

LWV Ohio Statehouse Day – March 7, 2017

Initiative and Referendum Process

Ann Henkener, Redistricting Specialist

Ohio is one of 18 states that has a component of direct democracy which allows voters to enact Constitutional amendments without going through a legislative body first.

The Constitutional Revisions and Updating Committee of the Ohio Constitutional Modernization Commission has been reviewing the initiative process. The problem some committee members see in the current process is that it is too easy for commercial interests to change the Ohio Constitution. In addition, some Constitutional initiatives would more properly be statutes. A stated goal of some committee members is to make the initiative process for a statute easier and the initiative process for a Constitutional amendment slightly more difficult, in order to incentivize not writing things into the constitution that more appropriately belong in statute.

One reason voters try to initiate a Constitutional amendment rather than a statute is that once it is passed by the voters, the legislature can't change it without going back to the voters. A way of making the statutory initiative process more attractive is to assure voters that it can't be changed by the legislature for a certain period of time, perhaps 5 years. Another way to make the statutory process more attractive is to decrease the signature requirement.

Currently, to put a statutory change on the ballot, supporters need to collect signatures from voters equal to 6% of the number of voters in the last gubernatorial race -- in two rounds of 3% each, once to get the legislature to take it up and second to place it on the ballot if the legislature refuses. For a Constitutional amendment to be placed on the ballot, an initiative must file signatures equal to 10% of the voters in the last gubernatorial race, which in reality requires collecting double that amount of signatures to ensure a sufficient number are valid.

The League supports both measures to make going the statutory route more attractive – by limiting legislators' ability to immediately change an initiated statute and making the initiated statute process easier by lowering the signature requirement. We do not however support any of the ideas to make the Constitutional route harder such as requiring a supermajority of voters (perhaps 60%) to approve it, or requiring it to be on the ballot twice. Further, most of the concerns expressed by the Committee have been addressed by the Constitutional Amendment passed in 2015 which would require that future amendments affecting commercial interests could be approved only after a two-step voting process.

One change that could improve the process is to have the ballot language determined early in the process – before signatures are gathered. In recent years petitioners have felt the ballot language proposed by the Ballot Board was inaccurate and prejudicial. The Ohio Supreme Court has agreed. That would leave time for litigation if the petitioners proposing the amendment thought it was unfair. It would also allow the petitioners to withdraw their petition without having to go through the expense of gathering signatures. The League has given testimony before the Constitutional Revisions and Updating Committee. To date the Committee hasn't come to a position on how it was to proceed. No action seems warranted at this time, but the League will notify our membership of how this issue progresses.