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CONSTITUTIONAL LIMITS ON LEGISLATIVE OVERRIDES OF STATUTORY INITIATIVES IN OHIO

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ABSTRACT

In November 2023, Ohio voters overwhelmingly approved an initiated statute legalizing adult-use marijuana and creating a regulatory framework for the new commercial industry. The law also allowed home cultivation, established a social equity and jobs program, imposed a special tax on recreational sales, and allocated portions of the revenue for specific purposes. Yet, despite the measure's 15-point margin of victory, lawmakers quickly considered—and in some cases enacted—significant changes, including repealing the social equity program and proposing limits on home cultivation, higher tax rates, and new penalties. These developments raise a fundamental question: Does the Ohio Constitution allow the General Assembly to override the will of the people?

The common assumption is yes, because Ohio's constitution does not explicitly prohibit legislative changes to initiated statutes. But Ohio courts have never addressed the issue, leaving the scope of legislative power to alter initiated statutes unresolved and creating uncertainty not only for the marijuana initiative but also for Ohio's century-old statutory initiative power.

This Essay challenges the view that initiated statutes lack constitutional protection in Ohio. It argues that the most faithful reading of Article II's text, structure, and history significantly limits—but does not entirely prohibit—legislative alterations of initiated statutes. Specifically, the Ohio Constitution authorizes lawmakers to enact changes only if they "facilitate" an initiative without in any way "limiting or restricting" it.

The Essay situates Ohio within the broader national landscape, surveys how other states address legislative overrides, and develops an interpretive framework grounded in the Ohio Constitution. It then applies this framework to two initiated statutes: the 2023 marijuana law and a 2006 indoor smoking ban. It concludes that while technical or implementation-oriented changes may be permissible, many proposed revisions to the marijuana law likely violate the Ohio Constitution.

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INTRODUCTION

In November 2023, Ohio voters overwhelmingly approved an initiated statute titled "An Act to Control and Regulate Adult Use Cannabis" that legalized recreational marijuana and created a regulatory framework for the new commercial industry.[1] It also allowed home cultivation, established a social equity and jobs program to address past drug law enforcement disparities, imposed a special tax on recreational sales, and allocated portions of the sales tax revenue for specific purposes, including to support the social equity and jobs program and to incentivize localities to allow recreational sales in their jurisdictions.[2] The statute was the result of a multi-year campaign, in which a group of Ohioans circulated initiative petitions to propose the law first to the Ohio General Assembly and then to their fellow citizens.

Yet, despite the initiative passing by a resounding 15-point margin, lawmakers promptly considered amending and even repealing it. The state's 2025-2027 biennial budget, for instance, repealed the social equity and jobs program,[3] while other proposed changes include limiting home cultivation, dramatically raising the sales tax rate, diverting tax revenue away from localities, and even imposing mandatory jail time for passengers caught smoking marijuana in a car.[4] These changes and proposed changes raise an important question: Are lawmakers allowed to override the will of the people?

Today, many assume the Ohio General Assembly has unlimited power under the Ohio Constitution to amend or even repeal citizen-initiated statutes.[5] This belief

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[1] *See, e.g.,* Megan Henry, *Ohioans Vote to Legalize Recreational Marijuana by Passing Issue 2 Law*, OHIO CAPITAL JOURNAL (Nov. 7, 2023), https://ohiocapitaljournal.com/2023/11/07/ohioans-vote-to-legalize-recreational-marijuana-by-passing-issue-2-law/.

[2] *See* OHIO ATT'Y GEN., *Issue 2 on the November 2023 Ballot – A Legal Analysis by the Ohio Attorney General*, (2023), https://www.ohioattorneygeneral.gov/SpecialPages/BALLOT-ISSUE-2-FINAL.aspx.

[3] DRUG ENFORCEMENT AND POLICY CENTER, *Comparison of Issue 2 Recreational Marijuana Initiative and Revisions by the Ohio General Assembly*, (July 3, 2025), https://moritzlaw.osu.edu/sites/default/files/2025-07/Ohio-reforms-comparison-table-Issue2-HB96Budget-July2025_final-for-web.pdf.

[4] *See, e.g.,* Morgan Trau, *Ohio Governor's Proposed Budget Includes Public Ed Funding, Tax Hikes on Weed, Tobacco and Betting*, Ohio Capital Journal (Feb. 3, 2025), https://ohiocapitaljournal.com/2025/02/03/ohio-governors-proposed-budget-includes-public-ed-funding-tax-hikes-on-weed-tobacco-and-betting/; Megan Henry, *Ohio Senate Passes Bill to Overhaul Weed Law Passed by Voters, Lower THC and Limit Home Grow*, Ohio Capital Journal (Feb. 26, 2025), https://ohiocapitaljournal.com/2025/02/26/ohio-senate-passes-bill-to-overhaul-weed-law-passed-by-voters-lower-thc-and-limit-home-grow/.

[5] *See, e.g.,* STEVEN H. STEINGLASS & GINO J. SCARSELLI, THE OHIO STATE CONSTITUTION 200 (2d ed 2022); NATIONAL CONFERENCE OF STATE LEGISLATURES ("NCSL"), INITIATIVE AND REFERENDUM IN THE 21ST CENTURY: FINAL REPORT AND RECOMMENDATIONS OF THE NCSL I&R

stems from the document's relative silence on the matter. Nowhere does it explicitly limit or restrict lawmakers from altering voter-approved statutory initiatives—at least not as explicit as several other state constitutions do. This comparative silence has been construed by some as granting lawmakers free rein; the thought is that if legislative changes are not specifically prohibited by the Ohio Constitution, they must be permitted.[6] However, Ohio courts have never weighed in on the question, leaving it unanswered.

The implications of this unanswered question extend far beyond the future of marijuana legalization in Ohio. If the General Assembly can freely amend or repeal voter-approved statutory initiatives, it significantly weakens one of the citizen lawmaking powers reserved by the Ohio Constitution that the Ohio Supreme Court has called "one of the most essential safeguards to representative democracy."[7] This in turn could push Ohioans to pursue policy changes that might be more statutory in nature through their constitutional initiative power, which raises its own concerns. Indeed, some believe this shift is already underway, fueling calls to amend the Ohio Constitution to provide clearer protections for initiated statutes.[8]

This Essay challenges the common assumption that the Ohio Constitution offers no protection for statutory initiatives, providing the first in-depth analysis of the issue. While the constitution does not explicitly restrict legislative alterations of voter-approved initiatives, as some state constitutions do, it also does not explicitly authorize such changes, as some others do. Instead, Ohio falls into a third category of states where the constitution does not explicitly address the issue, requiring a closer examination of the constitutional text, structure, and history to discern its meaning. This Essay undertakes that analysis and concludes that the most faithful reading of Ohio's statutory initiative power is one that significantly limits—but does not entirely prohibit—legislative alterations of voter-approved statutory initiatives.

The Essay proceeds in three parts. Part I situates Ohio within the broader national landscape of states that allow statutory initiatives, providing an original survey of how state constitutions address legislative changes to statutory initiatives

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TASK FORCE, 10-11 (July 2022), available at https://documents.ncsl.org/wwwncsl/Elections/IandR-report-2002.pdf.

[6] *See id.*

[7] State ex rel. Nolan v. ClenDening, 93 Ohio St. 264, 277 (1915).

[8] *See, e.g.,* OHIO CONST. MODERNIZATION COMM'N, *Final Report, Constitutional Revision and Updating Committee*, at 8, 22-26 (July 1, 2017), available at https://guides.law.csuohio.edu/ld.php?content_id=33797996; Mark Wagoner, *A Proposal to Rebalance Direct Democracy in the Ohio Constitution*, 73 CLEV. ST. L. REV. 26, 32 (2024); Nick Evans, *Ohio Senator Proposes Expanding Legislature, Simplifying Initiated Statute Process*, Ohio Capital Journal (Feb. 3, 2025), https://ohiocapitaljournal.com/2025/02/03/ohio-senator-proposes-expanding-legislature-simplifying-initiated-statute-process/.

and how courts have interpreted these provisions. It finds that while most state courts have upheld legislative alterations of statutory initiatives—creating a perception that courts generally view initiated statutes as on equal footing with ordinary statutes—nearly all did so under constitutional provisions that explicitly allowed such changes. More relevant to Ohio, however, are cases interpreting constitutional provisions that do not address the scenario in explicit terms. And the key takeaway from this last group of states is that the analysis of the Ohio Constitution must be rooted in the document's distinct text, structure, and history.

Part II conducts this textual, structural, and historical analysis, finding strong support for the conclusion that the Ohio Constitution limits the General Assembly's ability to alter voter-approved statutes. The constitution expressly "reserves" the statutory initiative power to the people,[9] carefully details how it is exercised, and declares these provisions "self-executing."[10] It then concludes the provision governing the initiative power by providing that legislators may pass laws concerning the initiative only if the laws "facilitate" the power and "in no way limit[] or restrict[]" it.[11] Of anything in the constitution, this last part—an anti-subversion clause—speaks most directly to the issue at hand: Lawmakers may alter voter-approved initiated statutes, but only if their changes facilitate the initiative and in no way limit or restrict it.

Further support for the conclusion that the Ohio Constitution limits lawmakers' ability to alter statutory initiatives is found by looking at the historical record surrounding Ohioans' adoption of the statutory initiative power in 1912—a methodological approach backed by current members of the Ohio Supreme Court.[12] Records from this time reveal three key points: (1) the initiative power was intended to curb legislative corruption and unresponsiveness; (2) the framers of the statutory initiative provision broke from the prevailing constitutional approach of the time by consciously omitting language that would have explicitly allowed legislative overrides; and (3) the framers and the public appear to have understood the statutory initiative as giving voters—not lawmakers—the final say on policy matters. Together, these records suggest that the constitution's statutory initiative provision was understood by the Ohioans who wrote and adopted it as significantly limiting lawmakers' ability to alter statutory initiatives.

The emerging constitutional standard limits, but does not completely prohibit, legislative changes. Part III thus considers how this would apply in practice, exploring actual, proposed, and hypothetical changes to Ohio's two most recently approved initiated statutes: the marijuana law and a 2006 indoor smoking

[9] OHIO CONST. art. II, § 1.
[10] OHIO CONST. art. II, § 1g.
[11] *Id.*
[12] *See, e.g.,* R. Patrick DeWine, *Ohio Constitutional Interpretation*, 86 OHIO ST. L.J. (Forthcoming 2025).

ban. It concludes that many of the proposed changes to the marijuana law risk violating the Ohio Constitution's statutory initiative provision.

I. STATE CONSTITUTIONAL FRAMEWORKS FOR LEGISLATIVE ALTERATIONS OF STATUTORY INITIATIVES

Comparisons to other states' approaches to legislative alterations of initiated statutes have fed the belief that the Ohio Constitution offers no protection for such laws once they have been approved. A 2002 report from the National Conference of State Legislatures (NCSL), for instance, listed Ohio among the states where "the legislature is free to amend or repeal an initiated measure at any time,"[13] and the NCSL's conclusion that has, in turn, been cited elsewhere.[14] This Essay, therefore, begins with a survey of the state constitutional frameworks for legislative alterations of statutory initiatives.

Twenty-one states, including Ohio, allow citizens to propose statutes through an initiative petition and submit them for voter approval or rejection.[15] (There is no federal equivalent of the initiative.) These states generally frame the initiative power as a "reservation" of legislative authority to the people,[16] but their constitutions vary significantly in how the power is exercised. Some state constitutions say little about the initiative power beyond reserving the power, allowing lawmakers to work out the details, while others prescribe highly detailed procedures that leave little room for legislative modification.[17]

One of the (many) ways states' initiative powers differ from each other is in their approach to legislative changes to voter-approved statutory initiatives. On this, states generally take one of three approaches, discussed in further detail below

States also differ in whether their legislatures can amend or repeal voter-approved initiated statutes. On this issue, state constitutions take one of three approaches: (1) explicitly limiting or prohibiting such changes; (2) explicitly allowing them without limits; or (3) not explicitly addressing the scenario. Each is explored below.

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[13] NCSL, *supra* note 5 at 10-11.
[14] *See* STEINGLASS & SCARSELLI, *supra* note 5 at 200.
[15] Allie Boldt, *Direct Democracy in the States: A 50-State Survey of Journey to the Ballot*, at 5, STATE DEMOCRACY RESEARCH INITIATIVE (November 2023), https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2023/11/Direct-Democracy-In-the-States-Full-Report.pdf.
[16] *See, e.g., id.* at 28-205 (surveying each state constitution's direct democracy provisions); *see also* Anthony Johnstone, *The Separation of Legislative Powers in the Initiative Process*, 101 NEB. L. REV. 125, 129-31 (2022).
[17] *Compare* Ohio Const. art. II, §§ 1-1g *with* Ida. Const. art. III, § 1; *see also* Johnstone, *supra* note 16 at 134-36 (surveying different state constitutional requirements for initiative provisions).

A. Constitutions that Explicitly Limit or Prohibit Legislative Alterations

Nearly half the states with the statutory initiative power—Alaska, Arizona, Arkansas, California, Michigan, Nebraska, Nevada, North Dakota, Washington, and Wyoming—explicitly limit or prohibit legislators from altering voter-approved initiatives, though several of these states distinguish between legislative amendments and full repeals.[18] The relevant provisions in these states typically either impose a waiting period before changes can be made, or require a legislative supermajority to make changes—or both.[19] The Nevada Constitution, for instance, bars the legislature from altering a voter-approved initiated statute for three years after it takes effect.[20] North Dakota's prohibits legislative changes for seven years unless lawmakers approve the changes by a two-thirds vote in both houses.[21] And Arizona's flatly prohibits full repeals and allows legislative amendments only if the amending legislation "furthers the purpose" of the initiative and is also approved by at least a three-fourths vote in both houses.[22]

Although these provisions are generally straightforward, courts still wrestle with whether legislative changes go too far. In *State v. Meastas*, for example, the Arizona Supreme Court struck down a law that penalized medical marijuana use on college campuses, finding it amended—but did not "further"—an earlier-approved initiated statute that legalized medical marijuana.[23] The initiative had listed specific locations where penalties for possession or use could apply, and college campuses were not included.[24] Citing this, the court deemed the legislature's new penalty an "amendment" to the initiative, triggering the Arizona Constitution's safeguards for initiated statutes.[25] Then, invoking the initiative's stated goal of shielding medical marijuana patients from criminal penalties, the court held that the legislative amendment failed to further its purpose in violation of the state constitution.[26]

Another illustrative example is *Arizona Advocacy Network Foundation v. State*, where the Arizona Court of Appeals considered whether a senate bill impermissibly amended an initiated statute establishing campaign finance rules for candidates.[27] The plaintiffs argued that the bill's revisions to definitions of "contribution" and "expenditure" constituted an amendment subject to the state constitution's safeguards for initiated statutes, but the court held that these terms were not constitutionally protected because the initiative incorporated them by

[18] *Cf.* APP. A.
[19] *Cf. id.*
[20] NEV. CONST. art. 19, § 2.
[21] N.D. CONST. art. III, § 8.
[22] Ariz. Const. art. IV, § 1(6)(B)-(C).
[23] 244 Ariz. 9 (2018).
[24] *Id.* at 13.
[25] *Id.*
[26] *Id.* at 14.
[27] 250 Ariz. 109 (Ariz. Ct. App. 2020).

reference rather than fixing static definitions.[28] The plaintiffs also challenged the bill's new definition of "primary purpose," which exempted certain outside entities from registration requirements, but the court concluded the change neither directly nor indirectly altered the initiative's substance because the initiative was focused on contribution and reporting obligations for candidates, which remained unchanged.[29] Finally, the court agreed that the senate bill's provision designating the secretary of state as the "sole public officer" authorized to initiate campaign finance investigations impermissibly restricted the authority of the commission created by the initiative, violating the state constitution.[30]

Additional examples come from California, where courts have had to determine the scope of the state constitution's rule that prohibits legislative amendments to voter-approved initiatives unless the initiative itself allows changes.[31] The California Supreme Court has clarified that although this restriction "preclud[es] the Legislature from undoing what the people have done, without the electorate's consent," it does not bar lawmakers from legislating on an issue related to but distinct from the subject of an initiative.[32] As a result, California courts have had to determine whether legislation impermissibly amends an initiative or instead addresses a related but distinct issue.[33] Thus, even in states with strong constitutional protections, courts still play a critical role in policing the boundary between permissible and impermissible legislative changes.

B. Constitutions that Authorize Legislative Alterations Without Limits

Often overlooked is that a third of the states with the statutory initiative—Alaska, Colorado, Massachusetts, Missouri, Oklahoma, South Dakota, and Wyoming—explicitly *authorize* legislators to amend or repeal voter-approved initiatives without imposing any hurdles to doing so.[34] (Alaska and Wyoming appear in both classifications, as they explicitly limit full repeals of initiated statutes but explicitly allow amendments.[35]) These provisions typically provide either that lawmakers may alter initiated laws at any time or that the initiative power shall not be construed to limit lawmakers' ability to change initiatives.[36] The Massachusetts Constitution, for example, provides that "[s]ubject to the veto power of the governor and to the right of referendum by petition as herein provided, the [legislature] may amend or repeal a law approved by the people."[37] Meanwhile, the

[28] *Id.* at 114-17.
[29] *Id.* at 118-19.
[30] *Id.* at 120-21.
[31] *See* CALIF. CONST. art. II, § 10.
[32] People v. Kelly, 47 Cal. 4th 1008, 1025 (2010).
[33] *Id.* at 1027 (collecting cases).
[34] *Cf.* APP. B.
[35] *Cf. id.*
[36] *Cf. id*.
[37] MASS. CONST., Articles of Amendment art. XLVIII, § 4.

Oklahoma Constitution states that "[t]he reservation of the powers of the initiative and referendum in this article shall not deprive the Legislature of the right to repeal any law, propose or pass any measure, which may be consistent with the Constitution of the State and the Constitution of the United States."[38]

State courts interpreting these provisions universally hold—or at least have strongly suggested in dicta—that lawmakers in their states can freely amend or repeal initiated statutes. The first such ruling came from the Oregon Supreme Court in 1903, in *Kadderly v. City of Portland,* when the state constitution then-provided that the initiative power "shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure."[39] (Oregonians later removed this language from the state constitution in 1968.[40]) Rejecting a challenge to the initiative power brought under the U.S. Constitution's republican form of government clause, the court explained that "[l]aws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will."[41]

Another example is the Colorado Supreme Court's 1913 decision in *In re Senate Resolution No. 4.*[42] Relying on the state constitution's provision that the initiative power "shall not be construed to deprive the General Assembly of the right to enact any measure," the court upheld a legislative repeal of an initiated statute.[43] The court reasoned that "[a]n act repealing an act is a measure, and, as the General Assembly is not deprived of the right to enact any measure, it clearly has the power to repeal any statute law, however adopted or passed."[44] Several other state courts have reached similar conclusions under nearly identical constitutional provisions.[45]

C. Constitutions that Do Not Explicitly Address Legislative Alterations

In the remaining states—Idaho, Maine, Montana, Oregon, Ohio, and Utah—the constitutions do not (currently) address legislative authority to amend or

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[38] OKLA. CONST. art. V, § 7.
[39] 74 P. 710, 712 (Or. 1903).
[40] *See* State Democracy Research Initiative, 50 Constitutions: Oregon Constitution, Article IV, Section 1, https://50constitutions.org/or/constitution/compare?compareOne=88659&compareTwo=97991 (comparing the 1902 and 1968 versions of the constitutional provision).
[41] *Kadderly*, 74 P. at 720.
[42] 54 Colo. 262 (1913).
[43] *Id.* at 270.
[44] *Id.*
[45] *See* State ex rel. Halliburton v. Roach, 230 Mo. 408 (1910); Earth Island Institute v. Union Electric Company, 456 S.W.3d 27 (Mo. 2015) (reaffirming that "once a statute is adopted by initiative or referendum, then the legislature is free to amend or repeal it as it would any other statute."); Granger v. City of Tulsa, 174 Okla. 565, 568 (1935); State v. Whisman, 154 N.W. 707, 709 (S.D 1915).

repeal voter-approved initiated statutes, at least as explicitly as the others do.[46] The NCSL's 2002 report nevertheless grouped these states with those that expressly authorize legislative changes, stating that legislators in all these states may freely amend or repeal statutory initiatives. But the state court decisions interpreting provisions that are silent on the issue indicate that the constitutional analysis should be more than simply noting whether the constitutional text explicitly limits or prohibits legislative alterations.

An early example is the Idaho Supreme Court's 1943 decision in *Luker v. Curtis*, in which the court held that the Idaho Constitution did not prevent the legislature from altering an initiated statute.[47] Key to the court's conclusion was the fact that the state constitution largely left implementation of the initiative power to the state legislature, providing that the power must be exercised "under such conditions and in such manner as may be provided by acts of the legislature."[48] Citing this language, the court reasoned that the Idahoans who adopted the initiative were "content to leave the *manner and conditions* of its exercise to their chosen senators and representatives" and had "in no form or manner limited the power of the legislature in time, manner or method of legislating on any subject upon which the lawmaking power can operate."[49] The court thus concluded that the state constitution "did not give any more force or effect to initiative legislation than to legislative acts but placed them on an equal footing."[50]

A 1996 advisory opinion from the Maine Supreme Court offers another—albeit, less convincing—example.[51] The opinion concerned the constitutionality of a proposed initiated statute that sought to impose term limits on members of Congress. In it, the court said in passing that if the measure were enacted, "subsequent sessions of the Legislature may choose to follow it, or they may choose to repeal it, either expressly or by implication."[52] Critically, the court did not analyze or even mention the state constitution, instead citing federal case law for the principle that one legislature cannot bind future legislatures.[53] The court also emphasized that its opinion was rushed and non-binding, and it left open the possibility of reaching a different result in a future case with fully developed facts and arguments.[54] The court has not revisited the issue since.

The most recent example is the Utah Supreme Court's 2024 decision in *League of Women Voters of Utah v. Utah State Legislature,* which unanimously

[46] *Cf.* APP. A.
[47] 136 P.2d 978 (Ida. 1943).
[48] *Id.* at 979.
[49] *Id.* at 980.
[50] *Id.* at 979.
[51] Opinion of the Justices, 673 A.2d 693, 695 (Me. 1996).
[52] *Id.*
[53] *Id.*
[54] *Id.*

rejected the lawmakers' claim that the Utah Constitution's silence on legislative changes gives them free rein to alter a voter-approved initiated statute that sought to reform the state's redistricting process.[55] The court's analysis focused on discerning the original public meaning of the state constitution's initiative provision, as well as its declarations that "all political power is inherent in the people" and that they "have the right to alter or reform their government as the public welfare may require."[56] Tracing these provisions' histories, the court found it "significant" that the Utahns who adopted the statutory initiative in 1900 did not include language allowing legislative overrides like South Dakota had done just two years earlier.[57] The court also cited contemporaneous statements indicating that Utahns saw the initiative as a check on the legislature when they approved it.[58] Based largely on this historical analysis, the court held that the constitution offers some protections for initiated statutes, at least when they seek to alter the form of state government.[59] (The court did not, however, decide whether similar protections apply to initiatives that do not alter the form of state government.)

Importantly, the Utah Supreme Court did not announce an absolute bar against legislative alterations. Instead, the court explained that lawmakers may amend initiated laws so long as the change "does not infringe the people's reform right—for example, if the amendment furthered or facilitated the reform, or at least did not impair it."[60] Likening the standard to strict scrutiny, the court added that "even if the Legislature were to amend an initiative in a way that impaired the government reform, those changes would not be unconstitutional if the Legislature showed they were narrowly tailored to protect a compelling governmental interest."[61] And rejecting the notion that initiatives receive "special status," the court explained that limits on legislative power exist "not because such initiatives are accorded a higher status than other statutes, but because they embody the people's exercise of constitutional rights."[62] To hold otherwise, the court said, would render those rights "illusory."[63]

Turning to Ohio, no court has addressed whether the Ohio Constitution allows lawmakers to change voter-approved initiated statutes. The closest a court came to doing so was the Ohio Supreme Court in its 1935 decision *State ex rel.*

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[55] 554 P.3d 872 (Utah 2024).
[56] *Id.* at 892-910.
[57] *Id.* at 905-06. The court added that "[i]f the people of Utah had wanted to make explicit that the Legislature was free to override any citizen initiative, they had a prime example of how to do so." *Id.*
[58] *Id.* at 906-08.
[59] *Id.* at 909.
[60] *Id.* at 909-10.
[61] *Id.* at 910.
[62] *Id.* at 909
[63] *Id.*

Singer v. Cartledge, which held that a non-chartered municipality's council could override a citizen-initiated ordinance.[64] The court noted that although the state constitution reserved legislative powers to the people of municipalities, the document prescribed few details or safeguards, providing that the powers "can only be exercised in the manner provided by law."[65] And because neither the constitution nor the laws governing non-chartered municipalities "limited or qualified" city councils' legislative authority, the court reasoned that councils retained the power to repeal initiated ordinances.[66] The court then added that "[t]he same principle applies to legislative enactments subsequently repealing an initiated law where there is no denial of the power so to do in a State Constitution."[67] The court did not, however, address whether the Ohio Constitution specifically allows or denies such legislative changes.

With the exception of Maine, these courts rooted their analyses in the text, structure, and history of the constitutional provisions at issue rather than more generalized theories about initiatives. The Idaho court emphasized the legislature's authority under the state constitution to prescribe the scope of the initiative power, reading the silence on the issue of legislative changes as permission. The Ohio Supreme Court's analysis of the state's municipal initiative power was similar. By contrast, the Utah court focused on the history of the state's initiative provision and the framers' decision to omit language expressly authorizing legislative overrides. Together, these cases provide a framework for assessing whether the Ohio Constitution should be understood as permitting or instead limiting, legislative changes to initiated statutes—an analysis taken up in the next Part.

II. THE OHIO CONSTITUTION'S STATUTORY INITIATIVE POWER

Although the Ohio Supreme Court's decision in *Singer* did not address whether the Ohio Constitution allows or limits legislative changes to voter-approved statutory initiatives, its reasoning suggests that an Ohio court would require constitutional evidence to impose such a limitation. This Part contends that such evidence exists in the text, structure, and history of the statutory initiative provision and that the most faithful reading of the provision is one that significantly limits—but does not entirely prohibit—legislative alterations of initiated statutes. More specifically, the constitution should be understood as allowing lawmakers to alter an initiated statute only if the change facilitates the initiative without in any way limiting or restricting it.

[64] 129 Ohio St. 279 (1935).
[65] *Id.* at 286 (citing Ohio Const. art II, § 1f).
[66] *Id.* at 287.
[67] *Id.*

A. The Constitutional Text and Structure

The Ohio Constitution's provisions governing the statutory initiative power in Article II are extensive, spanning over 1,500 words[68]—far more than the constitution's roughly 50-word provision addressing the municipal initiative power at issue in *Singer.*[69] A review of these provisions reveals textual and structural commitments that, taken together, are best understood as significantly constraining the General Assembly's legislative authority over initiated statutes, including its ability to amend or repeal voter-approved statutory initiatives.

As a starting point, consider that the initiative power aligns with the Ohio Constitution's broader goal of ensuring government accountability and rule by the people.[70] Its Preamble states that the constitution derives from the people of Ohio to "secure its blessings and promote our common welfare."[71] Its Bill of Rights affirms that "[a]ll political power is inherent in the people" and that "[g]overnment is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary."[72] It guarantees several rights that are essential for self-governance, including the rights of the people to assemble, consult for their common good, instruct their representatives, petition the General Assembly for the redress of grievances, and the right to vote (with limited exceptions).[73] And it establishes three separate, elected branches of government. Within this framework, the initiative power both reinforces and extends the constitution's other commitments to popular sovereignty.

Turning specifically to the initiative power, Article II, Section 1 introduces it as a reservation of legislative authority to the people of Ohio, who, again, are the origin of "all political power."[74] It "vest[s]" the legislative power of the state in the General Assembly but states immediately adds that the "people reserve to themselves the power to propose to the general assembly laws . . . and to adopt or reject the same at the polls on a referendum vote as hereinafter provided."[75] (It also reserves to the people the statewide constitutional initiative and veto referendum

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[68] OHIO CONST. art. II, §§ 1, 1b, 1e, 1g.
[69] OHIO CONST. art. II, §§ 1, 1f.
[70] *See also* Jessica Bulman-Pozen & Miriam Seifter*, The Democracy Principle in State Constitutions,* 119
MICH L. REV. 859 (2021) (discussing the "democracy principle" inherent in state constitutions).
[71] OHIO CONST., Preamble; *see also* Newburgh Heights v. State, 168 Ohio St.3d 513, 517 (2022) ("The purpose of our written Constitution is to define and limit the powers of government and secure the rights of the people.") (citation omitted).
[72] OHIO CONST. art. I, § 2.
[73] OHIO CONST. art. I, § 3; art. V, §§ 1, 5 (excepting felons), 6 (excepting "idiot[s]" and "insane person[s]").
[74] *See* Johnstone, *supra* note 16 at 129-31 (discussing the significance of state constitutions "reserving" legislative power to the people).
[75] OHIO CONST. art. II, § 1.

powers, as well as comparable powers at the municipality level.[76]) The initiative thus amounts to a power retained from the power delegated to the General Assembly, placing it beyond the reach of lawmakers unless otherwise provided in the constitution.[77]

After reserving the initiative power to the people, the constitution lays out in great detail how that power is to be exercised, leaving little to the General Assembly to decide through legislation. The Ohio Supreme Court has repeatedly noted that the high level of detail was intended to safeguard the initiative power from legislative interference.[78] This stands in stark contrast to the constitution's treatment of the municipal initiative power at issue in *Singer*. There, apart from reserving the initiative and referendum powers to the people of each municipality, the constitution provided not procedural details. Instead, it—much like the Idaho Constitution's statutory initiative provision in *Luker v. Curtis*—states that these "powers shall be exercised in the manner now or hereafter provided by law,"[79] leaving their implementation entirely to the discretion of lawmakers.

As part of the highly detailed initiative process, Article II, Section 1b explicitly allows the General Assembly to amend a law proposed by initiative petition and pass its own alternative, but only during a four-month window preceding any election on the proposal.[80] The constitution gives legislators three options during this window: (1) pass the law as proposed, (2) pass an amended version, or (3) decline to pass it or otherwise take no action.[81] If passed as proposed, it takes effect but could face a veto referendum.[82] And if amended or not passed—including if the General Assembly takes no action at all—citizens can circulate a second petition to place either their original proposal or a version incorporating some of the General Assembly's amendments on the ballot.[83] Beyond this four-

[76] *Id.*
[77] *See* Johnstone, *supra* note 16 at 129-31.
[78] *See* Hockett v. State Liquor Licensing Board, 91 Ohio St. 176, 182-83 (1915) ("The astonishing thing about these provisions is not their brevity, but the minutia and detail with which the Constitution makers provided for safe-guarding the initiative and referendum as to constitutional amendments."); State ex rel. Nolan v. ClenDening, 93 Ohio St. 264 (1915) ("An examination of the various provisions of the Constitution shows with what painstaking care the right of referendum was safeguarded…"); State ex rel. LetOhioVote.org v. Brunner, 123 Ohio St.3d 322 (2009) (noting "the great precaution taken by the constitutional convention of 1912 to set forth and safeguard, with the particularity of detail usually found only in legislative acts, the right of referendum…") (internal quotation omitted); *see also* Johnstone, *supra* note 16 at 136 (explaining that "the constitutional specification of additional qualifications for the initiative power relative to the legislature's power preserves the former's autonomy from the latter, since otherwise those additional qualifications would need to come from the legislature itself.")
[79] OHIO CONST. art II, § 1f.
[80] OHIO CONST. art II, § 1b.
[81] *Id.*
[82] *Id.*
[83] *Id.*

month window, the constitution does not provide for any further legislative involvement, aside from an anti-subversion provision at the end of the initiative process—implying that lawmakers' authority is confined to what the constitution expressly permits.

Article II, Section 1b also unambiguously provides the effect of voter approval on an initiated statute: If a majority of electors approve a proposal, it "shall be the law," "shall take effect" thirty days after the election, and "shall" supersede any alternative passed by the General Assembly.[84] It also provides that an approved law is not subject to a gubernatorial veto,[85] further reinforcing the notion that elected officials cannot undo the will of the people.

Further, while the constitution does not explicitly limit the people's statutory initiative power by authorizing the General Assembly to change initiated laws, it does contain two other explicit limits on the power. One extends constitutional limits on the General Assembly's lawmaking power to citizen initiatives.[86] This means, for example, that an initiated statute must follow the same single-subject limit as the General Assembly.[87] The other prohibits using the initiative to impose a "single tax" on land values, which was a contentious Progressive Era cause.[88] The presence of these specific, narrowly drawn limits indicates that the constitution should not be read to imply additional, unstated restrictions, such as allowing lawmakers to alter initiated statutes. Consistent with this, the Ohio Supreme Court, in one of its earliest cases interpreting the initiative, emphasized that the people's exercise of the power would not be curtailed absent a restriction "clearly beyond reasonable doubt" in the constitution itself.[89]

Finally, after detailing further procedural requirements for statewide initiative and referendum petitions, such as signature thresholds and public notice rules, Article II, Section 1g concludes by stating: "The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved."[90] Of all the constitutional provisions, these final two sentences—effectively, an anti-subversion clause—seem to most directly answer whether legislators can alter statutory initiatives; they can, but only if the change facilitates the initiative without in any way limiting or restricting it.

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[84] *Id.* If voters reject the initiative but the General Assembly has passed an alternative, the alternative takes effect; otherwise, no change occurs.
[85] *Id.*
[86] OHIO CONST. art. II, § 1.
[87] *See* OHIO CONST. art. II, § 15.
[88] OHIO CONST. art. II, § 1e; *see also* Steven Steinglass & Ernest Oleksy, *Direct Democracy: Ohio Style*, 73 CLEVELAND ST. L. REV. 1, 108-09 (2024).
[89] *See* Pfeifer v. Graves, 88 Ohio St. 473, 488 (1913).
[90] OHIO CONST. art. II, § 1g.

Case law interpreting this anti-subversion clause is admittedly sparse. But in an early case addressing the clause, *Hockett v. State Liquor Licensing Board* (1915), the Ohio Supreme Court explained that the framers included it to make "doubly sure" that they had safeguarded the initiative and referendum powers because they "fear[ed] that they might have omitted some clerical step."[91] The court expanded upon this theme a few months later in *State ex rel. Hunt v. Hildebrant*, writing:

> Language could not have been used by the members of the constitutional convention or by the electors of the state that would give clearer expression to their intention and purpose in reference to this subject-matter. They undoubtedly had in mind the practical impossibility of covering every detail of the operation of the provisions of the organic law of the state; that some difficulties might arise in relation thereto that could be obviated by laws that would facilitate, but not limit or restrict, their application, and for that reason and to this extent, but no further, the General Assembly is authorized to act. This constitutional provision is a limitation upon the power of the General Assembly, and for that reason, if for no other, its framers and the electors of the state that adopted it did not propose or intend that its operation should be left to the pleasure of the General Assembly, for, in that case, the failure of that body to act would defeat the will of the people as expressed in the Constitution of the state.[92]

In other words, *Hunt* confirmed that Article II, Section 1g's anti-subversion clause should be understood as the sole grant of power for the General Assembly to legislate on anything related to the initiative power that is not otherwise provided for in the constitution—and that this delegated power is quite limited.

Ultimately, Article II, Section 1g's anti-subversion clause gives the clearest answer to the question of whether the General Assembly can change statutory initiatives: Lawmakers may facilitate an initiative, but never limit or restrict them. This understanding is reinforced by the history of Ohioans' adoption of the statutory initiative, discussed next.

[91] 91 Ohio St. 176, 182-83 (1915).
[92] 93 Ohio St. 1, 8-9 (1915).

B. The History of Ohioans' Adoption of the Statutory Initiative Power

The broader history of Ohioans' adoption of the initiative and referendum in connection with the state's 1912 constitutional convention has been well documented elsewhere, most recently by Steven Steinglass and Ernest Oleksy,[93] and need not be repeated here. Rather than retracing that broader narrative, this Section focuses on how the history helps answer the specific question of whether the Ohio Constitution allows the General Assembly to alter initiated statutes.

When a constitutional provision's meaning is unclear from its text, Ohio courts often look to historical context, the problems the provision was meant to address, its purpose, and the remedy it sought to provide.[94] Applying this interpretive method to Ohio's statutory initiative provision, which has remained largely unchanged since 1912,[95] reveals three key insights: (1) the statewide initiative and referendum powers were intended to curb legislative corruption and unresponsiveness; (2) the framers rejected language that would have explicitly authorized the General Assembly to alter statutory initiatives; and (3) the framers understood the initiative as giving the people the final word on public policy.

1. The reason and necessity for the statutory initiative power

Public distrust of elected officials ran high during the Progressive Era, when citizens across the country sought reforms that would give them greater control over their representatives.[96] This was especially true in Ohio, where corruption was rampant at both state and local levels; several state legislators and legislative officers were charged with or convicted of bribery around the time of the 1912 convention,[97] and one lawmaker was even on trial for bribery in Columbus while the convention was underway in the same city.[98]

Against this backdrop, whether to adopt the initiative and referendum was one of the constitutional convention's central questions.[99] Delegates repeatedly described the powers as tools to help make the government more responsive to the public. Delegate (and Judge) Hiram Peck of Hamilton County, for example,

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[93] Steinglass & Oleksy, *supra* note 88.
[94] *See* City of Centerville v. Knab, 162 Ohio St.3d 623, 629 (2020); *see also* DeWine, *supra* note 12 at *19-24 (discussing *Knab*).
[95] *See* STEINGLASS & SCARSELLI, *supra* note 5 at 199 (discussing minor revisions adopted in 2008).
[96] *See* Steinglass & Oleksy, *supra* note 88 at 104.
[97] *See Senator Huffman Given Three Years in the Penitentiary for Legislative Bribery*, THE PEOPLE'S DEFENDER (July 18, 1912), available at https://ohiomemory.org/digital/collection/p16007coll108/id/2131/ (noting that State Senator Isaac Huffman was the fourth legislative official to be convicted for bribery after Representative Owen Evens, Senate Sergeant-at-Arms Rodney Diegle, and State Senator L.R. Andrews).
[98] *See id.*
[99] *See* Lloyd Luther Sponholtz, Progressivism in Microcosm: An Analysis of the Political Forces at Work in the Ohio Constitutional Convention of 1912, at 143 (1969) (Ph.D. dissertation, Univ. of Pitt.); Steven Steinglass, *Constitutional Revision: Ohio Style*, 77 OHIO ST. L.J. 281, 307 (2016)

catalogued public corruption in other states and in Ohio's cities before turning to the General Assembly:

> Now come back to the state of Ohio, and I do not need to call your attention to the sad things that have happened here. At this very moment one of our senators is on trial on a charge of bribery in a court near by. Another senator has been convicted, and a public official connected with one of the legislative bodies has also been convicted and sent to prison. Common rumor says that similar offenses have been committed a great many times in Ohio. Is not there need for something to be done about our legislative bodies? Are they to go on wallowing in the mire of corruption forever and amen? Shall we not endeavor to lift them out?[100]

He added, "it is the love of money that has corrupted our city councils and our state legislatures, and to meet all this the situation now demands from our Constitutional Convention in Ohio something in the nature of a remedy."[101] That remedy was the initiative and referendum.[102]

Contemporaneous records are filled with similar sentiments. This includes the pre- and post-convention writings of convention president Herbert Bigelow of Hamilton County.[103] It also includes the convention floor statements of delegates A. Ross Read of Summit County, Henry Keller of Licking County, William Rockel of Clark County, O. H. Stewart of Meigs County, and Stephen Stillwell of Cuyahoga County.[104] Even prominent national figures, like Teddy Roosevelt and William Jennings Bryan addressed the convention and made similar comments while encouraging adoption of the initiative.[105] The Ohio Supreme Court acknowledged this a few years later in *State ex rel. Nolan v. ClenDening* (1915), describing the initiative and referendum as "one of the most essential safeguards to representative government" and explaining that the powers are needed "only when government ceases to be representative of the public welfare."[106] These records

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[100] PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO: CONVENED JANUARY 9, 1912 (hereinafter, "PROCEEDINGS AND DEBATES"), 777 (1912) (Peck).
[101] *Id.* at 776-77 (Peck).
[102] *Id.*
[103] HERBERT S. BIGELOW, DIRECT LEGISLATION THROUGH THE INITIATIVE AND REFERENDUM, at 3 (1907); HERBERT S. BIGELOW, NEW CONSTITUTION FOR OHIO: AN EXPLANATION OF THE WORK OF OHIO'S FOURTH CONSTITUTIONAL CONVENTION, H.R. DOC. NO. 62-863, at 11 (1912)
[104] PROCEEDINGS AND DEBATES, *supra* note 100 at 839 (Read), 845 (Keller), 847 (Rockel), 855 (Stewart), 933-34 (Stillwell).
[105] *Id.* at 378 (Roosevelt), 664 (Bryan).
[106] 93 Ohio St. 264, 277-78 (1915).

make clear that Ohioans understood the initiative as a tool to secure a more respective and representative government—not as a device that elected officials could disregard.

2. The development and evolution of the statutory initiative power

The framers of Ohio's statutory initiative provision did not start from scratch. They looked to the initiative provisions already adopted in other states for inspiration. Examining these provisions alongside the debates at Ohio's 1912 constitutional convention sheds light on how Ohioans understood the power they were creating.[107] Indeed, the convention record shows that delegates were aware of differing approaches, including ones that expressly empowered legislatures to change initiated statutes. Yet, delegates ultimately—and consciously—declined to adopt that approach.

By 1912, eleven states had already enshrined the statutory initiative in their constitutions, and their provisions provided important models to Ohio's delegates.[108] The convention's secretary (and former state librarian), Charles Galbreath, collected and circulated copies of these provisions along with then-pending proposals in other states.[109] The Oregon Supreme Court had also already issued its decision in *Kadderly v. City of Portland,* construing the Oregon Constitution to allow legislative alterations of statutory initiatives (discussed in Part I.B.).[110] The Ohio Supreme Court later acknowledged the significance of *Kadderly* to the convention delegates, noting that it was "fully considered by the [1912] Ohio constitutional convention."[111]

A review of the eleven other statutory initiative provisions in effect at the time reveals that the prevailing constitutional approach was to explicitly provide legislative authority to amend or repeal statutory initiatives. Eight states—Arizona, Arkansas, Colorado, Missouri, Montana, Oklahoma, Oregon, and South Dakota—adopted this approach.[112] Three others had alternative approaches: California

[107] *See* DeWine, *supra* note 12 at *15-16 (explaining that Ohioans' contemporary understandings of other state constitutional provisions that influenced amendments in the Ohio Constitution can be helpful to discerning the provision's original meaning).
[108] C.B. GALBREATH, INITIATIVE AND REFERENDUM, PUBLISHED FOR THE CONSTITUTIONAL CONVENTION OF 1912 7 (1912), available at https://catalog.hathitrust.org/Record/100329238 (last accessed April 7, 2025) (providing a timeline of the "progress of the initiative and referendum in America" and copies of each state constitutional provision that had been adopted before the 1912 convention).
[109] *Id.*
[110] 74 P. 710 (Or. 1903).
[111] State ex rel. Durbin v. Smith, 102 Ohio St. 591, 599 (1921).
[112] *Cf.* APP. B.

prohibited legislative changes unless the initiated law itself permitted them, while Maine and Utah were silent on the issue.[113]

Ohio lawmakers themselves had earlier embraced this prevailing approach. A 1908 joint resolution proposing adoption of the initiative power that nearly passed both legislative chambers provided: "Nothing herein shall in any way be held to abrogate or affect the right or power of the general assembly to repeal or amend any act or law however enacted; or of the courts to pass upon the constitutionality thereof."[114]

Although most states in 1912 explicitly allowed legislatures to amend or repeal initiated statutes, Ohio's delegates charted a different course. The convention's initial draft of an initiative and referendum amendment—introduced by Delegate Robert Crosser, the chair of the convention's initiative and referendum committee—included a clause that would have authorized legislative changes to statutory initiatives, providing that "[t]his section shall not be construed to deprive any member of the general assembly . . . of the right to introduce any measure."[115] That clause, however, did not survive.

After Crosser's proposal was referred to the initiative and referendum committee, and to a special sixty-delegate caucus led by the convention's president, a revised draft was reported back to the full convention.[116] Crucially, the language allowing the General Assembly to alter statutory initiatives had been removed and was never restored.[117] The delegates never revisited the point in subsequent floor debates, suggesting that the omission was a conscious—and uncontroversial—choice.[118]

At the same time, the initiative and referendum amendment ultimately adopted in Ohio did not fully mirror the provisions of any other state that had declined to grant legislatures free rein over initiated statutes. Rather than adopt California's rigid prohibition or the silence of Maine and Utah, Ohio took a unique approach, authorizing the General Assembly to facilitate, but not limit or restrict, the initiative power. By both omitting language that allowed legislative alterations and affirmatively barring laws that "limit or restrict" the initiative, Ohio's design deliberately constrained the General Assembly.

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[113] *Cf. id.*
[114] *See* GALBREATH, *supra* note 108 at 11-13.
[115] OHIO CONSTITUTIONAL CONVENTION 1912: PROPOSAL FOR AMENDMENTS AS INTRODUCED, at *13-18 (presenting "Proposal No. 2, As Introduced").
[116] *See* HOYT LANDON WARNER, PROGRESSIVISM IN OHIO: 1897-1917, at 320 (1964); Sponholtz, *supra* note 99 at 144-45; PROCEEDINGS AND DEBATES, *supra* note 100 at 552-55 (reporting Proposal No. 2 from the initiative and referendum committee).
[117] *See id.*
[118] *Cf. id.* 553-57, 671-717, 726-744, 756-863, 869-954, 1798, 1882-1902, 1906-1909, 1934-1943, 1948-1950.

3. The remedy provided by the statutory initiative power

Contemporaneous records strongly suggest that Ohioans understood the statutory initiative as a tool giving the people the final say over the General Assembly on matters of public policy. Delegates described the initiative as a means of "compel[ling] our servants to obey their masters, the people,"[119] and as a "club" to wield against the General Assembly to ensure the people "will have a way to get what they want."[120] Several other delegates made similar points.[121]

This understanding also emerged during debates over whether to adopt a direct or indirect initiative, which Delegate Crosser described as the "bitterest" question among convention delegates.[122] Although Ohio ultimately adopted the indirect initiative—sending proposed laws first to the General Assembly rather than directly to the voters, thus giving lawmakers a larger role in the process—delegates emphasized that the people would still have the final say. Delegate Peck, for example, stated: "Let [an initiated law] go to the legislature first, and then if the legislators don't get it right the people can take it in hand."[123] Similarly, when one delegate expressed concern that the General Assembly would be "circumvented in its entirety," Convention President Bigelow explained that legislators would still have an opportunity to review or amend proposals during the four-month review period provided by Article II, Section 1b.[124] And in a subsequent explanation, he said that the adopted system would ensure that "the measure which goes to popular vote may have the benefit of any honest effort to improve it in the legislature, and yet may be protected against legislative trickery and bad faith."[125]

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[119] PROCEEDINGS AND DEBATES, *supra* note 100 at 897-98 (Smith).
[120] *Id.* at 917 (Woods).
[121] *See id.* at 779 (Peck) ("This matter that comes before us is, 'Shall the people say, 'We will reserve to ourselves the right to interfere with legislation and to say to the legislature, if in certain matters you go astray and you do not do right we will reserve to ourselves the power to take them in hand if we choose to do so. You are our general agent for all purposes, but you make mistakes in certain matters; you cannot be trusted in certain respects and as to those matters we propose to take charge of them if we think necessary?'"); *id*. at 839 (Read) ("It is only when the legislature fails to act in accordance with the public demand that this reserved power of the people would be called into action."); *id.* at 902 (Hoskins) ("I believe that when a majority of the people, after a fair discussion of a question, decide that the law or constitution shall be thus and so, that the will of the majority of the people should be the law or the constitution."); *id.* at 941 (Bigelow) (arguing that if the people had the "final say" on matters of public policy through the initiative and referendum, legislators' "motive for bribery would cease.").
[122] Robert Crosser, *The Initiative and Referendum Amendments in the Proposed Ohio Constitution*, 43 THE ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 191, 195 (1912), available at https://play.google.com/books/reader?id=OjUhAQAAIAAJ&pg=GBS.PA190&hl=en (last accessed April 7, 2025).
[123] PROCEEDINGS AND DEBATES, *supra* note 100 at 782.
[124] *Id.* at 1909 (Bigelow).
[125] BIGELOW, NEW CONSTITUTION, *supra* note 103 at 14.

Others who observed the convention expressed a similar understanding. For instance, scholar Frank J. Goodnow, who covered the 1912 convention for the New York Times, wrote that the "underlying thought" of the convention's many proposals was to subject the state government to "extended, continuous and easily exercised control" by the people.[126] He described the initiative and referendum as the "most important proposals" to accomplish this.[127]

By contrast, no delegate or other contemporaneous observer appears to have suggested that, like Oregon's constitutional provision construed in *Kadderly*, the General Assembly would have free rein to alter a voter-approved initiated statute. Taken together, these records strongly indicate that, although the General Assembly could propose alternatives to initiated proposals during a defined four-month window, the 1912 convention delegates and Ohio voters understood the initiative as ensuring that the people would have the final say.

C. Interpretive questions raised by the analysis

Interpreting Article II, Section 1g's anti-subversion clause as limiting the General Assembly's ability to alter voter-approved initiated statutes raises several questions. A threshold interpretive issue is whether the final two sentences of Section 1g—"[t]he foregoing provisions of this section shall be self-executing, except as herein otherwise provided" and "[l]aws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved"—apply broadly to Article II's initiative and referendum powers, or only to the specific petition procedures detailed in Section 1g, such as signature requirements, ballot language, and judicial review.

At first glance, the use of "this section" in the "foregoing provisions of this section" and "their operation" might suggest that the clause applies only to the provisions specifically prescribed in Article II, Section 1g and not to the other initiative-related provisions in Article II. However, reading "this section" to apply more broadly to all of Article II's initiative provisions is supported by the fact that all the initiative and referendum provisions in Article II were submitted to voters as a single amendment in 1912.[128] This suggests that Section 1g should be understood as a subsection of Section 1 rather than an independent provision.[129] Otherwise, if

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[126] Frank J. Goodnow, *The Initiative and Referendum in Ohio's New Constitution*, N.Y. TIMES (Aug. 18, 1912), available at https://timesmachine.nytimes.com/timesmachine/1912/08/18/100245412.html?pageNumber=66.

[127] *Id.*

[128] PROCEEDINGS AND DEBATES, *supra* note 100 at 2101-03.

[129] As a matter of drafting style, no constitutional provisions in 1912 followed the now-common internal organizational structure that designates subsections with letters in parentheses (e.g., "(A)"). *Cf. id*. at 2119-2145 (showing the Ohio Constitution with the amendments proposed by the 1912 constitutional convention that were approved by the people). This formatting style appears to have not been used in the constitution until 1968 with the adoption of the "Modern Courts Amendment."

Section 1g's "self-executing" language applied only to its own procedural rules, the substantive initiative and referendum powers outlined in Sections 1a (constitutional initiative), 1b (statutory initiative), and 1c (referendum) would not be self-executing and could theoretically become inoperative without legislative action—an outcome the framers and electors in 1912 specifically sought to avoid, as *Hunt* explained.[130]

Moreover, even if the "self-executing" language applies only to procedural requirements, the sentence that follows makes clear that the General Assembly may not pass laws that in any way limit or restrict "either such provisions or the powers herein reserved."[131] The use of both "such provisions" and "the powers herein reserved" indicates a broad scope; not only are the procedural "provisions" protected, but so too are the broader initiative and referendum "powers" reserved throughout Article II.

A related question is whether Section 1g's anti-subversion clause prevents only burdensome procedural barriers, like restrictive petition requirements, or whether it also prohibits broader, substantive limitations. This question is trickier, as the limited case law applying the clause has only addressed procedural restrictions.[132] The Ohio Supreme Court has held that a "statute facilitates the initiative *process* if the purpose of the requirement is not to restrict the power of the people to vote or sign petitions, but to ensure the integrity of and confidence in the process."[133] Still, the court has never stated that the anti-subversion applies exclusively to procedural matters—those just happen to be the only issues litigated so far. Moreover, nothing in the constitutional text limits the anti-subversion clause to procedural matters. Instead, it broadly restricts the General Assembly from passing laws that limit either the initiative "provisions" or "power."

As a hypothetical, consider a statute prohibiting Ohioans from using the statutory initiative power to pass laws on a particular subject. Although the constitution does not explicitly bar lawmakers from imposing subject-matter

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Cf. Ohio Constitution – Law and History: Table of Proposed Amendments, CSU|Law, https://guides.law.csuohio.edu/ohioconstitution/ohioconstitutionamendmentstable.

[130] State ex rel. Hunt v. Hildebrant, 93 Ohio St. at 8-9.

[131] OHIO CONST. art. II, § 1g.

[132] *See* In re Protest Filed by Citizens for Merit Selection of Judges, Inc., 49 Ohio St. 3d 102, 106 (1990) (upholding a state law requiring petition signers to provide their voting address); In re Protest of Brooks, 155 Ohio App. 3d 370 (3d Dist. 2003) (upholding a requirement for disclosure of circulator compensation); Schaller v. Rogers, 2008-Ohio-4464, 2008 WL 4078446 *10 (10th Dist. Sept. 4, 2008) (upholding a requirement for referendum petitions to include a "fair and truthful" summary of the law to be referred, as determined by the attorney general); State ex rel. Ethics First-You Decide Ohio Pol. Action Commt. v. DeWine, 147 Ohio St. 3d 373 (2016) (upholding a state law requiring a state board to determine whether a constitutional initiative petition contains more than one amendment).

[133] *Ethics First-You Decide*, 147 Ohio St. 3d at 377 (quotation omitted) (emphasis added).

restrictions—and such a restriction is not "procedural" in that it does not involve a particular mechanical aspect of the initiative power—it would still violate Section 1g's anti-subversion clause. This is because, within the structure of the initiative provisions, Section 1g is the General Assembly's only source of authority to regulate aspects not otherwise addressed in the constitution. And that authority comes with a clear limit: Any law enacted pursuant to Section 1g must facilitate the initiative power without in any way limiting or restricting it.

Another question is whether a legislative override of a voter-approved statutory initiative "limits or restricts" the people's initiative power. It plainly can. A core aspect—and perhaps the defining one—of the statutory initiative power is that an initiated measure approved by voters becomes law. Indeed, the constitution explicitly states *three* times, without qualification, that an initiated law "shall" take effect if approved by the voters.[134] But if the General Assembly alters or repeals what the people enact, it reduces the initiative to a non-binding advisory vote rather than an exercise of reserved legislative power. In this sense, a post-election override functions no differently than a pre-election restriction on the subjects eligible for initiatives as both substantively curtail the people's ability to legislate directly.

To be sure, a state could protect the petition process from legislative interference while still allowing lawmakers to alter initiated laws. About a third of the states with statutory initiative take this approach.[135] But nothing in the text of the Ohio Constitution suggests that it takes this approach, too. And, as the previous section shows, the drafters of Ohio's statutory initiative provision deliberately rejected language that would have authorized such legislative changes, striking it from an early draft.

Moreover, to the extent that ambiguity exists on any of these interpretive issues, the Ohio Supreme Court has long held that such ambiguities must be resolved in favor of the people's exercise of the initiative power rather than in favor of the General Assembly. This principle echoes the court's statement in *Hunt* that a constitutional provision's "intent and purpose" should not be "defeated by any technical construction of its terms,"[136] and its directive to "liberally construe" the initiative power and avoid "diminish[ing]" it.[137] Accordingly, any uncertainty about

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[134] OHIO CONST., art. II, § 1b.
[135] *See* Part I.
[136] *Hunt*, 93 Ohio St. at 8-9; *see also* Pfeifer v. Graves, 88 Ohio St. 473, 475 (1913) ("The language of section 1b is to be fairly and reasonably interpreted, so as to carry out the purpose of the people who adopted the dual form of direct and indirect legislation prescribed therein.").
[137] State ex rel. Ohio Liberty Council v. Brunner, 125 Ohio St. 3d 315, 324 (2010); *see also* Hockett v. State Liquor Licensing Board, 91 Ohio St. 176 (1915) (explaining that, in interpreting the Ohio Constitution's constitutional initiative power, the court must avoid strict construction and instead "employ that broad-gauged liberal construction that the general terms of constitutional provisions necessarily require in order to make them effective and carry out the real intention of the people in making the Constitution.")

the legislature's authority to alter statutory initiatives should be resolved in favor of preserving the people's reserved power.

In sum, although the Ohio Constitution does not expressly address whether the General Assembly may amend or repeal statutory initiatives, its text, structure, and history strongly indicate that such authority is significantly limited.

III. APPLYING THE STATUTORY INITIATIVE POWER'S ANTI-SUBVERSION CLAUSE

If Article II, Section 1g's anti-subversion clause applies to legislative changes to initiated statutes, it does not impose an absolute bar. The General Assembly may still enact laws that "facilitate" an initiative, so long as they "in no way limit[] or restrict[]" it. This Part defines those terms, considers how that standard should operate in practice, and applies to Ohio's most recently approved initiated statutes.

A. The Standard of Review

Applying the anti-subversion clause first requires clarifying what it means for legislation to "facilitate" an initiative and "in no way limit[] or restrict[]" it. "Facilitate" generally means to make something easier, help bring it about, or ensure it runs smoothly.[138] "Limit" typically refers to assigning boundaries, curtailing, or reducing in extent, while "restrict" similarly means confining within bounds or imposing limits on use or distribution.[139] Taken together, these terms indicate that the General Assembly may improve or enhance an initiative but cannot hamper it.

Although Ohio courts have applied Article II, Section 1g's anti-subversion clause to initiative-related legislation, none has addressed a scenario in which the General Assembly altered an initiated statute. Existing cases instead illustrate how the courts have balanced the initiative power against intervening legislation. In the most recent example, *State ex rel. Ethics First-You Decide Ohio Political Action Committee v. DeWine* (2016), the Ohio Supreme Court upheld a pre-circulation single-subject review process, reasoning that the "modest" procedural impositions—shortening the circulation period and potentially dividing a proposal

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[138] *See* MERRIAM-WEBSTER, *Facilitate*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/facilitate (last accessed April 7, 2025); *see also* NEW WEBSTERIAN 1912 DICTIONARY ILLUSTRATED, at 315 (1912) (defining "facilitate" as "to make easy or less difficult; lessen the labor of.").

[139] *See* MERRIAM-WEBSTER, *Limit*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/limit (last accessed April 7, 2025); *see also* NEW WEBSTERIAN 1912 DICTIONARY ILLUSTRATED, at 503 (1912) (defining "limit" as a verb "to confine within bounds; restrict."); MERRIAM-WEBSTER, *Restrict*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/restrict (last accessed April 7, 2025); *see also* NEW WEBSTERIAN 1912 DICTIONARY ILLUSTRATED, at 503 (1912) (defining "restrict" as "to confine or limit").

into multiple measures—were justified by their benefit to voters.[140] One justice, however, has since cautioned that this line of precedent may under-protect the people's initiative power, warning that such "legislative facilitation" can erode the people's reserved authority over time and suggesting that courts should be more protective.[141] Even so, these examples demonstrate that, at a minimum, Ohio courts recognize the need to scrutinize legislative actions that burden the initiative power.[142]

Reading the anti-subversion clause and the precedent applying it suggests that Ohio courts considering a legislative alteration to an initiated statute should undertake an inquiry much like Arizona's courts do, asking whether legislation "furthers the purpose" of an initiative.[143] Framing the inquiry in these terms naturally leads to a form of heightened, if not strict, scrutiny—as in the Utah Supreme Court's decision *League of Women Voters of Utah v. Utah State Legislature*—requiring the State to show that a challenged law genuinely advances, rather than impedes, the measure's core objective.

B. Applying the Standard of Review

Under this standard, the General Assembly may enact changes that "facilitate" an initiative so long as they "in no way limit[] or restrict[]" it. Such facilitate changes could include minor technical edits, adjustments needed for effective implementation, or expansions consistent with the initiative's core purpose. Lawmakers may also address related issues not expressly covered by the initiative, akin to the "related but distinct changes" that arise in California.[144] What they cannot do is enact laws that undermine, conflict with, or otherwise constrain a voter-approved measure. Examining Ohio's two most recently approved initiated statutes—a 2006 indoor smoking ban and the 2023 marijuana legalization law—shows how legislative changes can either further an initiative or improperly limit or restrict it.

1. The "Smoke Free Workplace Act" (2006)

Consider first the "Smoke Free Workplace Act," an initiated statute Ohio voters approved in 2006 that prohibited smoking inside public places and places of

[140] 147 Ohio St. 3d 373, 377 (2016); *see also* Schaller v. Rogers, 10th Dist. Franklin No. 08AP-591, 2008-Ohio-4464, 2008 WL 4078446 (upholding a similar pre-circulation review conducted by the state attorney general).
[141] Jennifer Brunner, *Is Limiting Abortion a Pretext for Oligarchy? Abortion and the Quest to Limit Citizen-Initiated Ballot Rights in Ohio*, 2023 Wis. L. Rev. 1493, 1503 (2023).
[142] Jennifer Brunner, *Is Limiting Abortion a Pretext for Oligarchy? Abortion and the Quest to Limit Citizen-Initiated Ballot Rights in Ohio*, 2023 Wis. L. Rev. 1493, 1503 (2023).
[143] *See* Part I.A.
[144] *See* Part I.A.

employment, subject to limited exceptions.[145] The law remained unchanged until 2015, when legislators made minor stylistic edits (e.g., changing "website" to "web site") and authorized the state health department to set fines for violations of an existing provision.[146] In 2017, lawmakers created a narrow exemption for lab facilities conducting tobacco-related medical research.[147] Later revisions expanded the ban to include vaping devices,[148] clarified exemptions for retail tobacco stores, and updated enforcement provisions to align with broader administrative law changes.[149] Each of these changes refined enforcement or adopted the statute to new developments without undermining its core purpose—prohibiting indoor smoking—and thus would not violate Article II, Section 1g's anti-subversion clause.

By contrast, a law creating broad exceptions to, or repealing, the indoor smoking ban could not be characterized as "facilitating" the initiative and would almost certainly violate the anti-subversion clause. Similarly, a change weakening the health department's enforcement authority would likely be unconstitutional, whereas replacing the mechanism with an alternative might survive scrutiny if it is equally effective, though courts would likely view such a substitution skeptically given the voters' chosen enforcement structure.

Finally, suppose the General Assembly had exempted vaping devices from the indoor smoking ban rather than amending the ban to include them. This presents a closer question. The 2006 initiative defined "smoking" as "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant."[150] Whether vaping devices falls within that definition could require a factual record. If it does, an exemption would impermissibly restrict the initiative; if not, the change might qualify as a "related but distinct" legislative adjustment outside Article II, Section 1g's scope.

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[145] *See, e.g.,* OHIO SEC'Y. OF STATE, *Election Results – State Issue 5: November 7, 2006*, https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/; OHIO DEP'T. OF HEALTH, *Analyses of the Impact of Ohio's Smoke-Free Workplace Act – Executive Summary* (Sept. 2011), https://odh.ohio.gov/wps/wcm/connect/gov/3f5adafd-813a-4d40-9514-fc873bab6cc6/smokefreeimpactstudyexecutivesummary.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-3f5adafd-813a-4d40-9514-fc873bab6cc6-mi7TKfP.

[146] 131st Ohio General Assembly, House Bill 64 (amending Ohio Rev. Code § 3794.07).

[147] 132nd Ohio General Assembly, House Bill 49 (amending Ohio Rev. Code § 3794.03).

[148] 134th Ohio General Assembly, House Bill 110 (amending Ohio Rev. Code § 3794.01, 3794.03).

[149] 135th Ohio General Assembly, House Bill 33 (amending Ohio Rev. Code § 3794.03, 3794.09).

[150] *See* OHIO SEC'Y. OF STATE, *State Issue 5: November 7, 2006: Full Text*, https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/state-issue-5-full-text/ (enacting Ohio Rev. Code § 3794.01(A)).

2. "An Act to Control and Regulate Adult-Use Cannabis" (2023)

Changes and proposed changes to "An Act to Control and Regulate Adult-Use Cannabis" further illustrate how Article II, Section 1g's anti-subversion clause should be understood to constrain legislative authority. Through August 2025, lawmakers have eliminated provisions directing portions of the special sales tax revenue to the division of cannabis control and to substance abuse and addiction services, and they have repealed the social equity and jobs program.[151] The first two changes might be defensible under an undue burden analysis: although the dedicated funds were eliminated, state law still requires funding for both the division and for substance abuse and addiction services—albeit through privatized programs—suggesting the underlying functions remain largely intact.

The repeal of the social equity and jobs program, by contrast, is more difficult to justify. There is no indication the repeal addressed a legal defect or implementation necessity; rather, it appears to reflect a policy disagreement[152]—a type of legislative action Article II, Section 1g was designed to prevent. While a judicial finding of unconstitutionality could warrant repeal, Ohio's program has faced no such challenge.[153] Absent that justification, the repeal likely exceeds the limited authority Article II, Section 1g grants to the General Assembly for facilitating an initiative.

Other proposals underscore the same principle. A full repeal of the initiative without replacement, which was threatened by some lawmakers in 2023, would almost certainly violate Article II, Section 1g, just as a wholesale repeal of the indoor smoking ban would.[154] Likewise, proposed changes to increase penalties for passengers smoking marijuana in a vehicle from a minor misdemeanor to

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[151] *Cf.* DRUG ENFORCEMENT AND POLICY CENTER, *Comparison of Issue 2 Recreational Marijuana Initiative and Revisions by the Ohio General Assembly*, (July 3, 2025), https://moritzlaw.osu.edu/sites/default/files/2025-07/Ohio-reforms-comparison-table-Issue2-HB96Budget-July2025_final-for-web.pdf.

[151] *See id.*

[152] *Cf.* Jeremy Noble, *Voters Backed Cannabis Social Equity in Ohio. Lawmakers Ditched It Anyway*, CRAINS CLEVELAND (Aug. 18, 2025), https://www.crainscleveland.com/cannabis/lawmakers-scrap-ohios-cannabis-social-equity-program.

[153] Other states have seen similar social equity programs challenged in federal court as violating the federal dormant commerce clause. *See* Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd., ___ F.4th ____, 2025 WL 2313142 (2d Cir. Aug. 12, 2025); Chris Roberts, *Another Blow for New York, Marijuana Social Equity in Federal Court*, MJBIZDAILY (Aug. 13, 2025), https://mjbizdaily.com/another-blow-for-new-york-marijuana-social-equity-in-federal-court/.

[154] *See* Karen Kasler, *Senate President Says Marijuana Law Will Get Some Changes if Ohioans Pass Issue 2*, STATEHOUSE NEWS BUREAU (Oct. 13, 2023), https://www.statenews.org/government-politics/2023-10-13/senate-president-says-marijuana-law-will-get-some-changes-if-ohioans-pass-issue-2.

mandatory jail time,[155] double the special sales tax rate,[156] redirect tax revenue away from localities that allow dispensaries,[157] or halve the number of permissible "home grow" plants[158] all appear motivated by policy disagreement rather than implementation concerns, and thus would likely violate Article II, Section 1g.

By contrast, some potential legislative changes would facilitate the initiative, or at least regulated related issues, without altering what the voters approved. For example, state officials have claimed that the initiative's allocation of funds to host communities lacks appropriation language necessary to release those funds.[159] If correct, adding appropriation language would almost certainly qualify as a permissible facilitation of the initiative, give that voters approved the allocation. As another example, proposals to regulate hemp-derived products such as delta-8 THC would likely fall outside Article II, Section 1g's constraints because the initiative did not directly or indirect address those products.[160]

In short, whether a legislative change complies with Article II, Section 1g turns on the particulars of both the initiative and the proposed amendment. While lawmakers may adopt measures that refine or expand an initiative to ensure its effective operation, they may not enact laws that in any way limit or restrict what voters approved.

CONCLUSION

Whether further changes to "An Act to Regulate and Control Adult Use Cannabis" will follow remains to be seen. By August 2025, lawmakers had already enacted several revisions, and other sweeping overhauls remain pending.[161] These

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[155] *See* Ohio Rev. Code §§ 3780.36(D)(2), 3780.99(B).

[156] *See* Douglas A. Berman, Jana Hrdinova, & Dexter Ridgway, *Tinkering with Taxes: Contextualizing Proposals to Alter Ohio's Marijuana Tax Rate and Revenue Allocations*, DRUG ENFORCEMENT AND POLICY CENTER (February 2025), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5137083.

[157] *See id.*

[158] Anna Staver, *Ohio Growers Push for Changes in Senate Marijuana Bill*, CLEVELAND.COM (Feb. 19, 2025), https://www.cleveland.com/news/2025/02/this-screws-us-ohio-growers-push-for-changes-in-senate-marijuana-bill.html.

[159] *See* Haley BeMiller, *Ohio Marijuana Law Changes Tall in Statehouse. Cities are Paying the Price,* COLUMBUS DISPATCH (June 26, 2025), https://www.dispatch.com/story/news/politics/2025/06/26/changes-to-ohio-marijuana-law-stall-over-hemp-local-funding/84339715007/.

[160] *See, e.g.,* Sarah Donaldson, *Ohio House Rolls Out Its Own Cannabis Bill, With Fewer Changes Than Senate Version*, STATEHOUSE NEWS BUREAU (March 7, 2025), https://www.statenews.org/government-politics/2025-03-07/ohio-house-rolls-out-its-own-cannabis-bill-with-fewer-changes-than-senate-version.

[161] *See, e.g.,* Megan Henry, *'We Are Going to Push Pause' On Ohio Marijuana Legislation, Says Republican Lawmaker*, OHIO CAPITAL JOURNAL (June 25, 2025), https://ohiocapitaljournal.com/2025/06/25/we-are-going-to-push-pause-on-ohio-marijuana-legislation-says-republican-lawmaker/.

enacted and proposed changes proceed from the assumption that legislators are free to amend the initiative Ohioans overwhelmingly approved in 2023. Yet the text and history of Article II of the Ohio Constitution challenge this assumption, suggesting that lawmakers' role is limited to passing laws that "facilitate" a voter-approved initiative while "in no way limiting or restricting" it. This standard may not foreclose all legislative changes to initiatives, but it would provide meaningful protection for the people's statutory initiative power.

APPENDIX A: CURRENT STATE CONSTITUTIONAL PROVISIONS REGARDING LEGISLATIVE ALTERATIONS OF STATUTORY INITIATIVES

State & Provisions	Current Constitutional Text
Alaska ALASKA CONST. art. XI, § 6	"An initiated law . . . may not be repealed by the legislature within two years of its effective date. It may be amended at any time."
Arizona ARIZ. CONST. art. IV, § 1(6)(B)-(C)	"(B)The legislature shall not have the power to repeal an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon or to repeal a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon and for all other initiatives and referendums, the legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon and shall not have the power to repeal a referendum measure decided by a majority of the votes cast thereon. (C) The legislature shall not have the power to amend an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon, or to amend a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure. For all other initiatives and referendums, the legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon and shall not have the power to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of

	each house of the legislature, by a roll call of ayes and nays, vote to amend such measure."
Arkansas ARK. CONST. art. V, § 1	"No measure approved by a vote of the people shall be amended or repealed by the General Assembly . . . except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly"
California CALIF. CONST. art. II, § 10	"The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval."
Colorado COLO. CONST. art. V, § 4(a)	"This section shall not be construed to deprive the general assembly of the power to enact any measure."
Idaho	Does not explicitly address.[162]
Maine	Does not explicitly address.[163]
Massachusetts MASS. CONST., Articles of Amendment art. XLVIII, § 4.	"Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people."
Michigan MICH. CONST. art. II, § 9	"[N]o law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature."

[162] *See* Part I discussing *Luker v. Curtis*, 136 P.2d 978 (Ida. 1943).
[163] *See* Part I discussing *Opinion of the Justices*, 673 A.2d 693 (Me. 1996).

Missouri MO. CONST. art. III, § 52(b)	"Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise. This section shall not be construed to deprive any member of the general assembly of the right to introduce any measure."
Montana	Does not explicitly address.[164]
Nebraska NEB. CONST. art. III, § 2	"The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature."
Nevada NEV. CONST. art. 19, § 2	"An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect."
North Dakota N.D. CONST. art. III, § 8	"A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house."
Ohio	Does not explicitly address.
Oklahoma OKLA. CONST. art. V, § 7	"The reservation of the powers of the initiative and referendum in this article shall not deprive the Legislature of the right to repeal any law, propose or pass any measure, which may be consistent with the Constitution of the State and the Constitution of the United States."
Oregon	Does not explicitly address.[165]

[164] *See* Part I n. 36 discussing *State v. Stewart*, 53 Mont. 18 (1916), which was decided under a prior version of the state constitution.
[165] *See* Part I discussing *Kadderly v. City of Portland,* 74 P. 710 (Or. 1903), which was decided under a prior version of the state constitution.

South Dakota S.D. CONST. art. III, § 1	"This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure."
Utah	Does not explicitly address.[166]
Washington WASH. CONST. art. II, § 1(c)	"No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: PROVIDED, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon."
Wyoming WY. CONST. art. III, § 52(f)	"An initiated law becomes effective ninety (90) days after certification, is not subject to veto, and may not be repealed by the legislature within two (2) years of its effective date. It may be amended at any time."

[166] *See* Part I discussing *League of Women Voters of Utah v. Utah State Legislature,* 554 P.3d 872 (Utah 2024).

APPENDIX B: STATE CONSTITUTIONAL PROVISIONS REGARDING LEGISLATIVE ALTERATIONS OF STATUTORY INITIATIVES, AS OF OHIO'S 1912 CONSTITUTIONAL CONVENTION

State & Provisions (Year of Adoption in Parentheses)	Constitutional Text
Arizona ARIZ. CONST. art. IV, § 14 (1911)	"This section shall not be construed to deprive the legislature of the right to enact any measure."
Arkansas ARK. CONST. art. IV, § 1, second paragraph (1910)	"This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure."
California CAL. CONST., art. IV, § 1, seventh paragraph (1911)	"No act, law or amendment to the constitution, initiated or adopted by the people at the polls under the Initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said Initiative measure;"
Colorado COLO. CONST. art. V, § 1, third paragraph (1910)	"This section shall not be construed to deprive the general assembly of the right to enact any measure."
Maine ME. CONST. art. IV, pts. 1 & 3 (1908)	Did not explicitly address.

Missouri MO. CONST. art. IV, § 1, fourth paragraph (1908)	"This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure."
Montana MONT. CONST. art. V, § 1, fifth paragraph (1906)	"This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure."
Oklahoma OKLA. CONST. art. V, § 7 (1907)	"The reservation of the powers of the Initiative and Referendum in this article shall not deprive the legislature of the right to repeal any law, propose or pass any measure, which may be consistent with the constitution of the state and constitution of the United States."
Oregon OR. CONST. art. IV, § 1 (1902)	"This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure."
South Dakota S.D. CONST. art. III, § 1 (1898)	"This section shall not be construed so as to deprive the legislature or any member thereof of the right to propose any measure."
Utah UTAH CONST. art. VI. (1900)	Did not explicitly address.