

Ohio House Constitutional Resolutions Committee

Testimony of Richard D. Topper

Opponent of H.J.R. No. 1

Good morning, Chair Plummer, Vice Chair Hillyer, Ranking Member Mohamed, and members of the House Constitutional Resolutions Committee. My name is Richard Topper. I'm a trial attorney and have volunteered in voter protection for almost twenty years. I am presenting testimony as an interested party in opposition to the restrictions on Ohioans' Constitutional Right to Amend their Constitution.

For over 110 years, Ohio citizens have been able to amend the Ohio Constitution with a 50% majority. Representative Mike Curtin has or will do an excellent job outlining the history and the reasons for this important right.

HJR 1 puts roadblocks to this important right by increasing the petition requirements and increasing the threshold to a 60% majority. This effects every Ohio citizen, including your constituents. You need to really step back and ask yourselves: "Do I want to make a major change to the Constitution that will affect my constituents Constitutional rights without circulating petitions, on a 50% vote, in an election where the turnout may be 8-10% of the Ohio electorate?" Think about it.

There are two short term goals which will affect Ohioan in the long run.

Number One: to preserve the power of Ohio's ruling party. And Number Two: to make it more difficult for women to protect their own bodies. The members of this committee should think twice before striking 110 years of Constitutional precedent in an undemocratic manner, since the short-term goal will have far reaching and long-term consequences.

Let me first address the preservation of power. Let me preface by discussing two ways to amend the Ohio Constitution. The first method is when citizen groups put together a constitutional amendment ballot issue and collect over 400,000 signatures in at least 44 counties after approval by the Ohio Attorney General and the Ohio Ballot Board. The second way to put an amendment on the ballot is by a three-fifths, or 60% vote by each house in the Ohio General Assembly. With three-fifths approval of the Ohio House and Senate, there is no requirement for approval of the ballot language and the gathering of petitions.

The second method which is being used in HJR 1 and SJR 2 is a slam dunk due to the excessive gerrymandering conducted in 2021 and 2022 by the Ohio Redistricting Commission, the Ohio General Assembly and Governor Mike DeWine. This gerrymandering led to a 70% Republican supermajority in the Ohio House and Senate. Therefore, Ohio Republicans will have no problem reaching that 3/5 number needed to put their Constitutional restrictions on the ballot.

How does increasing the Constitutional amendment threshold to 60% preserve the power of the Ohio Republican party in the short term? By making it more difficult for Ohio citizens to restructure how legislative districts are drawn.

In 2021 and 2022, Ohio Republicans were able to avoid the requirements of Article XI, the so-called anti-gerrymandering amendment to the Ohio Constitution by drawing district maps favorable to their party and ignoring the Ohio Supreme Court four times when directed to draw fair maps.

Because Ohioans found out that the Article XI mandates can and were skirted, many have found it necessary to create a new Constitutional amendment which prevents the gaming which was endemic to Article XI. The additional petition requirements and a 60% approval threshold will make it all the more difficult and expensive for Ohio citizens to put an anti-gerrymandering amendment on the ballot and get it passed. And I can guarantee you that dark money galore will be spent to preserve the power of the ruling party those when those with that money know they only need to convince 40% of the Ohio electorate to defeat an anti-gerrymandering issue.

What is even more foul about both HJR 1 and SJR 2 is that the ballot issue is slated for August of this year. Why August? Hardly anyone votes in August. In the August, 2022 primary there was an 8% turnout. In August of 2020, a special

election occurred in Hamilton County where voter turnout was only 11.8%. On that same day, Cuyahoga County had their own special election. Their voter turnout? Just 6.8%. This is what Frank LaRose said last year about August elections in his testimony in support of HB 458: "...A handful of voters end up making big decisions, either on candidates or more often, on local ballot issues. The side that wins is often the one that has a vested interest in the passage of the issue up for consideration." Mr. LaRose went on to say, "**This isn't how democracy is supposed to work.** More importantly, it doesn't have to. Voters are just as capable of voting on these important issues during the standard primary and general elections and there is no reason why these contests can't happen at the regularly scheduled primary and general elections which occur twice a year."

So, what is the best way to make sure one political party stays in power? Make it more difficult to pass a Constitutional amendment to change the system. And blindsides Ohioans by bringing the issue up in an August election with historical low turnout numbers. Do the members of this committee really feel that this is democracy at work?

I want to briefly mention the other reason HJR 1 is slated for the August Election. Polling shows that a majority of Ohioans want to protect a woman's right to make decisions regarding their own bodies. They do not agree with the Ohio Legislature's extreme position on abortion. This November, Ohioans may vote on

a woman's right to call her body her own. Ohioans don't feel their rights are being protected and they want to hold the Ohio General Assembly accountable to protect women in our state.

You are all familiar with the US Senate filibuster rule which coincidentally holds that 60% of the Senate must agree before a law is put up for a vote. Until 2017, there was a 60% threshold for the approval of Supreme Court candidates. That was lowered by Mitch McConnell and the Republican senate majority. Thus, the three justices who were swing votes in the *Dobbs* case which overruled *Roe v. Wade* were placed on the Supreme Court by a simple majority, not by the 60% threshold. If a 50.1% majority can take away a woman's right to choose, don't you think Ohioans should be allowed to vote on this issue using the same percentage?

It's interesting that dark money and Larry Householder are being brought up as a reason to strip majority rules and citizens' rights in Ohio. Mr. Stewart, I commend you for coming out against Mr. Householder early, but the fact of the matter is he remained in the Ohio House for over a year after being accused of taking bribes and almost one third of your members voted to keep him in the House. Furthermore, gerrymandered House districts all but assured his reelection when the evidence arose that he took bribes.

Increasing the petition requirements and instituting the 60% threshold will make it impossible for Ohio citizen groups to amend their constitution and will give all the power to those with dark money. As you all know, circulating petitions costs money. Political ads informing voters of the reasons for the Constitutional amendments costs even more. Those who want to stay in power will do everything they can to fight to stay in power. Just look at the money First Energy spent for their nuclear subsidy. Do you think they'd flinch in spending the money to reach the 60% threshold and to satisfy the additional petition requirements? And do you think companies like First Energy would flinch in fighting an amendment that would be beneficial to Ohioans but hurt its interests knowing their threshold for defeat is one vote over 40% In addition, by making it all the more difficult for Ohio citizens to petition their government, you are all but assuring gerrymandering and dark money expenditures will continue unfettered by the threat of a citizen-led petition.

If you as a committee are truly interested in preventing dark money in entering Ohio politics, you should get behind campaign finance reform. How many of the Republicans on this committee have sponsored or voted on a campaign finance bill since the Householder fiasco? I know the answer. None of you. How many of you have joined in the campaign finance bill that Representative Sweeny sponsored and introduced in March? How many of you have joined in the fight to

end dark money with a US Constitutional amendment overruling the effects of the *Citizens United* case?

Thomas Jefferson said, “The will of the people is the only legitimate foundation of any government and to protect its free expression should be our first object. That legitimacy not only extends to the Ohio Republican party but the Ohio Democratic Party when the shoe is on the other foot.

So, I ask the members of this committee. Do you want to be known as the legislators that preserved the rights of Ohioans to petition their government? Or do you want to be known as the legislative body that stripped these rights for personal gain?

Thank you and I will be happy to answer any questions.