy refused to fall into the trap set by the opponents. The opposition had proposed the limitation on the statutory initiative, expecting Bigelow and his allies to oppose the limitation and thus expose their true goal of seeking to initiate a statute to adopt a single tax on real property. The “trick” failed, as the proponents of the initiative did not challenge the restriction placed on the statutory initiative. See Bigelow, *A New Constitution for Ohio* 12 (July 5, 1912).

<sup>6</sup> Unlike the limited use of subject-matter limitations on the use of the constitutional initiative, limitations on the use of state statutory initiatives are common though not universal. Where they exist, they typically involve limitations on the use of the statutory initiative to make state budgetary appropriations. The use of limitations on the statutory initiative is beyond the scope of this memorandum.

<sup>7</sup> See, e.g., J. Michael Connolly, *Loading the Dice in Direct Democracy: The Constitutionality of Content- and Viewpoint-Based Regulations of Ballot Initiatives*, 64 N.Y.U. Ann. Surv. Am. L. 129 (2008) (arguing that “both content- and viewpoint-based regulations of ballot initiatives should be held to implicate the First Amendment” but that “viewpoint-based regulations of ballot initiatives should require strict scrutiny, while content-based regulations of ballot initiatives should require intermediate scrutiny”); Russell Patrick Plato, *Selective Entrenchment Against State Constitutional Change: Subject Matter Restrictions and the Threat of Differential Amendability*, 82 N.Y.U. L. Rev. 1470 (2007) (arguing that the current framework used to evaluate subject matter restrictions provides insufficient protection against the serious harms such restrictions create); Anna Skiba-Crafts, Note, *Conditions on Taking the Initiative: The First Amendment Implications of Subject Matter Restrictions on Ballot Initiatives*, 107 Mich. L. Rev. 1305 (2009) (arguing that “subject matter restrictions on ballot initiatives constrain ‘core political speech’ and so should receive strict First Amendment scrutiny”); Note, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment*, 107 Colum. L. Rev. 1437 (2007) (arguing “that subject matter restrictions burden expressive conduct composed of nonspeech and speech elements” and proposing “that courts apply intermediate scrutiny to restrictions on the subject matter of initiatives, affirming those that insulate state constitutional rights but invalidating those that simply calcify the electoral gains of transient political majorities”).

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 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.

March 25, 2015 (draft)

**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

**Initiated Constitutional Amendments Approved by Ohio Voters**

**with Voting Percentages & Total Votes Cast at Election**

**1913-2014**

*From 1913 to 2014, Ohio voters approved 18 of 68 proposed initiated amendments. This chart identifies the approved amendments with the votes cast on them and the total votes cast at the election in which they were considered.*

Date	Subject	Const. Provision	Vote	Total Votes on Issue	Percent In Favor	Total Votes Cast at Election	Percent Voting on Issue
11-3-1914	Home rule re: liquor	XV:9a	559,872 to 547,254	1,107,126	50.6%	1,161,970*	96.0%
11-5-1918	Referendum; voters may approve/reject action of legislature ratifying any proposed amendment to US Constitution	II:1	508,282 to 315,030	823,312	61.7%	997,930*	85.6%

11-5-1918	Prohibit manufacture and sale of alcoholic beverages	XV:9	463,354 to 437,895	901,249	51.4%	997,930*	93.0%
11-5-1918	General Assembly to classify property for taxation	XII:2	336,616 to 304,399	641,015	52.5%	997,930*	66.8%
11-7-1933	10-mill limit on unvoted real estate taxes	XII:2	979,061 to 661,151	1,640,212	59.7%	2,282,401*	80.9%
11-7-1933	Home rule for counties	IV:16; X:1, 2, 3, 4, 5, 6, 7	846,594 to 742,925	1,589,519	53.3%	2,282,401*	78.4%
11-3-1936	Prohibit sales tax on food for consumption off premises	XII:12	1,585,327 to 719,966	2,305,293	68.8%	3,045,046*	75.7%
11-4-1947	Limit use of motor vehicle license and fuel taxes for road and related purposes	XII:5a	1,037,650 to 669,718	1,707,368	60.8%	2,280,221*	74.0%

11-8-1949	Adopt office-type ballot	V:2a	1,007,693 to 750,206	1,757,899	57.3%	2,303,860*	76.3%
11-8-1977	Person entitled to vote if registered for 30 days; elector failing to vote at least once in 4 years must re-register	V:1	1,964,361 to 1,225,852	3,190,213	61.6%	3,402,150*	93.8%
11-3-1992	Term limits for state senators and representatives	II:2; V:9	2,982,285 to 1,378,009	4,360,294	68.4%	5,043,094**	86.5%
11-3-1992	Term limits for state executive branch officers other than governor	III:2; V:9	3,028,288 to 1,349,244	4,377,532	69.2%	5,043,094**	86.8%
11-3-1992	Term limits for US senators and representatives	V:8;V:9	2,897,123 to 1,476,461	4,373,584	66.2%	5,043,094**	86.7%
11-8-1994	Repeal soft drink excise tax	XII:13	2,228,874 to 1,126,728	3,355,602	66.4%	3,570,391**	94.0%
11-2-2004	Ban on same-sex marriage; civil unions	XV:11	3,329,335 to 2,065,462	5,260,325	61.7%	5,722,443**	94.3%

11-7-2006	Raise the state minimum wage	II:34a	2,205,850 to 1,687,996	3,893,846	56.7%	4,184,072**	93.1%
11-3-2009	To allow one casino in Cincinnati, Cleveland, Columbus, and Toledo and distribute to all Ohio counties a tax on the casinos	XV:6	1,713,255 to 1,519,605	3,232,860	53.0%	3,292,374**	98.2%
11-8-2011	Freedom to choose healthcare	I;21	2,268,470 to 1,190,385	3,458,885	65.6%	3,628,342**	95.3%

\*Source: Ohio Election Statistics, Election and Registration Statistics (Ohio Secretary of State 1978)

\*\* Source: Voter Turnout in General Elections, Ohio Secretary of State Website, <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Voter%20Turnout%20in%20General%20Elections.aspx> (last visited March 23, 2015)

# TASK FORCE RECOMMENDATIONS

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

## General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

- A. First, adopting the advisory initiative; or
- B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

## Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

### **The Subject Matter of Initiatives**

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

### **The Drafting and Certification Phase**

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

### **The Signature Gathering Phase**

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

- A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
- B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
- C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

## Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

## Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

## Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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REFERENCE GUIDE TO  
OHIO CONSTITUTIONAL PROVISIONS  
ON  
INITIATIVE AND REFERENDUM  
&  
AMENDING THE CONSTITUTION

APRIL 2015

## Preface

To assist the Ohio Constitutional Modernization Commission's Constitutional Revisions and Updating Committee in its review of Article II, Sections 1a through 1g and Article XVI, Sections 1, 2 and 3, Commission staff has prepared this Reference Guide to Ohio Constitutional Provisions on the Initiative and Referendum and Amending the Ohio Constitution.

The Reference Guide sets out the language contained in each provision and provides a summary of its requirements in bullet point format.



## ARTICLE II: INITIATIVE AND REFERENDUM

### Article II, Section 1a - (Initiative and Referendum to Amend Constitution)

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

- Signatures of 10 percent of electors are needed to propose an amendment to the constitution.
- When petition filed with SOS and verified, SOS submits the proposed amendment to electors at the next election after 125 days.
- Initiative petitions have printed on them: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors.”



## **Article II, Section 1b - (Initiative and Referendum to Enact Statutes)**

*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.*



- At least 10 days before commencement of GA session, if petition is filed with SOS signed by 3 percent of electors proposing a statute, SOS transmits the petition to GA as soon as it convenes.
- If law passed by GA either as petitioned or as amended by GA, it is subject to referendum.
- If supplementary petition filed, SOS will submit to electors for their approval or rejection in these circumstances:
  - If not passed; or
  - If passed in amended form; or
  - If no action taken within 4 months.
- *Supplementary Petitions:* Deadlines and conditions for submitting to electors: If submission is demanded by supplementary petition signed by 3 percent of electors in addition to those signing the original petition:
  - Within 90 days after the proposal is rejected by the GA; or
  - After expiration of 4 months (if no action taken by GA); or
  - After a law passed by the GA has been filed by the governor with the SOS.
- *Supplementary Petitions:* Proposed law will be submitted to voters at next election after 125 days after supplementary petition filed.
- *Supplementary Petitions:* should be either as first petitioned for, or with any amendment(s) which may have been incorporated by one or both branches of the GA.
- If proposed law is approved by a majority of the electorate, it will go into effect in lieu of any amended form that may have been passed by the GA,
  - *Supplementary Petitions:* Until or unless the law proposed by supplementary petition shall have been rejected by the electors.
- Initiative petitions printed on top “Law Proposed by Initiative Petition First to be Submitted to the General Assembly.”
- Ballots to permit an affirmative or negative vote.
- If enacted, laws shall take effect 30 days after the election and published by SOS.
- If conflicting proposed laws or amendments are approved at the same election, the one receiving the highest number of affirmative votes shall be the law.
- Or, in the case of amendments to the constitution, the amendment receiving the highest number of affirmative votes shall be the amendment to the constitution.
- No law proposed by initiative and approved by the electors shall be subject to governor’s veto.



## Article II, Section 1c - (Referendum to Challenge Laws Enacted by the General Assembly)

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

- For a law passed by the GA to qualify for submission to the electors for their approval or rejection, a petition needs signatures of 6 percent of the electors.
- No law passed by the GA shall go into effect until 90 days after being filed by governor with the SOS, except as herein provided.
- When an appropriate petition is timely filed ordering that such law be submitted to the electors, the SOS shall submit the petition to the electors at the next election subsequent to 125 days after the filing of the petition, and the law won't be effective until approved by a majority of the voters.
- But if a referendum petition is filed against a portion of the law, the remainder is not prevented or delayed from going into effect.



## **Article II, Section 1d - (Emergency Laws Not Subject to Referendum)**

*Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.*

- Immediate effect:
  - Tax levies;
  - Appropriations for current expenses of the state; and
  - Emergency laws necessary for immediate preservation of public peace, health, or safety.
- Emergency Laws need approval of 2/3 of each chamber of the GA.
- Emergency Laws are not subject to referendum.

## **Article II, Section 1e - (Powers; Limitation of Use)**

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

- Initiative and referendum shall not be used to pass a law regarding property classifications for the purpose of levying different tax rates.
- Also shall not be used to authorize the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.



## **Article II, Section 1f - (Power of Municipalities)**

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

- Initiative and referendum powers extend to matters controlled by municipal legislative action.



## **Article II, Section 1g - (Petition Requirements; Submission; Ballot Language; Ballot Board)**

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

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

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

*No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or*



*both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.*

Initiative, supplementary, or referendum petition may be presented in separate parts; each part to contain a full and correct copy of the title, text, section or item sought to be referred, or the proposed law or amendment.

- Each petition signer must be an elector, and must give name, the date, and residence.
- If signer lives outside municipality, shall state county, rural route number, post office address, or township.
- Municipal resident shall state street and number of residence and name of municipality or post office address.
- Names of all signers in ink, each signer for himself.



- Petition must attach circulator statement, and that circulator witnessed the signatures.
- SOS has until 105 days before election to determine sufficiency of signatures.
- Ohio Supreme Court has original, exclusive jurisdiction over all challenges to petitions.
- Challenges must be filed no later than 95 days before the election.
- Court shall hear and rule on challenges no later than 85 days before the election.
- If no ruling is issued at least 85 days before election, petition is presumed sufficient.
- If petition is insufficient, 10 extra days are allowed for filing additional signatures.
- If additional signatures are filed, SOS shall determine sufficiency at least 65 days before election.
- Challenge to additional signatures shall be filed at least 55 days before the election.
- Court to rule on any challenges to additional signatures no later than 45 days before the election.
- If no ruling is issued at least 45 days before, petition is presumed sufficient.
- No law or amendment that passes shall be held unconstitutional or void due to insufficiency of the petitions, nor shall rejection of a law submitted by referendum petition be held invalid for such insufficiency.
- All initiative, supplementary, and referendum petitions require signatures of at least half the designated percentage of electors [10 percent for constitutional initiative or referendum, three percent for statutory initiative or referendum, six percent to challenge GA statutory law] from at least half the counties of the state.
- A true copy of all laws, proposed laws, or proposed amendments, together with argument or explanation both for and against, shall be prepared.
- Preparer to be named in the petition.
- The law, proposed law, or proposed amendment, together with arguments and explanations not exceeding 300 words for each, shall be published once a week for 3 consecutive weeks preceding the election in at least one general circulation newspaper in each county of the state where a paper is published.
- SOS places on the ballots the ballot language.



- Ballot language is prescribed by the Ohio Ballot Board in the same manner and subject to same terms and conditions as apply to issues submitted by the GA, pursuant to Section 1 of Article XVI.
- SOS causes the ballots 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.
- Style of all laws submitted by initiative and supplementary petition shall be “Be it Enacted by the People of the State of Ohio.”
- Style of all constitutional amendments shall be: “Be it Resolved by the People of the State of Ohio.”
- The basis for determining the required number of petitioners shall be the total number of votes cast for the office of governor at the last preceding election.
- This section shall be self-executing, and laws may be passed to facilitate their operation but in no way limiting or restricting either such provisions or the powers herein reserved.



## ARTICLE XVI: AMENDMENTS

### Article XVI, Section 1 - (Constitutional Amendment Proposed by Joint Resolution; Procedure)

*Either branch of the General Assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the General Assembly may prescribe.*

*The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.*

*The Supreme Court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the General Assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.*

*Unless the General Assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.*

*Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.*



- Either house of the GA may propose amendments. If the amendment is agreed to by 3/5 of the members of each house:
  - The proposal (with the yeas and nays) is entered on the journals; and,
  - Filed with the SOS at least 90 days before the election.
  
- Putting Proposed Amendments on Ballot:
  - Submitted on a separate ballot without party designation at either a special or general election, as GA may prescribe.
  - If multiple amendments submitted at the same time, they should be submitted so as to allow a separate vote on each.
  - If majority of the electors adopt an amendment it becomes part of the constitution.
  
- Ballot Board composition:
  - Ballot Board is SOS and four other members designated in manner prescribed by law.
  - No more than two designated members of ballot board can be members of the same party.
  
- Ballot language composition:
  - Ballot language is prescribed by a majority of the Ballot Board.
  - Shall properly identify the substance of the proposal.
  - Need not contain either full text or condensed text.
  
- Ballot language, explanation, arguments for or against:
  - Ballot Board to prepare an explanation, which may include purpose and effects.
  - Ballot board certifies ballot language to the SOS at least 75 days before the election.
  - Ballot language and explanation to be available for public inspection in the SOS office.
  - Unless the GA otherwise provides, the Ballot Board prepares arguments for and/or against a proposed amendment.
  - Election on the proposed amendment not to be enjoined or invalidated based upon faulty explanation, arguments, or other information.
  
- Challenges:
  - Supreme Court has exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors.
  - Challenges to the ballot language, the explanation, or the actions or procedures of the GA in adopting and submitting an amendment, to be filed “later than 64 days before the election.”
  - Ballot language not invalid unless it misleads, deceives, or defrauds voters.



➤ Publication:

- Proposed amendments, ballot language, explanation, and arguments to be published once a week for three consecutive weeks in at least one newspaper of general circulation in each county where a paper is published.
- GA to provide by law for other dissemination of information about proposed amendments.

**Article XVI, Section 2 - (Constitutional Amendment Proposed by Convention; Procedure)**

*Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the General Assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the House of Representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.*

- When 2/3 of members of each house think it is necessary to call a convention to revise, amend, or change the constitution, they recommend it to the electors to vote on a separate ballot without party designation.
- At next election for members of the GA, voters asked whether in favor of a convention.
- If a majority of “all the electors” voting for and against the calling of a convention, vote for a convention, the GA, at next session, shall provide by law for calling a convention.
- Candidates for members of a convention shall be nominated by nominating petitions only.
- Candidates shall be voted for upon one independent and separate ballot without party designation.
- Convention consists of as many members as are in the House of Representatives.
- Convention to meet within three months after candidates’ election.



### Article XVI, Section 3 - (Question of Constitutional Convention to be Submitted Periodically)

*At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution[,]" shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the General Assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.*

- At the general election to be held in 1932, and every 20 years thereafter, electors to be asked “shall there be a convention to revise, alter, or amend the constitution.”
- If a majority of the electors, voting for and against the calling of a convention, decide in favor of a convention, the GA, at its next session, shall provide by law for the for the election of delegates and the assembling of the convention.
- No amendment of the constitution, agreed upon by any convention, shall take effect until submitted to the electors and adopted by a majority voting on it.

