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Volume 1 | Number 2 Article 12

10-15-1973

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Recommended Citation
Scott, Robert L. (1973) "How Citizens can use the Initiative Power," *IUSTITIA*: Vol. 1: No. 2, Article 12.
Available at: http://www.repository.law.indiana.edu/iustitia/vol1/iss2/12

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How Citizens can use the Initiative Power

Robert L. Scott

The purpose of this discussion is to demonstrate how the initiative power may be employed by citizens wishing to pass a law independent of the state legislature. Although the initiative power is granted in many state constitutions, in the past it has been used sparingly. However during these days of political activism the initiative power has been given new vitality. For example, in the area of environmental law it has been employed by citizens groups in such states as California, Illinois, and Wisconsin to reserve greater individual rights against environmental pollutors.

At a time when the interest of so many individual citizens within our society is frustrated by a recalcitrant and sluggish legislature—influenced by political pressure from large corporate entities—it is vital that citizens have a means of instituting their own laws. While I am aware that the too frequent use of this power could upset the delicate balance between the government and the governed, this danger is minimized by the electorial process: laws so passed are still "of the people, by the people, and for the people."

Because environmental problems are of concern to all of us, this paper demonstrates how a law may be written and passed giving citizens the right to challenge pollutors in court and in administrative hearings. Citizens have traditionally lacked standing to be heard at administrative board hearings regulating air and water pollution or to bring suit in the courts unless they could prove they are adversely affected, i.e., suffered some physical harm to person or property. This law will aim to create such standing for the people of Ohio.

Definitions

The initiative is a device by which a person or group of persons may draft a law or constitutional amendment and by securing to a petition the signatures of a minimum number of qualified voters (electors) and

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require the appropriate state officials with or without action upon it by the legislature to submit the measure to the electorate at a general or special election.[1]

The purpose of the constitutional provisions for initiative was not to curtail or limit the power of the legislature to enact laws. Rather, it it was to compel enactment by the legislature of measures desired by the people but not enacted as the people desired by the government, and to enable the people by means of their initiative to enact such measures into laws themselves. [See, *International Brotherhood F. & O. v. Cincinnati Gas & Electric Company,* 33 Ohio OPS 99 (1942).] The initiative provisions of the Ohio Constitution were intended to preserve to the people a greater share of and control over the legislative power but without taking away from any constitutional department any of its powers excepting the veto power of the governor. The original idea of legislation by the initiative was to proceed directly to the people with the proposal that they ordain a law set forth therein. This original idea is modified under the Ohio Plan to the extent that a proposed law must be first submitted to the General Assembly, except in the case of proposal for amendments to the constitution. These may be proposed and submitted directly to the people.

Alternatives

There are two ways in which the initiative power may be employed. One is by amending the constitution and the other is by passing a statute. The constitutional amendment may take one of several forms. The following is an example of the variety of forms used in securing environmental rights:

a. statement of public policy;
b. directive to a legislature to enact environmental legislation;
c. authority to legislature to act;
d. restraint and disposition of public trust; and
e. environmental rights in individuals or in the people.

Such an amendment might very well take the form of one similar to that in Illinois. Its new constitution speaks in terms of an individual right: "Each person has a right to a healthful environment." (Ill. Const. art. 11, §2.) The existence of a public right may resolve any doubt about the standing of a citizen to sue to enjoin breaches of a public trust by state agencies, officials, or corporations. The implication of an individual right to a decent environment are rather more speculative

1. Jefferson, "The Initiative and Referendum in Ohio," 11 *Ohio L. Rev.* 495 (1950).

but could be more far-reaching. Potentially, a constitutional statement of such a right could be the basis of an individual's right to go to court and challenge virtually any governmental act and conceivably any private act which degrades the environment. The drafters of the Illinois provision seemed to have had such an effect in mind when they describd the expressions of the constitutional right to a healthful environment as providing "the vehicle for the individual to prosecute a violator." (See 6th Ill. Const. Convention, General Government Commission proposal 16 [July 1, 1970].)

The statement of right, however, is coupled with an explicit declaration of the individual standing to enforce the right. Hence it is not clear what legal effect Illinois drafters might have thought the statement of right standing by itself would have. The right to a decent environment can have other implications; it might result in a broader definition of what constitutes a nuisance, private or public. Moreover, the existence of a constitutional right could alter the balancing technique which is used in nuisance cases to weigh the social end economic benefits of the defendant's activities against the harm which that activity is doing to the plaintiff. See, *Boomer v. Atlantic Cement Company,* 55 Mis. 2d 1023, 287 N.Y.S. 2d 112 (S.C. 1967).

Several states, one being Michigan, have enacted citizen suit statutes:

> "An act to provide for actions for declaratory and equitable relief for protection of the air, water, and other natural resources and the public trust therein to prescribe the rights, duties, and functions of the Attorney General, any political subdivision of the state, any instrumentality, or agency of the state or of the political subdivision thereof, any person, partnership, corporation, association, organization, or other legal entity and to provide for judicial proceedings relative thereto." Act No. 127, Public Acts of 1970.

Aside from these substantive differences between a constitutional amendment and a law, both passed by initiatives, the long range effects and the immediate feasibility of gathering enough votes to place them on a ballot are the other immediate concerns. The obvious advantage of a constitutional amendment is its resistance to subsequent changes by the legislature.

Yet, the constitutional amendment in Ohio requires obtaining the signature of 10% of the voters based upon the last gubernatorial election on a petition before such an amendment may be placed upon the ballot. This would require gathering at least 318,414 signatures. Obviously, this compares unfavorably with the meager 3% required to submit a law to the Ohio General Assembly or the additional 3% needed

if the measure is rejected by members. Such law may require 6% of the voters to sign before being placed on the ballot. In either case, these signatures must be gathered from each of the countries. A law must have been submited to the General Assembly in January 1973 to get on the ballot of the next general election thereafter in November 1974. A constitutional amendment need only be concerned with getting on the ballot by the next general election in November 1974. Despite the greater burden of obtaining more signatures, it will be assumed that it is more feasible to by-pass the legislature and obtain a constitutional amendment.

Implementation Schedule and Estimated Cost of A Constitutional Amendment

The signatures of 318,414 electors, 10% of the 3,194,133 voting in the last gubernatorial election, must be secured to a petition in order to place a constitutional amendment on the ballot. After the required number of signatures have been gathered, they are submitted to the Secretary of State who places the constitutional amendment on the ballot of the next succeeding regular or general election. The only condition is that the petition be filed ninety days before the next election. If the next general election to place an amendment on the ballot was May 8, 1973, the petitions must have been filed by February 6, 1973. The following steps must have been taken:

Steps Required for Implementation	*Authority References**
1. 100 elector's signatures must be obtained on a petition for a proposed constitutional amendment.	#1 procedure section
2. A committee for petitioners is selected to transact business with the Secretary of State's office.	#2 procedure section
3. Petitioners must send a copy of proposed law to the Attorney General for his certification.	#1 procedure section
4. The Attorney General forwards certification and amendment to the Secretary of State.	#1 procedure section
5. The Committee determines how many part-petitions are needed. The minimum number of petitions are determined by dividing the total number of signatures necessary (318,414) by the	

* Each of these steps has certain substantive and procedural requirements for their implementation. These references refer to fuller explanations of requirements which are delineated in the Ohio Constitution and statutes and which are set out in the later sections on substantive and procedural requirements.

number of signature lines contained on one part-petition. (318,414 ÷ 25 = 12,736) A minimum of 12,736 petitions must be ordered (more than the minimum should be ordered). They next determine the printer who is to do the printing. The number of petitions to be ordered and the name of the printer is forwarded, in writing, to the Secretary of State together with a check covering the cost of printing.	#3 procedure section
6. The Secretary of State determines standards for and orders signature petitions to be used.	#1 & 2 procedure section 1 a-d substantive section
7. The Secretary of State distributes petitions to those solicitors whose names are filed with the Secretary of State.	#4 procedure section 2 a-d, 1A substantive section
8. Signatures are obtained.	#5 procedure section 2 a-d, 1A substantive section
9. Petitions are returned to Secretary of State. (Feb. 6, 1973)	#6-7 procedure section
10. Secretary of State forwards petitions to County Board of Elections for verification of signatures.	#7 procedure section 3 a-b substantive section
11. Arguments for and against amendments are prepared and forwarded to Secretary of State.	4a substantive section
12. The Secretary of State publishes in newspapers a copy of the proposed law with arguments pro and con.	see attached copy of mailing #8 procedure section 4b substantive section
13. Amendment is placed on the ballot by the Secretary of State. A simple majority vote is required for the amendment to pass. (ballot date May 8, 1973)	#9 procedure section 4c-d, 5 substantive

Substantive requirements

1. Preparation of petition. See Art. II Sec. 1A & 1G of Ohio Constitution.
   a. The initiative petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or proposed law or proposed amendment to the Constitution.
   b. Each part of petition shall have attached an affidavit of the person soliciting: containing number of signers on such part, each signature was made in his presence, that to the best of his knowledge and belief each signature is the signature of the person who bares that name, that person was

believed to be an elector, that he signed with knowledge of contents of petition, that each signed on the date so indicated by his name.—No other affidavit is required.

c. Legend requirement: "Amendment to the Constitution proposed by Initiative Petition to be submitted directly to the electors."

2. Obtaining signatures. Art II Sec. 1G of Ohio Constitution
   a. The basis of the required number of petitioners shall be the total number of votes cast for the office of governor at the regular last proceeding election. There were 3,184,133 votes cast in the last gubernatorial election in 1970.
   b. From each of ½ of the counties of the state, there shall be petitions bearing the signatures of not less than ½ of the designated percentage of the electors of such county. According to an attorney with the Election Division of the Secretary of State Office, this is a distribution formula for the solicitation of signatures of 10% of the voters voting in the last gubernatorial election. Consequently, within this 10% figure must be included signatures from at least 5% of the total number voting in the last gubernatorial election in each of 44 counties of the state.
   c. Each signer must be an elector and indicate date of signing and his place of residence after his name. Signers residing outside the municipality shall state the township and county they reside. Residents of a municipality shall state in addition to the name of such municipality, the street and number, if any, of their residence and the ward and precinct in which the same is located. Each signer shall sign in ink.
3. Verifications of petition. Art. II Sec. 1G of Ohio Constitution.
   a. Verified signatures shall be presumed to be sufficient, unless not later than 40 days before the election, the contrary shall be otherwise proved. No additional days shall be allowed for filing of additional signatures.
   b. No law passed by initiative shall be held unconstitutional or void on account of the insufficiency of the petition.
4. Public notice of Amendment. Art. II Sec. 167
   a. A true copy of law or amendment to constitution together with an explanation both for and against shall be prepared. Such persons who prepare same may be named in such petition.
   b. Secretary of State shall distribute to each elector of state proposed law and arguments for and against (arguments are

limited to 300 words each). The law shall be published once a week for five consecutive weeks preceeding the election in at least one newspaper of general circulation in each county of the state where a newspaper is published. This requirement of publication is the result of the constitutional amendment proposed Jan. 1, 1972; mailing was used before. To date, there is no precedent for newspaper publication. However, some form of the attached copy of a mailing would be used in publication.

c. Secretary of State shall cause the title to be placed upon ballot; ballot shall call for affirmative or negative vote.

d. The "style" of mending for a constitutional amendment submitted to the people shall read, "Be it resolved by the people of the State of Ohio."

e. See attached part petitions and notice used in mailing for most recent initiative.

5. Placing Amendment on the ballot Art. See II Sec. A of Ohio Constitution

Secretary of State shall submit to electors for their approval or disapproval at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The actual dates here are as mentioned earlier.

Procedural requirements

1. 100 qualified electors ("the petitioners") by written petitions (not notarized or verified) submit a copy of proposed law and a summary of it to the Attorney General for examination. The Attorney General must certify whether the summary is fair and accurate; if it is, he files a verified copy of the law, the summary, and his own certification with the Secretory of State, who then determines the size, weight, and color of signature petitions to be used. Ohio Revised Code §§3519.01 (general requirements), 3519.05 (form of petitions). There are no rigid requirements as to size, weight and color of signature petitions. All that is required is that each aspect "bears a reasonable relation" to the complexity, length, and general content of the proposed amendment. These requirements are set as a result of discussions with the Secretary of State's office.

2. Three to five of the petitioners are selected by the others as the "committee for petitioners," which represents the petitioners in all matters, and whose names appear on each petition. Ohio Revised Code §3519.02. The committee makes all arguments and explanations for the petitioners in favor of the initiative (300 word limit). A person appointed by the General Assembly, if in

session, or governor, if not, will write the opposition statement. Ohio Revised Code §3519.04.

3. The committee specifies in writing to the Secretary of State, the number of part-petitions required, the printer to be used, and the cost estimates. The Secretary of State orders enough "part-petitions" (petition pages) to be printed to provide enough spaces for requisite signatures, and charges the actual cost of printing to the petitioners. The petitions are to be printed serially in numerical order. Ohio Revised Code §3519.07.

4. Part-petitions are distributed to "solicitors," whose names have been filed with the Secretary of State. Ohio Revised Code §3519.08. The Secretary of State will only accept from those solicitors who are charged with numbered part-petitions. Each solicitor must retain possession of each part-petition charged to him during circulation of the petition for signatures to guard against fraud. Ohio Revised Code §3519.09.

5. Each part petition may contain signatures only from one county. Ohio Revised Code §3519.10. Each signer must be a "qualified elector of the state," and in signing, must write the date, and his voting residence (inclusive of rural route or post office and address, and township if outside municipal corporation; street and number, ward and precinct if in a municipal corporation). Ohio Revised Code §3519.10. (See attached copy).

6. Part-petitions must be returned to the Secretary of State within 18 months of issuance. Ohio Revised Code §3519.12. *All* part-petitions, "whether used or not," must be returned to Secretory of State or be subject to invalidation by the Board of collection of other signatures. Ohio Revised Code §3519.13.

7. Petitions must contain a minimum number of signatures (10% of the electorate if a constitutional amendment is filed) required to be accepted by Secretary of State. Ohio Revised Code §3519.14. After filing of completed petitions the Secretary of State sends individual part-petitions to county boards of elections, who verify signatures on part-petitions. Ohio Revised Code §3519.15. See procedure for protest against county boards' findings, Ohio Revised Code §3519.16.

8. At least 30 days prior to a general election at which an initiative measure is to be voted upon, the Secretary of State must, at the expense of the state, have printed such measure and 20 days before published a copy of the proposed law along with arguments for the law, which arguments and prepared by the General Assembly's appointees. Ohio Revised Code §§2519.19, 35-9.20. This section was amended to allow publication in newspaper instead of

mailing. See attached copy of material used in mailing as basis for publication. See 4 B of Substantive requirements section for full explanation of publication requirement.

9. Ballot title of propositions or issues "shall be in language not likely to cause prejudice one way or the other."

Cost for the Ohio Amendment—(Figures are based upon a 12 month Year)

1.	Full time administrator		13,500
2.	Paid staff		
	4 part-time area coordinators at $3.50 an hour		
	$3.50 x 4 x 20 hrs. x 52 wks.		14,560
3.	Printing		
	a) petitions (63,000 for 318,414 signatures using two sides)*		25,495
	b) newsletters	(guess)	2,000
	c) advertisements	(guess)	2,000
4.	Miscellaneous		
	a) rent for four area offices $100/mo. x 4 x 12		4,800
	b) phone $20/mo x 4 x 12		480
	c) travel		
	A minimum of 4 trips 4 times a month averaging 250 miles a trip		
	at 10¢ a mile 4 x 4 x 12 x 250 x .04		1,920
		Total	$64,655

The expenses of other initiative programs

1. California—Material on administration and the media campaign indicates California has local offices throughout the state. These offices are staffed by volunteers, many of whom are college students. The pictures that appear in the brochure portray an informal atmosphere of improvisation and youth. They are obviously likely to appeal to the liberal or college group. The functions of the various offices, as they appear from their literature are to distribute brochures and information, handle calls, distribute applications for endorsement (people in favor of Proposition 9) and pledges; and to receive the same when they are completed.

   The media campaign consisted of various press releases, advedtisements, endorsements, articles in small newsletters and in underground and radical newspapers, brochures, general articles from reputable magazines supporting the content of Proposition 9, general analysis of local pollution levels, general articles on economics and environmental law, independent expert testimony, and pamphlets directed at specific companies which are polluting. One could not help noticing that the brochure material did not look very impressive i.e. the quality of

the paper and the type, which suggest that printed material should be selected with care, consistent with the kind of image the initiative campaign should present.

The campaign material suggests certain program necessities: (1) The proponents of the initiative must decide whom they want to appeal to and what image they want to project; (2) That there must be staffed offices throughout the state; (3) That these offices must be capable of printing brochures, distributing information, taking calls and soliciting endorsements and pledges of funds if needed.

The People's Lobby has only required $8,300 in order to mount its initiative effort. The Lobby hod no paid staff and no advertisements (no paper would take an advertisement). Their funds paid for the printing of petitions, a newspaper, phone service, and travel throughout the state. Approximately 1,000,000 petitions were printed to gain roughly the same amount of signatures as is required to place a constitutional amendment on the ballot in Ohio. The relied mainly upon volunteers (approximately (sixty) to obtain signatures of whom the great majority were college students.

Solicitation was done in two ways. People who called in offering to solicit signatures were mailed petitions, and a cadre of volunteers was deployed in the field from various local offices throughout the state. There was greater success with the latter method because of control of deployment.

Funds were raised in several ways: individuals took out subscriptions, organizations gave donations, and printers gave in-kind contributions by printing the Lobby newspapers.

2. Ohio—Preliminary research in Ohio indicates an initiative could be mounted with $50,000 to start, with another $50,000 to be raised later. With respect to the methods used in the solicitation of signatures, the administrator strongly believed that paid staff is needed in addition to himself, who will take the responsibility for coordinating the deployment of volunteers. Most of the volunteers were obtained from various political and social groups who were interested in repealing the income tax.

Draft of a Constitutional Amendment which could be Submitted to the People as an Initiation Action.

This draft of a constitutional amendment includes a general statement of the State of Ohio's duties with respect to land, water, and other

natural resources held in the public trust and the citizen's right to sue for their violation.

Other states have similar constitutional provisions. These provisions fall into two categories: those that define generally that land, water, and air are held in the public trust, and those which define specifically which land and waters are held in public trust.

Purposes to be Served by this Constitutional Amendment

The purposes are: (1) to develop a statement of public policy which gives content to the doctrine of public trust; and (2) to give citizens the standing to challenge actions of state agencies and officials which are incompatible with such public policy.

A constitutional statement of public policy serves to bind state agencies and officials, as well as courts, and gives meaning and substance to Ohio's role as trustee of its lands, waters, and other natural resources. Such an amendment contrasts with a statute of greater specificity in a beneficial way: a general statement allows the law to develop under case law without the constraints of legislative specificity. There is a body of American case law to which the Ohio courts can look in applying the public trust aspects of the proposed constitutional amendment. (See Howard, "State Constitutions and the Environment," 48 Vir. L. Rev. 193 at 223 (1922).

With respect to the citizen's standing to sue under this amendment, a citizen has a right to both raise the issue of public trust in a challenge to agency rule-making and in court as well as advisory proceedings.

Draft of Text of Proposed Constitutional Amendment Article

Be it resolved by the people of the State of Ohio that it is the policy of State government, its administrative agencies, officials, legislative, and courts to conserve, develop, and utilize its natural resources, and its public lands for the benefit of all people. It shall be the State's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Be it further resolved that the people of Ohio have a right to the highest standards of air and water quality consistent with technical feasibility and economic reasonableness, and to the preservation of the natural, scenic, historic, and aesthetic values of the environment. Ohio's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the State of Ohio shall conserve and maintain them for the benefit of all the people.