

Andrew Green

Testimony in Opposition to HJR 6

Ohio House of Representative Government Oversight Committee

Wednesday, December 7, 2022

Chairman Wilkin, Vice Chairman Swearingen, Ranking Member Brown, and members of the House Government Oversight Committee, thank you for affording me the opportunity to provide written testimony in opposition to HJR 6, a proposed amendment to the Ohio Constitution.

While I fully support addressing the concerns brought forth by Rep. Stewart and Secretary LaRose in proposing this resolution, I strongly believe this is the wrong way to do it. Surely, there have been amendments made to our constitution in the last several decades that have filled it with language that I, in my non-legal expert assessment, would consider to be more “statutory-like” than “constitution-like.” Now the question that we need answer is this: how do we prevent this “statutory-like” language from making its way into the constitution in the first place? Given the amount of time, money, and other resources it takes for citizens to get a proposed amendment on the ballot, I would argue it is largely because all other avenues for seeking the desired change have been exhausted. Namely, the General Assembly has indicated a lack of desire to move a particular policy forward through the legislative process.

When citizens find themselves in such a situation, they have two main choices outside of the General Assembly’s typical legislative process:

- Propose an amendment to the Ohio Constitution (which is obviously what HJR 6 pertains to)
- Propose an initiated statute to the Ohio Revised Code (which has been discussed at relative length but notably little detail by Secretary LaRose in his discussions regarding HJR 6).

Since Secretary LaRose has been very deliberate to point out that the initiated statute process remains unchanged by this proposal, I think it is imperative to point out that proposing initiated statutes is far less common than proposed initiated amendments. Considering, as Rep. Stewart and Secretary LaRose have asserted, many of these amendments are more “statutory-like” than “constitution-like,” why do citizens take to the ballot far more often to amend the Ohio Constitution rather than the Ohio Revised Code? To that I propose this simple answer: the initiated statute process is broken.

The first issue with the initiated statute process is the involvement of the General Assembly. As I mentioned before, the need for citizens to begin the initiative process tends to indicate that the legislature is not interested in passing legislation regarding a particular issue. Naturally, allowing the very body that an initiative is, in one way or another, working against to directly influence the initiative process, undermines that very process. The second and arguably more troubling issue with the initiated statute process again has to do with the power the General

Assembly holds over the process. After the citizens go through a two-tiered signature gathering process and successfully overcome any attempts of the General Assembly to modify (and even completely undermine) the initiative, the statute simply becomes a part of the Ohio Revised Code, something that the General Assembly can amend or repeal portions of at any time with a simple majority vote (and a signature from the Governor). As I mentioned earlier, the fact that the citizens feel the need to engage in an expensive and time-consuming initiative process is because the General Assembly is likely not sympathetic to a given cause. It stands to reason that, despite the popularity that a given initiative may have among the general Ohio electorate, if a General Assembly disagrees with it, it could simply significantly modify or completely repeal an initiated statute at any time without any check by the people who enacted the statute (perhaps just a very short time ago).

Of the US states that allow initiated statutes, nearly half of them have restrictions on how easily an initiated statute can be modified or repealed by the state legislature ([https://ballotpedia.org/Legislative alteration](https://ballotpedia.org/Legislative_alteration)). For example, some states prohibit changes to initiated statutes for a certain period of time. Others require supermajorities in the legislature, and some require a majority vote of the people. Some states even require some combination of these things. These are common sense restrictions on the legislature that help protect the people's power of direct democracy in cases when a legislature may not be acting in the interest of the people on a particular issue.

I believe that Ohio citizens have time and again chosen to take to the ballot through constitutional amendments in order to protect their ideas from the threat of meddling by an unsympathetic (and at times, even hostile) General Assembly. If the initiated statute process afforded even a fraction of the protection provided by the constitutional amendment process, it would likely be much more common than it currently is. In turn, the constitutional amendment process would be less common.

If the problem HJR 6 sets out to solve is truly preventing provisions from being added to the Ohio Constitution that better fit in the Ohio Revised Code, I believe this resolution, in its current form, is misguided. Here's an analogy. Imagine a scenario in which there is a two-story building and two ways to get upstairs: the stairwell and the elevator. On the elevator is a sign that says "Only for use by people who are injured, disabled or otherwise unable to walk up stairs." The stairwell is old and all but every third step is missing. Surely, one *could* stretch out their hips and walk up the rickety, old stairwell, but it is difficult and, more importantly, unsafe. Naturally, everyone begins to use the elevator because it is the only safe way to get upstairs. However, the building groundskeeper becomes upset because the elevator is being bombarded with traffic that limits its availability for the people for whom it was intended: those that truly cannot climb stairs. Instead of fixing the stairwell, the groundskeeper decides to hire an elevator attendant to ensure the elevator is only being used by those for whom it was intended. However, that attendant is the final arbiter of whether or not someone is "disabled enough" or "injured enough" to justify the use of the elevator, meaning someone with a legitimate condition preventing them from climbing stairs may be denied access to the elevator if it is not abundantly clear from some visual indication such as the use of a wheelchair or crutches that the person truly needs the

elevator to get upstairs. Everyone else is left to either stay downstairs or risk the unsafe, rickety, old stairwell. How much sense does this make? Instead of modifying the mechanism that the people have relied on as a substitute for a broken stairwell, a sensible groundskeeper would simply fix the broken stairwell. I urge this committee, and this General Assembly as a whole, to fix the broken stairs, the broken initiated statute process—not restrict access to the elevator, the constitutional amendment process.

At the end of the day, HJR 6 would leave Ohio citizens with the same broken initiated statute process and a less adequate substitute in the form of the proposed constitutional amendment process.

Thank you, again Chairman Wilkin, Vice Chairman Swearingen, Ranking Member Brown, and members of the House Government Oversight Committee for providing the opportunity to submit written testimony today. I welcome any questions you may have via email or telephone at the email address and/or phone number provided to the chairman's office.