

Andrew Green

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Testimony to Ohio House Constitutional Resolutions Committee in Opposition to HJR 1

Chairman Plummer, vice chairman Hillyer, ranking member Mohammed, and members of the Ohio House Constitutional Resolutions 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 HJR 1 for six reasons.

First, there has been much reference by the primary sponsor 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 HJR 1 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, HJR 1 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, HJR 1 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 they 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 HJR 1 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 HJR 1 to see why they *really* want to pass HJR 1, 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, 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 recent constitutional amendments approved by over 70% of voters, Ohioans] now intend to

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>

rewrite Ohio's Constitution to put [an independent redistricting commission] in charge of drawing legislative districts.⁴

- Vocal HJR 1 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 HJR 1 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 HJR 1 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 HJR 1 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. HJR 1 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 HJR 1 will magically help rid the Statehouse of corruption.

Fourth, something that Secretary of State LaRose got right. In the press conference in which he and Rep. Brian Stewart introduced HJR 1's predecessor, HJR 6, at the tail end of the last General Assembly, LaRose said "if you were to raise the signature threshold, that would make it effectively harder for Ohioans to put an issue on the ballot, and that would disadvantage those truly citizen groups that want to get out there with clipboards and make it happen, but if you raise the signature threshold, you

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/>

may actually comparatively advantage the special interests.⁷ However, HJR 1 now seeks to do exactly what LaRose urged against, make the ballot access process more difficult, something he called a “blunt instrument and a pretty inelegant instrument.” Just as Secretary LaRose said in November of last year, doubling the number of counties that must achieve valid signatures numbering at least 5 percent of the votes cast in the last gubernatorial election in that county comparatively advantages deep-pocketed special interests at the expense of truly citizen-led efforts because special interests are far more likely than true citizen groups to have the resources to collect signatures from all 88 counties. Requiring 5% from 44 counties already ensures sufficient geographic diversity of petition supporters.

Fifth, there is currently one proposed amendment effort gathering signatures for the ballot. The passage of HJR 1 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 HJR 1 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. 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.

Finally, HJR 1 unnecessarily eliminates the 10-day signature “cure period” petitioners are granted if they do not achieve the requisite number of signatures to place their proposal on the ballot. In his sponsor testimony, Representative Stewart made an absurd analogy: “when [candidates] have to collect... signatures to get... on the ballot, if [they] screw it up, [they] don't get more time. [They're] just out. I think that the... groups that are trying to [amend] our constitution should have the same standard applied to them that's applied to [candidates].⁸” This is a comparison not between similarly sized apples and oranges but rather marbles and bowling balls. The largest number of valid signatures any Ohio candidate is required to submit to make the ballot is about 5,000. For most candidates, the number is far smaller, often just a few dozen. In comparison, petitioners need over 400,000 valid signatures to place a proposed amendment on the ballot. This is a difference of not one, but *at least* two orders of magnitude—a factor of *at least* 100! Collecting signatures for a proposed constitutional amendment is a huge undertaking that can get very complicated and extremely difficult to keep track of. If petitioners fall an inch short of the finish line, they absolutely should be granted a short period to get themselves across the line. That is exactly what the 10-day cure period does. No petitioners are going to be able to collect another 100,000 signatures in a short 10-day window if they fall far short in the first round, but collecting an few hundred or thousand extra to reach 5% of the votes cast for governor in a few counties is extremely reasonable. With HJR 1's proposed requirement that all 88 counties reach the 5% threshold, the cure period becomes all the more critical because instead of having to reach 45 different signature counts (44 counties plus statewide), petitioners will need to reach 89 (88 counties plus statewide).

Thank you again, chairman Plummer, vice chairman Hillyer, ranking member Mohammed, and members of the Ohio House Constitutional Resolutions Committee, for providing me the opportunity to provide written testimony in opposition to HJR 1. 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

⁷ Press Conference – 11-17-2022 – Discussing Reforms to Protect Ohio's Constitution
<https://www.ohiochannel.org/video/press-conference-11-17-2022-discussing-reforms-to-protect-ohios-constitution?start=101&end=180>

⁸ Ohio House Constitutional Resolutions Committee – 3-22-2023. <https://www.ohiochannel.org/video/ohio-house-constitutional-resolutions-committee-3-22-2023?start=3363&end=3380>

any questions any members of the committee may have regarding my testimony at my email address provided to the chairman's office.