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April 18, 2023

Testimony to Ohio Senate General Government Committee in Opposition to SJR 2

Chairman Rulli, vice chairman Schuring, ranking member DeMora, and members of the Ohio Senate General Government Committee, thank you for affording me the opportunity to provide written testimony on behalf of myself in opposition to the resolution that will fundamentally alter a necessary and important check that the people of this great state have on you all as legislators.

I want to begin by saying that I do not necessarily agree with much of the rhetoric we have heard regarding how this resolution, at its core, is “undemocratic, unfair, or unnecessary.” That said, I still am strongly opposed to SJR 2 for five reasons.

First, there has been much reference by the primary sponsors of the resolution and others in support of it to the recommendation of the Ohio Constitutional Modernization Commission that in order for a proposed constitutional amendment to be approved by the electors, it should be required to achieve a “passage rate of at least 55 percent.”¹ I firmly believe that the Constitutional Modernization Commission got it right—we absolutely should discuss increasing the vote threshold that is required to make changes to our state’s founding document in order to (1) ensure broad support and (2) discourage enshrining statutory-like provisions in the constitution when they fit much better in the Revised Code. However, the discussion around SJR 2 has largely ignored critically important context in the OCMC’s recommendation: *why* Ohioans have shown a much stronger preference to amend the constitution than go through the initiated statute process when they feel the General Assembly is ignoring or working against issues that they feel are important. Fortunately, we need look no farther than the very same OCMC report to find the reason for this:

*“A threshold question for the committee was why Ohio petitioners overwhelmingly chose the constitutional initiative over the statutory initiative. Relying on presentations by legal practitioners and interested parties, staff research, and committee discussions, the committee concluded that citizens generally prefer the constitutional initiative to the statutory initiative process because of the permanence provided by success at the polls. Additionally, the use of the statutory initiative, despite its lower signature requirement, was more burdensome because of the supplementary petition and the fact that **the results of a successful statutory initiative could easily be reversed by the General Assembly**, thus nullifying the significant effort and expense undertaken by statutory initiative proponents.”²*

The OCMC clearly concluded that any abuse of the initiated constitutional amendment process was largely, if not entirely, due to a flawed initiated statute process. As such, the OCMC recommended a way to fix the flawed process. Unfortunately, SJR 2 does *nothing* to implement that fix or otherwise

¹ Ohio Constitutional Modernization Commission, “Constitutional Revision and Updating Committee Report.” July 1, 2017. p. 24 <http://ocmc.ohio.gov/docs/Combo%20Report%20-%20CRU%20Final.pdf>

² Ohio Constitutional Modernization Commission, “Constitutional Revision and Updating Committee Report.” July 1, 2017. p. 23 <http://ocmc.ohio.gov/docs/Combo%20Report%20-%20CRU%20Final.pdf>

alleviate the concerns with the statutory initiative process identified by the OCMC. Instead, SJR 2 seeks to further erode the check the people of this state have on the legislature by “fixing” the constitutional amendment process without even trying to address the *prerequisite* fixes to the initiated statute process that exacerbate purported issues with the initiated amendment process, which pale in comparison to the deeply flawed initiated statute process. Until and unless the statutory initiative process is fixed, any changes to the initiated constitutional amendment process are a nonstarter for the people of Ohio. Think about how broken the initiated statute process is. When citizens feel their concerns are not being adequately addressed by legislators, they can band together to pass a law without the say of their legislators, except for the part where legislators get to meddle with it before it even reaches the ballot and the other part where lawmakers can instantly repeal it after it is passed with just a simple majority vote. It’s no wonder Ohio citizens who feel invisible to the General Assembly prefer to amend the constitution rather than enact statutory law. It’s the only way they can seek change without the threat of immediate reversal by the very people that weren’t being responsive to their concerns in the first place. In all its wisdom, the OCMC recommended a way to fix this, to make the statutory initiative process more insulated from the General Assembly. “The committee decided to recommend a five-year protected period, or ‘safe harbor,’ during which the General Assembly could only amend or repeal an initiated statute with a two-thirds vote.”³ Unless and until Ohioans can be assured that initiated statutes cannot simply be overturned with a simple majority vote of the legislature, the initiated constitutional amendment process is the only way for the people to place a *real* check on the General Assembly.

Second, the timing with which the General Assembly is taking up SJR 2 should cause anyone paying any ounce of attention to question the true motives behind it. The aforementioned OCMC recommendations were published nearly six years ago. Until about five months ago, there was next to no discussion of actually following through on either recommendation. Not until a major and sudden reversal in decades-long settled U.S. Supreme Court precedent, unnecessary politicization of the judiciary in Ohio, and general chatter among groups seriously considering pursuing constitutional amendments that are largely opposed by the majority of the General Assembly but are, according to any and all polling I’ve seen, popular among everyday Ohioans did the discussion around increasing the threshold to pass constitutional amendments begin. We need not look any farther than statements made by the very people pushing so strongly for SJR 2 to see why they *really* want to pass SJR 2, and spoiler alert, it’s not to “protect” the Ohio Constitution from anything other than everyday Ohioans with whom these supporters disagree with on specific issues where the majority of General Assembly seems to be out of step with the majority of Ohioans.

- The primary sponsor of HJR 1, a resolution nearly identical to SJR 2 currently working its way through the Ohio House, Rep. Brian Stewart, in a memo to colleagues to gain support for a similar resolution at the 11th hour of the previous General Assembly: “After decades of Republicans’ work to make Ohio a pro-life state, [Ohioans] intend... to write abortion [rights] into Ohio’s Constitution [and] all the [unpopular] work accomplished by multiple Republican majorities [and unelected federal judges] will be undone... [Additionally, after] a year-long circus in the Ohio Supreme Court [in which Republican-drawn maps were ruled unconstitutional seven times by a bipartisan majority of the Ohio Supreme Court on the grounds that they violated two

³ Ohio Constitutional Modernization Commission, “Constitutional Revision and Updating Committee Report.” July 1, 2017. p. 23 <http://ocmc.ohio.gov/docs/Combo%20Report%20-%20CRU%20Final.pdf>

recent constitutional amendments approved by over 70% of voters, Ohioans] now intend to rewrite Ohio's Constitution to put [an independent redistricting commission] in charge of drawing legislative districts.⁴

- Vocal SJR 2 supporter, Secretary of State Frank LaRose: "Another group filed papers this week to amend our constitution. First abortion, now minimum wage. These [are] attempts to bypass our legislative process... if lawmakers ask us to vote this August on protecting Ohio's constitution (& give us time to prepare [to change the rules in the middle of the game for supporters of these efforts]), we will be ready."⁵

Whether or not their opposition to reproductive rights, independent redistricting, and minimum wage is the motivation behind SJR 2 or not, the timing and cited statements sure make it seem like it. It completely undermines the argument they try to make that our constitution needs to "be protected" from some general big, bad, scary influence but rather suggests that they think that these specific proposals are bad policy. The Ohio Constitution was designed to allow the voters of Ohio to make that determination, not any one person or small group of people who abuse their power to undermine the direct democracy enshrined in the Ohio Constitution.

Third, Secretary of State Frank LaRose, in an attempt to argue in favor of SJR 2 instead completely undermines it in his recent op-ed "Larry Householder's sinister plot shows 'vulnerability' of Ohio Constitution" in the *Columbus Dispatch*. LaRose tries to argue that the recent conviction of expelled former Ohio House Speaker, Larry Householder, is a perfect example for why Ohio needs SJR 2 to "protect" the constitution from big monied interests, like FirstEnergy, the company that bankrolled bribes to Householder⁶. However, LaRose's op-ed largely ignores the *reason* FirstEnergy's executive leadership was so willing to back a proposed constitutional amendment to likely extend Householder's tenure in the Ohio House as Speaker. They didn't want to hijack the constitution; they wanted to keep Householder in power. That just so happened to require a constitutional amendment. SJR 2 does *nothing* to address public corruption and the ease with which the Ohio General Assembly was bought and sold by FirstEnergy executive leadership and Larry Householder. Instead, it makes it more difficult for everyday Ohioans to place a check on a legislature that has grown to answer to deep-pocketed corporations rather than everyday Ohio citizens. Yet, our state's chief elections officer is trying to promote the ludicrous idea that SJR 2 will magically help rid the Statehouse of corruption.

Fourth, there is currently one proposed amendment effort gathering signatures for the ballot. The passage of SJR 2 will change the rules for these petitioners in the middle of the game, which is entirely unfair to them at best. At worst, it could completely derail an otherwise successful initiative campaign. I certainly hope it is not the goal of SJR 2 supporters to sow such confusion in an already ongoing process, but having paid attention to the Ohio Statehouse long enough, I wouldn't bet on it.

⁴ Twitter—Andrew Tobias, @AndrewJTobias. December 14, 2022. <https://twitter.com/AndrewJTobias/status/1603130384744534016?s=20>

⁵ Twitter—Frank LaRose, @FrankLaRose. March 29, 2023. <https://twitter.com/FrankLaRose/status/1641054894290264064?s=20>

⁶ Frank LaRose. "Larry House Holder's sinister plot shows 'vulnerability' of Ohio Constitution," *Columbus Dispatch*. April 12, 2023. <https://www.dispatch.com/story/opinion/columns/guest/2023/04/12/larry-householders-sinister-plot-shows-why-ohio-constitution-must-change-frank-larose/70103556007/>

Changing the rules of the game because you're down at halftime is never a good way or the *right* way to win the game.

Fifth, SJR 2 would place a this proposed amendment on an August special election ballot, something that is, for good reason, not currently legal in the state of Ohio. Just last year, a majority of this committee's members voted to eliminate almost all August special elections because, as Secretary of State Frank LaRose said in proponent testimony:

*"8% [voter turnout] is not unusual for an August election... These embarrassingly low voter turnout rates in the last two August elections are not an anomaly. Far more often than not, this is normal among counties that have an August special election. Voters just don't turn out. That means just a handful of voters end up making big decisions, either on candidates or more often... ballot issues. **The side that wins is often the one that has a vested interest in the passage of the issue up for consideration. 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."*⁷

This resolution seeks to utilize an ultra-low turnout special election to approve this proposed constitutional amendment, and as LaRose said in the above cited testimony, the winning side is likely to be the proponents of SJR 2 because they are likely to turnout at a higher rate than opponents, which can make a huge difference in a low turnout election. *This isn't how democracy is supposed to work.* Secretary LaRose said it best: SJR 2 can appear on a regularly scheduled primary or, preferably, general election ballot, where a larger portion of Ohio voters will certainly weigh in. Proponents of placing SJR 2 on an August ballot claim that Plus, despite SJR 2 supporters' claims that "an August election for a statewide issue wouldn't be unusual," it is highly unusual. In Ohio's history, there has only ever been one election for a statewide issue held in August, and it was nearly 100 years ago.⁸

Finally, I find it necessary to point out that a co-sponsor of this resolution, Senator Theresa Gavarone, has repeatedly made the claim that SJR 2 somehow prevent "out-of-state special interests" from having "opportunities to manipulate Ohio's constitution."^{9 10} That claim is demonstrably false because nothing in SJR 2 changes the process for placing a proposed amendment on the ballot by initiative petition or who can lead such an effort. Under SJR 2, out-of-state special interests will have exactly the same *opportunity* to amend the Ohio Constitution that they did prior to SJR 2. They may be less likely to turn that opportunity into a successful effort, but it would do so at the expense of a critically important check that Ohio voters hold over a legislature that will not necessarily always be

⁷ Frank LaRose, "HB 458 – Ending Unnecessary Special Elections, Proponent Testimony." November 15, 2022. https://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/134th_ga/ready_for_publication/committee_docs/cmte_s_local_govt_1/testimony/cmte_s_local_govt_1_2022-11-15-0430_1521/hb458secretarylarosepro.pdf

⁸ Haley BeMiller, "Ohio secretary of state defends possible August election after pushing to limit them," *Columbus Dispatch*. March 28, 2023. <https://www.dispatch.com/story/news/politics/2023/03/28/ohio-secretary-of-state-frank-larose-defends-possible-august-election/70055877007/>

⁹ Twitter—Theresa Gavarone, @theresagavarone. March 28, 2023. <https://twitter.com/theresagavarone/status/1640886130429116417?s=20>

¹⁰ Twitter—Theresa Gavarone, @theresagavarone. April 1, 2023. <https://twitter.com/theresagavarone/status/1642196120385273856?s=20>

representative of everyday Ohioans because that same higher bar would apply to true citizen groups as well as big monied out-of-state special interests.

Thank you again, chairman Rulli, vice chairman Schuring, ranking member DeMora, and members of the Ohio Senate General Government Committee, for providing me the opportunity to provide written testimony in opposition to SJR 2. I am sorry I was unable to provide to in-person testimony due to the scheduling of this hearing in the middle of my workday. I would be happy to take any questions any members of the committee may have regarding my testimony at my email address provided to the chairman's office.