



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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## Constitutional Revision and Updating Committee

Dennis P. Mulvihill, Chair  
Charles F. Kurfess, Vice-chair

December 15, 2016

Ohio Statehouse  
Room 018

## **OCMC Constitutional Revision and Updating Committee**

Chair        Mr. Dennis Mulvihill

Vice-chair   Mr. Charles Kurfess

Ms. Janet Abaray

Mr. Roger Beckett

Rep. Robert Cupp

Se. Kris Jordan

Mr. Chad Readler

Sen. Tom Sawyer

Rep. Emilia Sykes

Mr. Mark Wagoner

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

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**THURSDAY, DECEMBER 15, 2016**  
**11:00 P.M.**  
**OHIO STATEHOUSE ROOM 018**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
  - Meeting of November 10, 2016  
*[Draft Minutes – attached]*
- IV. Reports and Recommendations
  - None scheduled
- V. Presentations
  - None scheduled
- VI. Committee Discussion
  - Article II, Sections 1 through 1i, 15 and 17 – Constitutional Initiative, Statutory Initiative, and the Referendum

The chair will lead a continuation of the committee's working session regarding draft language to amend the provisions on the constitutional initiative, the statutory initiative, and the referendum.

*[Clean Draft of Article II, Sections 1 through 1i, 15, and 17 (Constitutional Initiative, Statutory Initiative, and Referendum) – attached]*

*[Marked-up Draft of Article II, Sections 1 through 1i, 15, and 17 (Constitutional Initiative, Statutory Initiative, and Referendum – attached]*

*[Revised Memorandum by OCMC Staff titled “Additional Considerations Related to the Draft Initiative and Referendum Sections of Article II,” dated December 1, 2016 – attached]*

VII. Next Steps

- The chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

*[Planning Worksheet – attached]*

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 10, 2016

#### **Call to Order:**

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 2:12 p.m.

#### **Members Present:**

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, Sawyer, and Wagoner in attendance.

#### **Approval of Minutes:**

The minutes of the October 13, 2016 meeting of the committee were approved.

#### **Discussion:**

Chair Mulvihill began the meeting by recounting the various ideas the committee has explored over the last several meetings regarding the initiated constitutional amendment and initiated statute process. These include requiring a supermajority for the approval of a constitutional amendment, having a proposed amendment appear on the ballot in consecutive general elections, creating a safe harbor for initiated statutes, and modifying signature requirements.

Chair Mulvihill then called on committee member Chad Readler to provide his perspective on the latest draft of the sections before the committee. Mr. Readler stated that the one item that he has gone back and forth on concerns whether there should be a supermajority for the approval of a constitutional amendment, or if the proposed amendment should appear on the ballot at two consecutive elections. He indicated that, while he originally thought two consecutive elections might make sense, he has since rethought the matter and now believes that a supermajority requirement for one election, perhaps to be held in an even-numbered year might make more sense.

Committee member Roger Beckett said the committee is trying to find some scientific precision as to a revision that would be palatable to the people. He said his assessment is that the committee is making progress, and has reached bipartisan agreement that the process should be recalibrated. He said the challenge is that, when the committee's proposal goes to the legislature, it could be that no one is going to be completely happy about the proposed changes. He said the Democrats do not want to strengthen the constitutional initiative procedure and the Republicans are not interested in easing the initiated statute procedure. He said "The balance we have to find is how to make everyone equally unhappy." Mr. Beckett continued that, on the initiated statute side, the committee has gone a long way in removing the indirect and taking the percentage of signatures needed from a total of six to five percent, and adding the safe harbor. He said the committee has been talking about requiring two consecutive elections, and there has been consensus, and the committee has gotten some push back on that from the Democrats that that proposal would be too hard to sell. He said he understands that. He suggested that the goal should be to get the number of electors who participate in voting on a ballot initiative as high as possible, and said his preference would be to require a 60 percent approval rate, instead of 55. He added that the committee should recommend constitutional initiative proposals only be placed on the ballot in even-year elections, when there is larger turnout and higher percentage of voters.

Senator Tom Sawyer added that in even-numbered years there is not such disparity in voting between one community and another.

Mr. Beckett said the committee should be getting information on which of the proposals it is considering is most likely to pass, but he said "we need a sense from the legislature of the appetite for this."

Chair Mulvihill asked Senator Kris Jordan for his thoughts on how the legislature might view the proposals under consideration.

Sen. Jordan said he cannot speak for his caucus, or the leadership, but he thinks the committee needs to make the statutory initiative easier. He offered to bring the topic to the caucus to see what others might be thinking.

Vice-chair Charles Kurfess noted that what kind of supermajority or procedure is recommended might depend on how people view imposing a supermajority on the constitutional initiative process. Chair Mulvihill agreed that is an issue the committee has been worrying about.

Representative Bob Cupp observed that the initiated statute procedure was developed as a bypass to the legislature because the legislature would bottle up the process due to narrow interests. He said he hopes whatever the committee does, it does not approve a plan that makes it too easy to bypass the legislature, causing Ohio to become like some western states that overdo it with initiated statutes. He said there is a conceptual theory about requiring a higher standard for passage of citizen's initiatives, yet the legislature has to attain a 3/5 vote of support to propose an amendment. He said imposing a supermajority requirement on a citizen's initiative is the comparable version of having a supermajority for the legislature.

Mr. Kurfess said the emphasis may need to be on increasing the difficulty in getting an initiated amendment on the ballot, rather than requiring a supermajority vote. He said he is concerned about making it too easy to obtain petition signatures, and does not like the idea of paying people to gather signatures. He said if a proposal is that important, there ought to be enough people willing to volunteer to get the signatures.

Committee member Janet Abaray asked whether it might work to add a requirement that a competing ballot issue be placed on the ballot by the political party, so as to balance the ballot questions.

Chair Mulvihill said that requirement might be too cumbersome, plus it might be hard to determine what the party thinks of a particular issue.

Mr. Beckett said alternate points of view are expressed in the required language providing pros and cons regarding the ballot question.

Mr. Kurfess summed up Rep. Cupp's position as arguing for a supermajority rather than requiring the initiative to go on the ballot twice, and Chair Mulvihill agreed.

Sen. Sawyer said the idea of a supermajority requirement also has merit because of its simplicity.

Chair Mulvihill asked Mr. Hollon, under Section 1a(E), to remove the segment "elections" and put in language for the sake of discussion next month that would require a majority vote of 55 to 60 percent in favor of an initiated amendment, and would only allow it to be placed on the ballot in an even-numbered year. He said that will be the draft the committee will work from when the committee invites guests in next month to discuss these issues.

Chair Mulvihill asked if there were any other items from the draft that could be altered.

Rep. Cupp asked about the requirement of getting signatures from various counties. He said there may need to be changes in consideration of the modern age in which communication and travel is easier.

Chair Mulvihill said the committee has discussed that question previously. He said the argument went both ways, and there was a concern that proposed amendments would only come from large metropolitan areas. He said, to the extent the General Assembly wants to allow electronic signatures, that would alleviate concerns about the even distribution of persons signing the petitions.

Mr. Hollon noted that the word "each" was inserted in the current draft in response to a concern previously expressed by Mr. Kurfess. Mr. Hollon also pointed out the committee had been provided with three charts showing the proposed timeline, in response to a request from Ms. Abaray. Mr. Hollon also noted alternative language was used in Section 1f(B) in order to eliminate the unnecessary repetition of a phrase and make the section read more easily.

Chair Mulvihill asked who the committee thought should be invited to attend the next meeting to provide their views of the proposed language. He noted the League of Women Voters, the 1851 Center, and Attorney Don McTigue should be invited.

Mr. Beckett suggested the secretary of state's office might wish to provide insight.

Mr. Hollon said he would issue these invitations.

Chair Mulvihill said he would follow up with Mr. Hollon to identify anyone else and extend invitations. He said additional groups would be Common Cause Ohio, Policy Matters, Progress Ohio, and Initiative Ohio.

Sen. Sawyer suggested also contacting persons who have signaled their interest in running for secretary of state.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 2:54 p.m.

**Approval:**

The minutes of the November 10, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the December 15, 2016 meeting of the committee.

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair

## ARTICLE II

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

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

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

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

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

(B)     The petition shall have printed across the top: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors” and shall set forth the full text of the proposed amendment.

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

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

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

(F) If conflicting proposed amendments to the constitution are approved at the same election by [55 percent or 60 percent] of the electors voting for the proposed amendments, the one receiving the highest number of affirmative votes shall be the amendment to the constitution.

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

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

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

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

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

(D) Upon receipt of the petition, the secretary of state shall transmit a copy of the petition and full text of the proposed law to the General Assembly. If the proposed law is passed by the

General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum under Section 1c of this article.

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

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

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

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

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

(J) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for five years after its effective date, unless upon the affirmative vote of two-thirds of all members elected to each house of the general assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The Supreme Court shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the sufficiency of a petition and the signatures on a petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then

the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

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

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

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

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

(E) An emergency law, necessary for the immediate preservation of the public peace, health, or safety, shall be passed only on the affirmative vote of two-thirds of all members elected to each house of the General Assembly. The reason for the emergency shall be set forth in a section of the law, which shall be passed on a separate affirmative vote of two-thirds of all members elected to each house of the General Assembly.

**Section 17. [Effective Date of Laws]**

(A) Except as otherwise provided in this section, a law passed by the General Assembly and signed by the governor, shall go into effect ninety days after the governor files it with the secretary of state.

(B) A law passed by the General Assembly and signed by the governor providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into effect when filed by the governor with the secretary of state. (V5)

## ARTICLE II

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

(A) ~~\_\_\_~~ The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as herein provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls of the initiative and referendum as set forth in this article. The limitations expressed in the constitution; on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. *[Current Section 1]*

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

*[From the last two sentences of current Section 1g]*

### **Section 1a.     *[Initiative 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."~~

(A) The people reserve the power to propose an amendment to the constitution, independent of the General Assembly, and may do so at any time after the last day of May of an odd-numbered year and before the first day of June in the following year, by filing with the secretary of state an initiative petition proposing an amendment to the constitution. *[From the first sentence of current Section 1a, with new language added regarding the time for filing the petition – with new language added regarding the time for filing]*

(B) The petition shall have printed across the top: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors" and shall set forth the full text of the proposed amendment. *[From the last sentence of current Section 1a]*

(C) The petition shall be required to bear the signatures of ten percent or more of the electors of the state, including five percent or more of the electors from each of one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office. *[From the first sentence of current Section 1a, the fifth paragraph of current Section 1g, and the third to last sentence of current Section 1g]*

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

*second sentence of current Section 1a – with new language added regarding even-numbered year elections]*

(E) If the proposed amendment to the constitution is approved by [55 percent or 60 percent] of the electors voting on the issue, it shall take effect thirty days after it was approved. [New language, except for the thirty day effective date, which is near the end of current Section 1b]

(F) If conflicting proposed amendments to the constitution are approved at the same election by [55 percent or 60 percent] of the electors voting for the proposed amendments, the one receiving the highest number of affirmative votes shall be the amendment to the constitution. [From the second to last sentence of current Section 1b]

(G) An amendment that is approved by the electors shall be published by the secretary of state. [From language near the end of current Section 1b]

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

~~When at any time, not less than ten days prior to the commencement of any session of the General Assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the General Assembly as soon as it convenes. If said proposed law shall be passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the General Assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the General Assembly or after the expiration of such term of four months, if not 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 petitions 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 section 1a and section 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.~~

(A) The people reserve the power to propose a law, and may do so at any time after the last day of May and before the first day of February of the following year, by filing with the secretary of state an initiative petition proposing a law to the General Assembly. [From the first sentence of current Section 1b, with new language added regarding the time for filing the petition]

(B) The petition shall have printed across the top: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly" and shall set forth the full text of the proposed law. [From language found approximately three-fourths of the way through current Section 1b]

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

the last preceding election for that office. [From the first sentence of current Section 1b, the fifth paragraph of current Section 1g, and the third to last sentence of current Section 1g]

(D) Upon receipt of the petition, the secretary of state shall transmit a copy of the petition and full text of the proposed law to the general assembly. If the proposed law is passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum under Section 1c of this article. [From language found in the first part of current Section 1b]

(E) If before the first day of June immediately following the filing of the petition the General Assembly does not pass the proposed law in the form as filed with the secretary of state, and the petition is not withdrawn as provided by law, and, upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed law for the approval or rejection of the electors at the next general election. [From language in current Section 1b, with new language added regarding the time for the General Assembly to take action and the ability to withdraw the petition]

(F) If the proposed law is approved by a majority of the electors voting on the issue, it shall take effect thirty days after the election at which it was approved in lieu of any amended form of the law that may have been passed by the General Assembly. [From language found midway through current Section 1b]

(G) If conflicting proposed laws are approved at the same election by a majority of the total number of votes cast for each of the proposed laws, the one receiving the highest number of affirmative votes shall be the law. [From language found near the end of current Section 1b]

(H) A law proposed by initiative petition and approved by the electors shall not be subject to veto by the governor. [From last sentence of current Section 1b]

(I) A law proposed by initiative petition and approved by the electors shall be published by the secretary of state. [From language found near the end of current Section 1b]

(J) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for five years after its effective date, unless upon the affirmative vote of two-thirds of all members elected to each house of the general assembly. [New language creating a safe harbor provision]

**Section 1c. [Referendum to Challenge Laws Enacted by the General Assembly]**

~~The second aforesaid power reserved to 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 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.~~

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

of state a referendum petition challenging the law, section of law, or item in a law appropriating money. *[From language in the first part of current Section 1c]*

(B) The petition shall have printed across the top: “Referendum Petition to Challenge a Law Enacted by the General Assembly to be Submitted to the Electors” and shall set forth the full text of the law, section of law, or item in a law appropriating money being challenged. *[New language added that mirrors the requirement in current Sections 1a and 1b for initiative petitions to propose constitutional amendments and laws]*

(C) The petition shall be required to bear the signatures of six percent or more of the electors of the state, including three percent or more of the electors from each of one-half or more of the counties, as determined by the total of votes cast for the office of governor at the last preceding election for that office. *[From the first sentence of current Section 1c, the fifth paragraph of current Section 1g, and the third to last sentence of current Section 1g]*

(D) Upon verifying the requirements of the petition as provided in this article, the secretary of state shall submit the challenge for the approval or rejection of the electors, at the next primary or general election occurring sixty days or more after the process for verifying and challenging the requirements of the petition and the signatures on the petition is complete. *[From language midway through current Section 1c, with new language added regarding the time for the election]*

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

(F) If a referendum petition is challenging any section of law or item in a law appropriating money, the remainder of the law that is not being challenged shall not be prevented or delayed from going into effect. [From last sentence of current Section 1c]

(G) A law providing for a tax levy, a law providing appropriation for current expenses of the state government and state institutions, or an emergency law necessary for the immediate preservation of the public peace, health, or safety, as determined under Section 15(E) of this article, shall not be subject to challenge by referendum. [From language at the beginning and end of current Section 1d]

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

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

(A) An initiative petition and a referendum petition filed under this article may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the proposed constitutional amendment, proposed law, or the challenged law, section of law, or item in a law appropriating money, to be submitted to the electors. [From first sentence of current Section 1g]

(B) Each person who signs an initiative petition or a referendum petition shall sign in ink and only for the person individually, and shall provide the person's residential address and the date

the person signed the petition. [From first paragraph of current Section 1g] The General Assembly may prescribe by law for the collection of electronic signatures in addition to or in lieu of petitions signed in ink. [New language]

(C) Each separate part of an initiative petition and a referendum petition shall contain a statement of the person who circulated the part, as may be required by law, indicating that the circulator witnessed the affixing of every signature to the part. [From first paragraph of current Section 1g] The General Assembly may prescribe by law for the witnessing of electronic signatures presented in addition to or in lieu of petitions signed in ink. [New language]

(D) In determining the sufficiency of the signatures required for initiative and referendum petitions, the secretary of state shall consider only the signatures of persons who are electors. [From the first paragraph of current Section 1g]

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

~~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.~~

(A) Within thirty days following the filing of an initiative or referendum petition, the secretary of state shall verify the sufficiency of the petition and the signatures on the petition pursuant to the requirements of this article. [From last sentence in first paragraph of current Section 1g, with new language added as to the thirty day time requirement]

(B) The Supreme Court shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the sufficiency of a petition and the signatures on a petition. [From the first sentence of the second paragraph of current Section 1g]

(C) A challenge to a petition or signatures on a petition shall be filed with the Supreme Court within seven days after the secretary of state's determination of the sufficiency of the petition and the signatures on the petition. The Supreme Court shall hear and rule on a challenge within fourteen days after the filing of the challenge with the court. If the Supreme Court does not rule on the challenge within fourteen days after the filing of the challenge to the petition and the signatures, the petition and signatures shall be deemed to be sufficient in all respects. [From the second paragraph of current Section 1g, with new language added regarding time requirements]

(D) If the Supreme Court determines the petition or signatures are insufficient, additional signatures to the petitions may be filed with the secretary of state within ten days following the Supreme Court's ruling. If additional signatures are filed, the secretary of state shall determine their sufficiency within ten days following the filing of the additional signatures. [From the third paragraph of current Section 1g, with new language added regarding time requirements]

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

petition and signatures shall be deemed to be sufficient in all respects. [From the third paragraph of current Section 1g, with new language added regarding time requirements]

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

(G) The approval of a proposed amendment to the constitution or a proposed law, submitted by initiative petition and approved by a majority of the electors voting on the issue shall not be held unconstitutional on account of the insufficiency of the petitions proposing the issue. The rejection of a law, section of law, or item in a law appropriating money, challenged in a referendum petition and rejected by a majority of the electors voting on the issue shall not be held invalid on account of the insufficiency of the petitions initiating the challenge. [From language found at the beginning of the fourth paragraph of current Section 1g, reworked for greater clarity]

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

~~The initiative and referendum powers are 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.~~

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

law, may be named in the petition submitted. *[From language found in the first half of the fourth paragraph of current Section 1g]*

(B) A true copy of a law, section of law, or item in a law appropriating money, submitted by referendum petition, shall be prepared together with an argument or explanation, or both, against the law, section, or item. The name of the person who prepares the argument or explanation, or both, against the law, section, or item may be named in the petition submitted. The name of the person who prepares the argument or explanation, or both, for the law, section, or item shall be named by the general assembly, if in session, and, if not in session, then by the governor. *[From language found in the first half of the fourth paragraph of current Section 1g]*

(C) An argument or explanation, or both, as prepared under this section, shall be three hundred words or less. *[From language found in the first half of the fourth paragraph of current Section 1g]*

(D) The full text of the proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money, together with the argument and explanation for each, and the argument and explanation against each, shall be published once a week for three consecutive weeks preceding the election in at least one newspaper of general circulation in each county of the state, where a newspaper is published. *[From language found in the first half of the fourth paragraph of current Section 1g]* The General Assembly may prescribe by law for the electronic publication of the items required by this section in addition to or in lieu of newspaper publication. *[New language]*

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

~~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 rout 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 the post offices 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 no 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.~~

(A) The secretary of state shall place on the ballot language for a proposed amendment to the constitution, proposed law, law, section of law, or item in a law appropriating money, presented by initiative or referendum petition to be submitted to the electors for a vote. [From language found in the second half of the fourth paragraph of current Section 1g]

(B) The ballot language shall be prescribed by the Ohio ballot board in the same manner and under the same terms and conditions as apply to issues submitted by the general assembly under Article XVI, Section 1 of this constitution. [From language found in the second half of the fourth paragraph of current Section 1g]

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

law, or item in a law appropriating money. *[From language found in the second half of the fourth paragraph of current Section 1g]*

(D) The style of all constitutional amendments submitted by an initiative petition shall be: “Be it Resolved by the People of the State of Ohio.” The style of all laws submitted by initiative petition shall be: “Be it Enacted by the People of the State of Ohio.” *[From language found in the second half of the fourth paragraph of current Section 1g]*

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

(A) The powers of the initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation on the property or of authorizing the levy of any single tax on land, land values, or land sites at a higher rate or by a different rule than is or may be applied to improvements on the land or to personal property. *[From language found in current Section 1e(A)]*

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

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division

(B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

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

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

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

~~(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.~~

***[Current Section 1e(B)]***

(C) The ~~supreme court of Ohio~~ Supreme Court shall have original, exclusive jurisdiction in any action that relates to this section. ***[Current Section 1e(C)]***

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

The powers of the initiative and referendum are reserved to the people of each municipality, as provided by law, on questions which a municipality may be authorized by law to control by legislative action. [From language found in current Section 1f]

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

(E) An emergency law, necessary for the immediate preservation of the public peace, health, or safety, shall be passed only on the affirmative vote of two-thirds of all members elected to each house of the general assembly. The reason for the emergency shall be set forth in a section of the law, which shall be passed on a separate affirmative vote of two-thirds of all members elected to each house of the general assembly. [From language found in current Section 1d]

**Section 17. [Effective Date of Laws]**

(A) Except as otherwise provided in this section, a law passed by the General Assembly and signed by the governor, shall go into effect ninety days after the governor files it with the secretary of state. [From the second sentence of current Section 1c]

(B) A law passed by the General Assembly and signed by the governor providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into effect and when filed by the governor with the secretary of state. [From the first sentence of current Section 1d]

(V5)



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MEMORANDUM

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

**FROM:** Steven C. Hollon, Executive Director  
Shari L. O'Neill, Counsel to the Commission  
Steven H. Steinglass, Senior Policy Advisor

**DATE:** December 1, 2016

**RE:** Additional Considerations Related to the Draft Initiative and  
Referendum Sections of Article II

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To assist the committee in its consideration of the draft initiative and referendum sections in Article II as reviewed by the committee at its October and November 2016 meetings (“draft”), this revised memorandum provides background information and poses questions for committee discussion. Initially provided to the committee at the November 2016 meeting, the memorandum now is revised to remove discussion related to a proposal no longer under consideration that would have required citizen initiatives to be placed on the ballot in two consecutive elections.

#### **I. Preliminary Review Process**

Current Sections 1a, 1b, and 1c of the Ohio constitution and draft Sections 1a(A), 1b(A), and 1c(A) indicate that persons wishing to propose a constitutional amendment or law through the filing of an initiative petition, or who wish to challenge a law by filing a referendum petition, shall file the appropriate petition with the secretary of state. However, neither the current constitutional provisions nor the draft sections address a preliminary procedure that currently exists in statute. That procedure, which we shall refer to in this memorandum as a “preliminary review process,” is described at R.C. 3519.01.

#### *Constitutional and Statutory Initiative Petitions*

Under R.C. 3519.01(A), those who wish to circulate a petition for a constitutional amendment or proposed law must first do the following:

- File with the attorney general a copy of the petition that proponents intend to circulate under the requirement of the constitution. The preliminary petition is required to contain the signatures of not less than 1,000 electors, the proposed amendment or law, and a summary of it.
- The attorney general reviews the preliminary petition to determine if the summary of the proposed amendment or law is “fair and truthful.”
- The attorney general certifies the preliminary petition and sends it to the ballot board for its determination of whether the petition meets the “one proposal” requirement as prescribed by R.C. 3519.01(A) and R.C. 3505.062 (and as further discussed in Sections III and IV of this memorandum).
  - If the petition does not meet the one proposal requirement, the ballot board divides the petition, certifies that to the attorney general, and the petitioners must resubmit summaries for each of the petitions to the attorney general for review.
  - If the petition meets the one proposal requirement, the ballot board sends it to the attorney general.
- The attorney general then sends the petition to the secretary of state as a “certified” petition and the petitioners may then start their drive to obtain the number of signatures required by the constitution.

Under the current and draft constitutional provisions, the proponents of either a constitutional or a statutory initiative file their completed petitions with the secretary of state. In both the current and draft versions, the secretary of state, after verifying the signatures on the petitions, submits the proposed constitutional amendment to the voters at an election. Under the current and draft versions, the secretary of state transmits the statutory initiative petition to the General Assembly for its consideration.

### *Referendum Petitions*

Under R.C. 3519.01(B), those who wish to circulate a referendum petition to challenge a law must first do the following:

- File with the attorney general and secretary of state, at or near the same time, a copy of the petition that proponents intend to circulate under the requirement of the constitution. The preliminary petition is required to contain the signatures of not less than 1,000 electors, the law being challenged by referendum, and a summary of it.
- The attorney general has ten days to determine if the summary is fair and truthful, and certify the same.
- The secretary of state has ten days to verify the signatures and the accuracy of the text of the law.



The preliminary review process in R.C. 3519.01(B) allows the petition to be submitted for review by the secretary of state and the attorney general at the same time, rather than serially. The preliminary review process for the referendum does not require the ballot board's participation.

The current and draft constitutional provisions indicate that a completed referendum petition is to be filed with the secretary of state at any time within 90 days after the law has been signed by the governor and filed with the secretary of state. The current and draft provisions do not mention a preliminary review process, nor do they mention a requirement that the referendum petition be submitted to the attorney general.

### *Questions for Consideration*

Questions the committee may wish to consider regarding the statutorily required preliminary review process include:

- Should the requirements of the preliminary review process located in R.C. 3519.01 be inserted into the constitution?
- Should the current 90-day constitutional time period for filing a referendum petition be altered to accommodate the ten-day preliminary review by the secretary of state and the attorney general?

## **II. Limitation on Certification of Petition or Petition Circulation Period**

Ohio does not limit the length of the petition circulation period for constitutional and statutory initiatives. Thus, a petition for a proposed amendment that the attorney general determines contains a fair and truthful summary of the proposed amendment or law may be circulated for signatures indefinitely. The only other states without limitations on the circulation period are Arkansas and Utah.<sup>1</sup>

In 2002, the Final Report and Recommendation of the National Conference of State Legislatures' Initiative and Referendum Task Force recommended that a circulation period be limited. California, for example, has a 150-day circulation period, but the most common circulation periods are between one and two years. The limitation on the length of the circulation period may be achieved by including language providing an expiration date for the attorney general's fair and truthful certification, should the committee decide to recommend constitutionalizing the preliminary review process.

### *Questions for Consideration*

The committee may wish to consider the following questions:

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<sup>1</sup> For more information on petition circulation periods, see <http://www.ncsl.org/research/elections-and-campaigns/petition-circulation-periods.aspx> (last visited Nov. 1, 2016).

- If the committee determines it would like to add the preliminary review process to the constitution, should there be an expiration date for the “certification” of the preliminary petition?
- Alternatively, should there be a limitation on the time that a petition can be circulated once certified?

### III. One Amendment Rule

The committee may wish to clarify that the requirement that a proposed constitutional amendment only address one subject is applicable to initiated amendments as well as to legislatively-proposed amendments.

#### *Current Requirements*

Article XVI, Section 1, which relates to constitutional amendments proposed by joint resolution of the General Assembly, provides, in the last sentence, that “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.” The language is original to the 1851 constitution.

Meanwhile, Article II, Section 1 generally applies the same limitations on the General Assembly to the citizens’ initiative and referendum process, providing that “The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.”

The relationship between these two provisions was the subject of *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, in which the Supreme Court of Ohio addressed whether the ballot board correctly split a proposed constitutional amendment into two ballot questions after determining that the proposed ballot language violated the one amendment rule. After applying the relevant test, which asks whether each of the individual subjects contained in a proposal “bears some reasonable relationship to a single general object or purpose,” the Court granted a writ of mandamus based on its conclusion that the ballot board improperly split the amendment. *Id.* at ¶ 42 [citations omitted]. Specifically, the Court held “all the sections contained [in the proposed amendment] bear some reasonable relationship to the single general purpose of preserving Ohioans’ freedom to choose their health care and health-care coverage.” *Id.* at ¶43. The test outlined in *Liberty Council* does not appear in the Ohio Constitution.

R.C. 3519.01(A) provides that “Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately.” Additionally, R.C. 3505.062(A) requires the ballot board to “examine, within ten days after its receipt, each written initiative petition received from the attorney general under [R.C. 3519.01] to determine whether it contains only one proposed law or constitutional amendment so as to enable the voters to vote on a proposal separately.” The statute further requires the board to divide the petition into individual petitions if the board

determines the petition contains more than one proposed law or amendment.<sup>2</sup> The preview procedure must be completed before the petitioners circulate their petitions.

In June 1978, voters approved a ballot measure that added the following sentence to Article II, Section 1g: “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.” This amendment resulted from a ballot question asking voters whether they wanted to require the ballot board to write the ballot language for initiative and referendum petitions. The measure was approved by a vote of 65.53 percent to 34.47 percent. Arguably, the 1978 amendment allows the ballot board to review and split a petition that does not comply with the one amendment rule as a part of its preliminary review process (as described above). On the other hand, as noted above, the constitution does not expressly provide for a preliminary review process.

### *Questions for Consideration*

Questions the committee may wish to consider regarding the one amendment rule include:

- Should the constitution expressly provide that an initiated petition for a constitutional amendment comply with the one amendment rule?
- If the answer to the preceding question is “yes,” should the determination of the question continue to be made by the ballot board in the preliminary review process noted in the preceding section of this memorandum?
- If the preliminary review process is constitutionalized, should the ballot board continue to have the constitutional authority to split the petition into separate petitions?

## **IV. One Proposal of Law for Initiated Statutes**

The committee may wish to constitutionalize the statutory requirement that a petition for an initiated statute only propose one law.

### *Current Requirements*

As described in the preliminary review process (see Section III above), a petition for an initiated statute is subject to a process whereby the ballot board determines whether the petition contains only one proposal of law. This requirement is prescribed in R.C. 3519.01(A), which indicates

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<sup>2</sup> There is no equivalent statute requiring the ballot board to divide a ballot question posed by the General Assembly. Instead, R.C. 3505.062(B) merely provides that the ballot board prescribes the ballot language for constitutional amendments proposed by the General Assembly, “which language shall properly identify the substance of the proposal to be voted upon.” In enacting R.C. 3505.062, the General Assembly may have concluded that it should be able to determine for itself whether a proposed amendment bears some reasonable relationship to a single general object or purpose. In fact, the one amendment rule is similar to the “one subject rule” in Article II, Section 15(D), a provision with which the legislature is well-acquainted.

“only one proposal of law \* \* \* to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on the proposal separately.” The ballot board’s inquiry in relation to this requirement is described at R.C. 3505.062 (A), which states that the ballot board shall:

Examine, within ten days after its receipt, each written initiative petition received from the attorney general under section 3519.01 of the Revised Code to determine whether it contains only one proposed law \* \* \* so as to enable the voters to vote on a proposal separately.

\* \* \*

If the board determines that the initiative petition contains more than one proposed law \* \* \*, the board shall divide the initiative petition into individual petitions containing only one proposed law \* \* \* so as to enable the voters to vote on each proposal separately and certify its approval to the attorney general. If the board so divides an initiative petition and so certifies its approval to the attorney general, the petitioners shall resubmit to the attorney general appropriate summaries for each of the individual petitions arising from the board’s division of the initiative petition, and the attorney general then shall review the resubmissions as provided in division (A) of section 3519.01 of the Revised Code.

Currently, there is no explicit constitutional requirement that a statutory initiative petition be limited to one proposed law, nor is there provision for a ballot board review of that question. The closest analogous provision might be a portion of Section 1g, which states that “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.” However, Article XVI, Section 1 relates solely to constitutional amendments, and does not address statutory law.

When the General Assembly enacts law, it is bound by the requirements of the “one subject rule” contained in Article II, Section 15(D), which reads, in part: “No bill shall contain more than one subject, which shall be clearly expressed in its title.” The one subject rule has been variously interpreted over the years, and case precedent provides no “bright line test” for when a statute violates that principle. While not specifically referencing the one subject rule, the last sentence of Article II, Section 1 indicates that “The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.”

### *Questions for Consideration*

- Should the constitution expressly provide that only one proposal of law be contained in an initiated petition for a statutory law, as is currently required by R.C. 3519.01(A)?

- Is Article II, Section 1's statement extending the limitation on the law-making power of the General Assembly to the people sufficient to indicate the one subject rule applies to both?

## V. Supermajority

Over the last several months, the committee has looked at several alternatives in considering whether to set a higher standard for passing an initiated constitutional amendment other than a simple majority.

The committee has considered whether the ballot question should be approved by a supermajority of those voting on the issue, such as 55 percent or 60 percent. The issue also has been raised whether to require a simple majority, but add a further requirement that at least 35 percent of the people voting in the election need to vote affirmatively to approve the ballot question.

### *Questions for Consideration*

Questions the committee may wish to consider in finalizing its position on voting requirements on initiated constitutional amendments include:

- Does the committee wish to recommend a supermajority requirement such as a passage rate of 55 percent or 60 percent?
- In the alternative to requiring a super-majority, does the committee wish to keep the standard a simple majority, but add an additional requirement by setting a minimum threshold of people voting in the election to approve the issue, such as 35 percent?

## VI. The Ballot Board and the Monopoly Questions

In Section I of this memorandum, the committee is presented with the question of whether it wishes to constitutionalize the current statutory procedure in which the attorney general and the ballot board conduct a preliminary review before proponents can start circulating an initiative petition for a constitutional amendment. Under this procedure the ballot board is looking at the specific question of whether the proposed amendment is consistent with the one amendment requirement.

In addition, current Section 1e(B)(2) and draft Section 1h(B)(2)(c), as discussed in Section VII of this memorandum, requires the ballot board to determine if it believes a proposed constitutional amendment would create a monopoly, and, if so, the board must prescribe two separate questions to appear on the ballot – the monopoly questions. This review by the ballot board occurs after signatures are collected and petitions are filed with the secretary of state.

### *Question for Consideration*

If the committee determines the preliminary review process should be constitutionalized, a question the committee may wish to consider is:

- Should the ballot board be required to address the monopoly issue during its preliminary review before the petition is circulated, or should the ballot board address the monopoly issue close to the end of the process, when the requisite number of petition signatures has been obtained and verified?

## **VII. Determining Whether an “Appropriation” is Subject to the Referendum**

Current language states at Section 1c that “any law, section of any law or any item in any law appropriating money passed by the General Assembly” is subject to challenge by referendum. This language is carried over to draft Section 1c(A). Meanwhile, language at the end of current Section 1d states that “appropriations for the current expenses of the state government and state institutions” are *not* subject to the referendum. This language is carried over to draft Section 1c(G).

The language contained in these sections appears, at first blush, to be contradictory. One section appears to suggest that any item in any law appropriating money is subject to the referendum, while the other section clearly states that appropriations for the current expenses of the state government and state institutions are not subject to the referendum.

The word “appropriation” is not defined in the constitution. As a result, we have to turn to case law to seek guidance on the question. A recent Supreme Court of Ohio case addressed an argument that a statutory scheme was not subject to the referendum because it was an appropriation for the current expenses of state government.

In *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, a citizens’ group sought a writ of mandamus to compel the secretary of state to treat video-lottery-terminal (VLT) provisions of the biennial budget bill as subject to the referendum. A key aspect of the case was the General Assembly’s declaration that the subject provisions were exempt from referendum because they “are or relate to” an appropriation for current expenses under Article II, Section 1d. The secretary of state followed this rationale in rejecting the referendum petition, but petitioners argued the VLT provisions were not appropriations for current state expenses, did not make expenditures or incur obligations, and were not temporary measures necessary to effectuate an appropriation. *Id.* at ¶ 9.

In concluding the VLT provisions did not meet the requirements for an appropriation, the Ohio Supreme Court followed the statutory definition of an appropriation as being “an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.” *Id.* at ¶ 28, citing R.C. 131.01(F). The Court further noted precedent establishing an appropriation bill as “a measure before a legislative body which authorizes the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure.” *Id.* [citations omitted]. The Court reasoned:

The VLT provisions of H.B. 1 are not themselves appropriations for state expenses because they do not set aside a sum of money for a public purpose; neither R.C. 3770.03 nor 3770.21 as amended by H.B. 1 makes expenditures or incurs obligations. Rather, they authorize the State Lottery Commission to operate VLT games and to promulgate rules relating to the commission's operation of VLT games, specify that the provisions of R.C. Chapter 2915 criminalizing gambling activities are inapplicable, bar political subdivisions from assessing new license or excise taxes on VLT licensees, and purport to vest this court with exclusive, original jurisdiction over any claim that the provisions are unconstitutional.

*Id.* at ¶ 29.

Further considering the question of whether the VLT provisions relate to an appropriation, the Court observed that Section 1d does not expressly include an exception for laws that relate to appropriations for the current expenses of the state government. Therefore, the Court determined the VLT provisions were subject to referendum because, by only being part of a law designed to generate revenue that can be appropriated, they merely related to an appropriation. *Id.* at ¶ 34.

#### *Question for Consideration*

One question the committee may wish to consider regarding these two seemingly contradictory provisions is:

- Should the language in the draft be revised to provide greater clarity in what appropriation can or cannot be challenged, thereby reducing ambiguity on the question?

### **VIII. Withdrawal of Petition if Legislature Acts**

Current constitutional language does not provide a mechanism for those who present an initiative petition proposing a constitutional amendment or statute to withdraw the amendment or statute if the General Assembly takes action on the proposal. This issue, however, is addressed in the Revised Code, which permits the initiative proponents to withdraw proposed initiatives and referenda. R.C. 3519.08(A).

In draft Section 1b(E), language is provided that allows the General Assembly to pass a law setting out a procedure for proponents of a statutory initiative to withdraw their petition, should they choose, before the next steps are taken to present the question to the electors of the state. The proponents may choose to do this if the General Assembly passes the proposed law as the proponents filed it with the secretary of state or in a substantially similar format. This mechanism has been described in committee meetings as an “off ramp.”

At the committee’s October 2016 meeting, a question was raised whether similar language should be inserted in draft Section 1a to allow the proponents of an initiated constitutional

amendment to withdraw their petition if the General Assembly enacts a statute or proposes an alternative constitutional amendment that resolves the matter.

*Question for Consideration*

The question for the committee is:

- Should there be a provision in draft Section 1a that allows the General Assembly to provide by a law a procedure where proponents of an initiated constitutional amendment can withdraw their petition?

**IX. Effective Date of Initiated Constitutional Amendment**

Current language in Section 1b of the Ohio constitution provides that a constitutional amendment proposed by initiative petition and approved by majority of the electors shall take effect 30 days after the election at which it is approved. Language in draft Section 1a(E) repeats this language and continues this requirement. In thinking about this issue, one might envision a process where the proponents wish to have the constitutional amendment take effect at a time later than 30 days after the election.

*Question for Consideration*

The question for the committee is as follows:

- Should the current 30-day requirement be continued in the draft section or should an alternative be inserted into the language that allows for the amendment to take effect either 30 days after the election or at a time later than 30 days if set forth in the proposed amendment or in an accompanying schedule presented to voters?

## Constitutional Revision and Updating Committee

### Planning Worksheet (Through November 2016 Meetings)

#### Article II – Legislative (Select Provisions)

##### Sec. 1 – In whom power vested (1851, am. 1912, 1918, 1953)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

##### Sec. 1a – Initiative and referendum to amend constitution (1912, am. 2008)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

##### Sec. 1b – Initiative and referendum to enact laws (1912, am. 2008)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

##### Sec. 1c – Referendum to challenge laws enacted by General Assembly (1912, am 2008)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved





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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### 2017 Meeting Dates

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14