

OHIO ISSUE ONE

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Representative Government vs. Direct Democracy

Arguments for direct democracy

- Direct democracy ensures that the laws reflect the will of the people.
- Direct democracy is a bulwark against legislative corruption by special interests.
- Direct democracy distributes political power more equitably.
- Direct democracy is opposed by those who already enjoy disproportionate political power.
- Direct democracy promotes transparency and civic participation.

Arguments for representative democracy

- Society needs much more legislation than the public could possibly enact. Therefore, a legislature is needed.
- Special interests have a greater incentive to participate in direct democracy than ordinary people do. Therefore, direct democracy is more likely than a legislature to be captured by special interests.
- Representative democracy facilitates deliberation and compromise in lawmaking.
- The general public may not be capable of weighing costs against benefits, or considering consequences.

One More Big Question

- **In a democracy, why should a constitution ever vest a minority with the power to thwart the will of the majority?**
 - Protection of minorities against majoritarian tyranny (bias, animus, prejudice)
 - Protection against excessive responses to temporary passions
 - To create legal stability that facilitates private planning and investment
 - To limit the power of government / maintain a private sphere beyond the reach of government

Origins

- Citizen ballot initiative-and-referendum is not part of the US Constitution, and was not featured in state constitutions in the original 13 states.
- It originated out of populist movements in the western states in the late 19th century, as a safeguard against corruption and special-interest legislation that was seen as benefiting out-of-state corporate interests.
- In 1898, South Dakota became the first state to adopt citizen constitutional initiative. Most western states followed suit.
- At a state constitutional convention convened by Ohio populists in 1912, Ohio became the 13th state to allow its citizens to propose and pass amendments to our state's constitution.
- On Feb. 21, 1912, former President Theodore Roosevelt addressed the convention to urge adoption of ballot initiative and referendum. "You are engaged in framing a constitution under and in accordance with which the people are to get and to do justice and absolutely to rule themselves," Theodore Roosevelt told the 1912 Ohio Constitutional Conventioneers. "If there must be decision by a close majority, then let the people step in and let it be their majority that decides."
- In addition to Roosevelt: William Howard Taft, Williams Jennings Bryan, Hiram Johnson, and Judson Harmon spoke in support of the changes in 1912.
- Over 82 working days, with Rev. Herbert S. Bigelow of Cincinnati's Vine Street Congregational Church presiding, delegates weighed hundreds of amendment proposals before agreeing to submit 41 of them to the voters. On Sept. 3, 1912, voters adopted 34, including an eight-hour work day for public works employees, organization for boards of education, minimum wage and overtime laws, and workers' compensation system. Of the 34 Amendments that were adopted in 1912, 19 did not achieve 60% of the vote.
- Also in 1912, Oregon women won the right to vote by ballot initiative, eight years before ratification of the 19th Amendment to the U.S. Constitution guaranteed women's suffrage nationwide.

Ohio's Present Balance Between Direct Democracy and Representative Democracy

Ohio Const. Art I, §1. 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 after provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. 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.

- Ohio's constitution primarily relies on representative democracy, *i.e.* the Ohio legislature has vast powers to make Ohio's laws, and in fact makes almost all of Ohio's laws.
- But the Ohio Constitution also provides for several forms of direct democracy.

- First, by public referendum, Section 1c of Ohio's Constitution empowers a simple majority of Ohio voters to repeal a law recently enacted by the General Assembly.
 - By citizen-initiated petition, a repeal referendum may be placed on the ballot if
 - The total number of valid signatures on the petition exceeds 6% of the number of votes cast in the most recent gubernatorial election.
 - The petitions were signed by at least 3% of the voters in at least 44 of Ohio's 88 counties.
 - The referendum does not seek to repeal a statewide tax levy, an appropriation to fund the government, or an emergency measure.
 - This mechanism was used to repeal S.B. 5 in 2011.
 - This mechanism would not be affected by Ohio Issue One.

- Second, by public referendum, Section 1b of Ohio’s Constitution empowers a simple majority of Ohio voters to bypass the state legislature, and to directly propose and enact a statute.
 - By citizen-initiated petition, a proposed constitutional amendment may be placed on the ballot if
 - The total number of valid signatures on the petition exceeds 3% of the number of votes cast in the most recent gubernatorial election.
 - The petitions were signed by at least 1.5% of the voters in at least 44 of Ohio’s 88 counties.
- Once on the ballot, a citizen-initiated constitutional amendment is ratified by a simple majority of the popular vote.
- If it fails, the same citizen-proposed amendment can be placed on a subsequent ballot using the same process.
- If it passes, the legislature may repeal the citizen-initiated statute.
- This mechanism would not be affected by Ohio Issue One.

- Third, by public referendum, Section 1a of Ohio's Constitution empowers a simple majority of Ohio voters to propose and adopt amendments to Ohio's Constitution.
- By citizen-initiated petition, a proposed constitutional amendment may be placed on the ballot if
 - The total number of valid signatures on the petition exceeds 10% of the number of votes cast in the most recent gubernatorial election, which is 413,487 signatures in 2023.
 - The petitions were signed by at least 5% of the voters in at least 44 of Ohio's 88 counties.
- Once on the ballot, a citizen-initiated constitutional amendment is ratified by a simple majority of the popular vote.
- Of the 125 constitutional amendments adopted since 1914, only 19 were placed on the ballot by citizen-initiative. During that time, voters rejected 52 proposed amendments that were placed on the ballot by citizen-initiative.
- On Tues July 25, the Secretary of State certified that petitioners submitted 495,938 valid signatures on behalf of the proposed statewide reproductive choice initiative which will appear on November's ballot.
- Since 2015, the Ohio constitution no longer can be amended to grant a monopoly to a specified entity that is not then available to other similarly situated entities.
- The efficacy of citizen-initiated petitions for constitutional amendments would be very substantially restricted by Ohio Issue One.

- Fourth, Art. XVI, Sec.1 of Ohio’s Constitution empowers the Ohio General Assembly to place a proposed amendment to Ohio’s Constitution on the ballot, by securing a three-fifths vote in each house.
- Once on the ballot, a legislature-initiated constitutional amendment is ratified by a simple majority of the popular vote.
- Of the 125 constitutional amendments adopted since 1914, 106 were placed on the ballot by the General Assembly. During that time, voters also rejected 32 proposed amendments placed on the ballot by the General Assembly.
- Because the Ohio Constitution since 1851 has capped state debts at \$750,000, many state bond issues require a constitutional amendment. Such proposals generally are placed on the ballot by the General Assembly and ratified by the voters. For example:
 - In 2000 & 2008, Ohio voters approved successive \$400 million dollar bond issues to finance “The Clean Ohio Fund,” Gov. Taft’s initiative to pay for open space conservation, farmland preservation, trail creation, brownfield restoration, and protection of ecologically sensitive areas.
 - In 2005 & 2010, Ohio voters approved a total of \$2.1 billion dollars in bond issues to finance “The Third Frontier program,” Gov. Taft’s initiative to leverage Ohio’s research institutions to attract private venture capital for young, start-up businesses, and also to finance local infrastructure projects.
- This General Assembly’s ability to enact constitutional amendments that it supports also would be very substantially restricted by Ohio Issue One.

- Fifth, Article XVI, Sec. 3 of Ohio's Constitution requires the question to be placed on the ballot once every twenty years: "Shall there be a convention to revise, alter, or amend the constitution?"
- If a majority of voters answer "yes," then a constitutional convention must be promptly called.
- Ohio has held four constitutional conventions: 1802, 1850-1851, 1873-1874 and 1912. All but the 1873-1874 Convention resulted in either the adoption of a new constitution or major revisions to a previous one.
- Ohio voters were last asked this question in 2012 and will next be asked it in 2032.

What changes are proposed by Ohio Issue One?

- Ohio Issue One would not change the current processes for citizen-initiated repeal of a recently-enacted statute. (Ohio Const. Sec. 1c).
- Ohio Issue One would not change the current processes for citizen-initiated enactment of a new statute. (Ohio Const. Sec. 1b).

BUT

- Ohio Issue One would greatly restrict the efficacy of the current processes for citizen-initiated amendments to Ohio's Constitution. (Ohio Const. Sec 1a).
- Ohio Issue One also would greatly restrict the efficacy of the current processes for legislature-initiated amendments to Ohio's Constitution. (Ohio Const. Art XVI)
- Indirectly, Ohio Issue One also would greatly restrict the efficacy of the current processes to revise, alter, or amend the constitution through a constitutional convention.

What are the new restrictions proposed by Ohio Issue One?

- Issue One **doubles the geographic diversity** of signatures needed to place a citizen-initiated constitutional amendment on the ballot.
 - Currently, petitions must be signed by at least 5% of the voters in at least 44 of Ohio's 88 counties.
 - Issue One would require petitions to be signed by at least 5% of the voters in each of Ohio's 88 counties.
 - This change is significant, because Ohio has many remote counties with low population, where signature-collection would be challenging.
 - 39 Ohio Counties have populations below 50,000. The least populated counties in Ohio are Vinton County (13,139), Monroe County (13,790), Noble County (14,354), Morgan County (14,604), and Harrison County (15,174).
 - Ohio's small counties all slant heavily Republican. In 2020, President Biden received fewer than 2,000 votes in each of the five smallest counties (as well as in Harrison County). By way of comparison, President Biden received 246,266 votes here in Hamilton County, where then-President Trump received 177,886.
 - On Tues July 25, Secretary of State LaRose certified that petitioners submitted 495,938 valid signatures on behalf of the proposed statewide reproductive choice initiative, clearing the hurdle of 413,487 signatures needed for November ballot placement. But if Issue One had already been in effect, then these 495,938 signatures would not have been enough because signatures were collected from at least 5% of the voters in only 55 of Ohio's 88 counties.
 - Issue One does not change the total number of valid signatures statewide needed to place a citizen-initiated constitutional amendment on the ballot, which remains at 10% of the number of votes cast in the most recent gubernatorial election, *i.e.* 413,487 signatures in 2023.

Comparison With Other States

- If Issue One is approved, then Ohio would become the only state to require campaigns to collect signatures from 100% of the state's counties.
- The other states that have county-based signature distribution requirements are:
 - Arkansas, which requires signatures equal to 5% of votes cast for governor in 50 of 75 counties;
 - Maryland, which provides that no more than half of the required signatures for referendums can come from any one county, or Baltimore, which is an independent city;
 - Massachusetts, which provides that no more than 25% of the required signatures can come from any one county;
 - Nebraska, which requires signatures from 5% of registered voters in 40% (38) of the state's 93 counties;
 - New Mexico, where referendum campaigns need to collect signatures equal to 10% of the votes cast at the last general election in 75% (25) of the state's 33 counties; and
 - Wyoming, which requires signatures equal to 15% of votes cast in the last general election in each of 2/3 (16) of the state's 23 counties.
- Colorado and Nevada also have signature distribution requirements that require campaigns to gather signatures from each subdivision of the state. In Colorado, campaigns must collect signatures from each of the state's 35 Senate districts, and in Nevada, campaigns must collect signatures from each of the state's four congressional districts.

US Constitutional Issues

- One U.S. Circuit Court of Appeals has struck down county-based signature distribution requirements for ballot initiatives. The 9th Circuit Court of Appeals ruled that such requirements violate the U.S. Constitution's Equal Protection Clause because counties "vary drastically in the size of their population," which can "dilute the vote of residents of densely populated counties." However, the 8th Circuit Court of Appeals upheld a county-based distribution requirement in Nebraska, ruling that the Equal Protection Clause does not apply to state ballot initiatives because they are a state-based process not guaranteed by the U.S. Constitution. Ohio is located within the jurisdiction of the 6th Circuit, which has not ruled on this matter.

- In addition, Issue One also **eliminates the grace period** currently allowed to cure defects in signature validity.
 - Section 1g of the Ohio Constitution currently governs a process in which the validity of signatures on citizen petitions can be challenged.
 - If the invalidation of some signatures causes a petition no longer to meet the numerical threshold, currently a ten-day grace period is allowed for the petitioners to collect more signatures.
 - Issue One would retain this ten-day grace period for citizen-initiated statutory referenda, but eliminate it for citizen-initiated constitutional amendments.
 - The ordinary process of disqualifying invalid signatures thus would be more likely to keep a citizen-initiated constitutional amendment off the ballot if Issue One is adopted.

- Issue One **increases the margin of votes** needed to ratify a constitutional amendment from 50% to 60%.
 - This increase applies both to citizen-initiated amendments and to legislature-initiated amendments.
 - Of the twenty Ohio Constitutional Amendments that have been ratified in the 21st Century, five received less than 60% of the popular vote.

2000 Legislative Clean Ohio Fund	57.4%
2005 Legislative Third Frontier Fund	54.1%
2006 Citizens Minimum wage increase	56.6%
2009 Citizens Casino gambling legalization	53.0%
2015 Legislative Anti-monopoly amendment	51.3%

- If a 60% vote had been required to pass those amendments, then Ohio’s minimum wage might still be \$5.15 an hour and casino gambling might not yet be legal.
- Recent economic development and conservation programs favored by state officials and business leaders would also have failed. These programs include:
 - A 2000 vote creating the “Clean Ohio Fund” authorizing the state to sell environmental conservation bonds (57%),
 - A 2005 vote creating the Third Frontier economic development program aimed at modernizing the state’s economy (54%) and
 - A 2015 amendment barring business interests from using the amendment process to grant themselves a monopoly (51%.) The proposal came in response to the 2009 casino measure and a failed measure in 2015 to legalize recreational marijuana use in Ohio.
- Two of the three that would have failed to clear 60%, the Clean Ohio Fund and the Third Frontier Fund, were signature proposals of then-Gov. Bob Taft, a Republican who held office from 1999 to 2007. Both involve borrowing money.
- Going further back in history, other proposals that would have failed to clear the 60% vote bar include alcohol Prohibition, an official recognition of women’s suffrage, allowing non-white people and women into the Ohio National Guard, and ending the practice of party-line, straight-ticket voting.

Ohio constitutional amendments that passed with less than 60% of the vote, 1914-present

Year	How referred	Brief description	Percentage yes
1914	Citizens	Home rule alcohol prohibition	50.6%
1918	Citizens	Statewide Alcohol Prohibition	51.4%
1918	Citizens	Property tax classification	52.5%
1918	Legislative	Property tax classification	56.4%
1920	Legislative	Crabbe Act	57.9%
1923	Legislative	Industrial commission authority	52.7%
1923	Legislative	"White male" removed from voter eligibility	56.0%
1929	Legislative	15-mill property tax limit	58.2%
1933	Citizens	County home rule	53.3%
1933	Citizens	10-mill property tax limit	59.7%
1936	Legislative	Stockholder liability	56.7%
1947	Legislative	Sinking fund commission expansion	50.6%
1947	Legislative	Probate judge term limits	55.3%
1949	Citizens	Straight-ticket voting ban	57.3%
1951	Legislative	Multiple probate judges	55.6%
1953	Legislative	State School Board creation	56.8%
1953	Legislative	State militia racial integration	58.2%
1953	Legislative	Judicial commission repeal	59.3%
1954	Legislative	State exec officer term limits	55.5%
1955	Legislative	Public works bonds	56.0%
1956	Legislative	Longer state Senate terms	57.4%
1957	Legislative	Allow vote on county charter	51.0%
1959	Legislative	Permit GA to expand appeals court	56.0%
1959	Legislative	Municipal utility expansion	58.3%
1961	Legislative	Women allowed in National Guard	50.1%
1965	Legislative	Rural judges	52.7%
1965	Legislative	Development bonds	56.6%
1965	Legislative	Industrial development loans	56.7%
1967	Legislative	General Assembly redistricting	59.2%
1968	Legislative	Highway bonds	52.8%
1968	Legislative	Fund disposition	54.9%
1970	Legislative	Municipal charter notices	52.2%
1973	Legislative	Judicial compensation	53.0%

Year	How referred	Brief description	Percentage yes
1973	Legislative	Legislative reforms	59.5%
1974	Legislative	Public works superintendent repeal	59.5%
1975	Legislative	Charitable bingo	53.8%
1976	Legislative	Tax language cleanup	56.3%
1976	Legislative	Elector qualification	56.8%
1976	Legislative	Estate tax rebate	57.6%
1976	Legislative	Tax language cleanup	58.8%
1978	Legislative	Prison labor regulation	54.2%
1978	Legislative	County charter votes	55.5%
1980	Legislative	Property tax classification	53.0%
1982	Legislative	Low-interest financing for homebuyers	57.4%
1990	Legislative	Housing loans and grants	52.9%
2000	Legislative	Clean Ohio Fund	57.4%
2005	Legislative	Third Frontier Fund	54.1%
2006	Citizens	Minimum wage increase	56.6%
2009	Citizens	Casino gambling legalization	53.0%
2015	Legislative	Anti-monopoly amendment	51.3%

Source: Ohio Secretary of State's Office

Comparison With Other States

- Eighteen states constituting 43% of the US population, including Ohio, currently allow voters to initiate constitutional amendments. Eleven of these states require a supermajority vote or other election vote threshold for constitutional amendments:
 - New Hampshire, which does not have citizen-initiated constitutional amendments, has the highest vote requirement at two-thirds (66.67%).
 - Florida, which does provide for citizen-initiated constitutional amendments, has the second highest vote requirement at 60%.
 - In Colorado, a 55% vote of voters is required to amend the state constitution.
 - In Hawaii, Minnesota, and Wyoming, a majority of the total ballots cast in an election is required, meaning a blank vote has the same effect as a 'no' vote in these three states.
 - The other five states have other requirements, such as requiring a simple majority vote on the ballot measure itself and a certain percentage of voter turnout or ballots cast.
 - In Oregon, voters approved Measure 63 in 1998, which required that a ballot measure proposing a supermajority vote, such as a 60% vote, on ballot measures must be passed by the same vote threshold, such as 60%, as the measure itself proposes.
- If Issue One passes, then Ohio will tie Florida as the citizen-initiative state with the highest vote threshold.
- If Issue One passes, it probably will do so with less than 60% of the vote. (In Oregon, this would mean it would not pass).

The Near Future

Abortion: The future of abortion rights in Ohio will probably be decided on August 8. The abortion controversy is the proximate cause of the Ohio General Assembly's decision to authorize an August special election for Issue One, just a few months after it enacted legislation banning August special elections.

- Ohio Secretary of State Frank LaRose championed placing Issue One on an August ballot to make it harder for voters to amend the state constitution to protect abortion rights. "This is 100% about keeping a radical pro-abortion amendment out of our constitution," LaRose told attendees at a Lincoln Day dinner in northwest Ohio. "The left wants to jam it in there this coming November."
- On Tues July 25, as long expected, Secretary of State LaRose certified that a citizen-initiated reproductive choice amendment will appear on the November 2023 ballot. The proposal would amend the Ohio constitution to expressly provide that "every individual has a right to make and carry out one's reproductive decisions," including contraception, fertility treatment, continuing a pregnancy, miscarriage treatment and abortion.
- Illinois billionaire and anti-abortion activist Dick Uihlein has poured millions into "Save Our Constitution" PAC ads to support Issue One.
- A recent Suffolk University/USA TODAY Network poll found 57.6% of likely Ohio voters support November's proposed reproductive rights amendment; 32.4% oppose it and 10% were undecided.

\$15 Per Hour Minimum Wage

- In 2006, with a 56% majority, Ohio voters adopted a citizen-initiative to raise Ohio's minimum wage above the federal floor.
- Proponents are now collecting signatures to place a citizen-initiative on the November 2024 ballot that would amend Ohio's constitution to raise Ohio's minimum wage to \$15 per hour.
- If Issue One passes, it nonetheless might still be possible for proponents to use Section 1b of Ohio's Constitution Ohio's to place a statutory minimum wage increase on the ballot. A simple majority of the popular vote would remain sufficient to enact a citizen-initiated statute.

Recreational Marijuana

- Citizen-initiatives related to recreational marijuana have not yet succeeded in Ohio. But more are on the horizon.

Public Finance

- Because of the Ohio Constitution's strict debt limit, ratification of Issue One would likely prevent the General Assembly from issuing bonds to finance future public programs like the 2000 Clean Ohio Fund program or the 2005 Third Frontier Fund program, even if such programs had supermajority support in the legislature.

So how should I vote?

- Many voters have strong views about reproductive choice rights. If you are such a voter, then your views on the abortion issue might reasonably determine your vote on Issue One. Since Ohio adopted its citizen-initiative process in 1912, there have been only a handful of “once-in-a-generation” issues where the legislature has pitted itself in opposition to statewide public opinion on an issue of widespread public concern. Many voters may not live to see another proposed constitutional amendment whose outcome is as important to them as this November’s reproductive choice rights proposal.
- For voters who do not have strong views on abortion, I would suggest focusing on the following questions:
 - Is the *status quo* broken? Does it need fixing?
 - Does Ohio benefit from having a popular check on the work of its legislature?
 - Which entity has more frequently been “captured” by “special interests” adverse to the public interest: the Ohio legislature or the general electorate?
 - Should the state be able to issue bonds to support projects when such issue is supported by the Governor, both houses of General Assembly, and the public?
 - Why is opposition to Issue One bipartisan, but support for it partisan?