

Should we go to the ballot?

Technical requirements for a citizens' ballot initiative in Ohio and five political keys to victory

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Paul Ryder, Assistant Director
Ohio Citizen Action

Under the right circumstances, a ballot issue campaign can be a powerful tactic, changing or even reversing the tide of an issue, creating new law and a new political mandate in one stroke. Under the wrong circumstances, it can be a setback.

Anyone contemplating a ballot drive should treat it with the respect it deserves. Make it your business to know the [history of ballot issues](#) and the applicable provisions of the law, and think carefully through every aspect of the proposed campaign.

It is sobering to consider that many signature drives fall short of qualifying for the ballot, and that most issues that do make the ballot are defeated. Since 1950, 49 constitutional amendments, statutes and referenda have been proposed by petition; only 24% of them have won the support of Ohio voters. Looking just at constitutional amendments proposed by petition since 1913, of 70 put to the voters, only 18 have won. That's a 26% success rate.

Ohio Citizen Action has initiated or been a significant participant in [eleven state or local ballot campaigns](#). On statewide issues, the organization has won 50% of the time, with two wins and two losses. On local issues, it has won 71% of the time, with five wins and two losses. Citizen Action has won its last five ballot contests in a row.

1. Signatures

What kind of ballot issue?

If you are considering a local ballot issue, consult your local charter and ordinances; every local jurisdiction is different.

Statewide, there are four kinds of ballot issues:

- *Constitutional amendment by initiative petition:* A successful signature drive puts this directly on the ballot.
- *Statutory initiative:* After an initial signature drive, a proposed statute goes to the legislature for consideration. If the legislature kills it, or does nothing, or amends it

in a way not acceptable to the petitioners, a second signature drive can put it on the ballot.

- *Referendum*: Immediately after a law is passed, petitioners can put it on the ballot with a signature drive. A majority "no" vote throws out the law.
- *Measures put on the ballot by the legislature*: No signature drive is needed; these measures tend to be non-controversial.

To think through these choices, read first the primary applicable provisions of the Ohio Constitution, especially [Article II, Sec. 01a-01g](#) (initiatives and referenda), and [Article XVI](#) (constitutional amendments), and the Ohio Revised Code, [Chapter 3519](#) (elections). Reading these sections is no substitute for competent legal advice, which you must have prior to deciding to begin a campaign. Election laws are complicated, changing and unforgiving.

How many total signatures would we have to get?

It depends on what kind of ballot issue you are going for.

<i>Type</i>	<i>Percent of electorate</i>	<i>Net signatures</i>	<i>Gross signatures (150% of net)</i>
Constitutional amendment by initiative	10%	385,246	577,869
Statutory Initiative	3% twice	115,570 twice	173,355 twice
Referendum	6%	231,150	346,725

The required percent is applied to the size of the statewide electorate, defined as the number of voters in the last gubernatorial election. In 2010, 3,852,453 Ohioans voted in the general election for governor. 10% of that is 385,246.

For each kind of ballot issue, there are also per county signature requirements. Again, study the law carefully.

After you turn in the signatures, the boards of elections will scrutinize them for errors. Some signatures and some whole petitions will be rejected. It is not unusual for 25 - 35% of signatures to be disqualified. The legal requirements are 'net' signatures, that is, the number of signature declared valid by the boards of elections after they have checked the petitions.

How many gross signatures you need depends on how you gather them. If you go door-to-door with a 'walking list' of registered voters, the percentage of valid signatures will be relatively high. If you collect signatures on a sidewalk downtown or outside a K-Mart, the percentage will be lower.

It is prudent to gather 50% more signatures than the required number of valid signatures. For example, since a constitutional amendment requires 385,246 valid signatures, collect 577,869.

If you are checking petitions as they are delivered to you against a current state voter list, you will have a better sense of the quality of the signatures you are getting, and can more confidently plan how many surplus signatures you'll need.

There are different time restrictions for signature gathering for each kind of ballot issue; check the law closely.

Could we get enough signatures in time?

In the heat of a campaign it is easy to imagine a signature drive succeeding on the infectious enthusiasm of wave after wave of new volunteers. This is possible, but rare. Almost always, a signature drive succeeds through sheer organizational brute force or paid solicitors or a combination of the two.

Create a signature budget, including where they will come from, how many, and when and how many signatures you will have to turn over to the Secretary of State on what date. The signature budget requires the same accountant-like attention to detail as the campaign's money budget.

In your signature budget, only count those signatures over which you have direct control, including those from --

- your own organization,
- another organization you know well, if it has a good track record of gathering signatures and if it has made a firm commitment, or
- a hired petitioning firm with a good track record

No other promised signatures belong in the budget. At the beginning of the signature drive, many people and groups will promise signatures: *"I'll bring in 500 signatures by the end of the month. No problem."* This is great; give them encouragement, and training if necessary, and follow-up regularly. Do not, however, put these promised signatures in the signature budget until you have the completed petitions in hand. Most such promises are not fulfilled, so don't gamble the ballot drive on them. Those that do come in will be happy surprises.

Don't start the ballot drive unless your signature budget balances, that is, until you know how you're going to gather the required number of signatures on time.

One way to get a feel for the signature-gathering pace you'll need to maintain is to divide the gross signatures required by the number of days available. For example, in 2012, the Constitutional amendments or statutes proposed by initiative petitions to be submitted directly to the voters had to have been filed with Secretary of State by July 4, 125 days before the general election. If you were were working toward a constitutional amendment, and you wanted to gather 150% of the required number of signatures; that would be 577,869 gross signatures.

- If you started on January 1, you would have had 161 days, so you'd have to have averaged 3,590 signatures a day, seven days a week, over that period.
- If you started on March 1, you would have had 126 days, for an average of 4,587 signatures a day.
- If you started on May 1, you would have had 65 days, for an average of 8,891 signatures a day.

The cost of the signature drive itself depends on how you gather them. Unless you have one or more large reliable mobilized organizations working on the signature drive, you will find yourself considering hiring a petition management firm. Some of the more active companies nationally are National Petition Management, Progressive Campaigns, Inc., Citizens Solutions, Inc., Kimball Petition Management, Masterson & Wright, Voice of the Electorate, LLC, Arno Political Consultants, Dewey Square Group, Lincoln Strategy Group, M&R Strategic Services, NW Democracy Resources, and Riester Consulting Company.

The costs per required signature gathered by a petition management firm varies greatly by firm, by state, by the amount of time available, and by how many other petitions the circulators are carrying.

In 2010, the average cost per required signature for the 49 measures on state ballots nationwide was \$3.29. If that were the price for an Ohio constitutional amendment signature drive, that would mean a cost of --

$$\$3.29 \times 385,246 = \$1,267,459.34$$

2. Five keys to the outcome

- ***Will it be contested?***

If you can pass the measure through the legislature or, if a constitutional amendment, have the legislature put it on the ballot, do it that way. It's much easier.

Only consider a ballot drive if powerful opponents are blocking you in the legislature. You have to assume that, if they are blocking you in the legislature, they will try to block you on the ballot as well.

It is possible, of course, that even powerful adversaries will decide not to oppose the measure once it is on the ballot. This happened, for example, in 1992 when the Ohio Roundtable, Ohio Citizen Action and other groups put term limits on the Ohio ballot. State House lobbyists and incumbents hated the proposal, but saw that no amount of money on TV ads could stop the measure from winning. They folded.

Notwithstanding this possibility, you must assume at the outset that there will be a tough contest.

- ***Is the issue already well-defined in the voters' minds?***

If voters already have a fix on what this is about, neither side will have much success in changing their minds, regardless of how many TV ads they buy. If not, then there will be a race by the two sides to define it in voters' minds first; whoever wins this race wins the vote.

For example, the 2008 payday lending referendum was sponsored by the payday lending industry, which put \$20.7 million into the campaign to pass it. They were opposed by a grassroots campaign which raised only \$547,413. If money were all that mattered, the payday loan industry would have prevailed easily. Instead it was crushed statewide, 64% - 36%, and in 87 of 88 counties. The issue was well understood by the voters before the campaign began, and they had a strong antipathy for predatory lenders. In addition, Ohio newspaper editorial boards leveled tough attacks on the lenders. This was too much for the industry to overcome.

- ***Do you have enough money to win?***

It costs a lot of money to run a ballot issue campaign, but not as much as some think. The opponents might spend \$10 million on television ads, but this does not mean that you have to spend that much to win. You just need to spend enough to get your message across to the voters.

Ohio is one of the four toughest states in which to do this. The other three are Texas, Florida and California. In these four big states, you can't buy TV time in the one dominant TV market because there isn't one. There are a half-dozen important media markets to buy time in, and that is costly.

In Ohio, all other things being equal, it costs at least \$2 million to get your message across to the voters. If you can raise that much, and the other factors are in your favor, you can beat anyone. In the 1997 workers compensation referendum campaign, for example, a \$2.4 million 'no' campaign beat a \$7.8 million 'yes' campaign, in 87 out of 88 counties, and by 57% to 43% statewide.

As with the signature budget, do not begin the campaign unless the money budget balances, that is, you know where the money is going to come from on time.

- *Are the proposal and the message simple?*

Given the little time voters have to concentrate on the issue, and the practical difficulties of reaching millions of them in a few weeks, a complicated message simply won't register with enough people.

Further, if you need a 'yes' vote to win, and your proposal is complex, the opponents will be much more likely to find some detail in an obscure provision that they can twist beyond recognition, and then use to attack the whole thing.

Legislators pass many complicated bills; voters don't.

- *Is this a "yes" vote or a "no" vote?*

Voters are properly cautious. If they are not sure about an issue, they will vote 'no'. This gives a big advantage to the 'no' side in a ballot issue campaign. They don't need to make a solid case against the issue, or even have any credibility. All that is required is to sow enough doubt or confusion in the voters' minds, and they win.

III. Clues from history

As reported above, since 1950, 12 of 49 statutory initiatives, constitutional amendments and referenda put on the ballot by petition have won. How did they do it?

For the purpose of learning how citizens can win, we can discard five of these initiatives, in three categories:

Fraud: In 1977, voters passed a constitutional amendment repealing election-day voter registration. The measure had been put on the ballot with signatures gathered by the Republican Party. GOP Secretary of State Ted Brown wrote a ballot summary which hid its real purpose, saying it would "provide that a person is entitled to vote at all elections if he has been registered to vote for 30 days and has the other qualifications as an elector." 52% of the electorate voted for this seemingly innocuous proposal. When voters learned what Brown had done, they passed a constitutional amendment -- put on the ballot by the legislature -- to give the job of writing ballot summaries to the Ballot Board, of which the Secretary of State was only one member.

Special-interest steamrollers: The 1994 pop tax issue won with \$8 million of soda pop industry money buying TV ads promoting it, while opponents spent \$150,000. It was a simple special-interest steamroller. Similarly, Ohio voters rejected gambling proposals four times before finally supporting the 2009 casino issue. In 2008, a casino proposal became an all-out TV war between gambling interests, with \$25.7 million in favor and \$38.7 million against. The next year, gambling interests found relative unity, with \$48.7 million in favor, and \$12.2 million against, and Ohio voters, stunned by the national

economic crash, were inclined to support anything that promised jobs. The measure won, 53% - 47%.

Symbolic measures: The definition-of-marriage issue (2004) was pre-defined in voter's minds as a moral statement of little practical consequence, and the opposition was weak. Similarly, the unopposed health care choice constitutional amendment (2011) was viewed as a way for voters to express their opposition to the 2010 federal health care law; more of a resolution than a consequential change to the Ohio Constitution. Presumably, few people in the future will want to go to all the trouble of going to the ballot for a merely symbolic victory.

The other seven winning initiatives give us useful clues to how to win an Ohio ballot issue:

- The three term limits measures (1992) were uncontested, pre-defined in the voters' minds, with a simple proposal and message. Given these strengths, it didn't require a threshold of TV dollars, and it didn't matter that it required a 'yes' vote.
- The workers compensation referendum (1997) had the threshold amount of TV money, a simple message of worker safety, and only needed a 'no' vote to win. These advantages prevailed in a highly contested campaign in which the losers outspent the winners by 3-to-1.
- The minimum wage increase (2006) was similar to the term limits issue in that it was over before it began. It was so well-defined that proponents could win without spending anything on television or radio.
 - ✓ The issue was weakly contested: Opponents spent only \$1,557,763 on media. That would be just enough to convey a simple convincing message. The opponents' message, however, was anything but simple or convincing: "Issue 2 is more than the minimum wage . . . an open invitation to identity theft and fraud . . . release your personal payroll records . . . on the internet for thieves around the world".
 - ✓ The issue was also well-defined in voters' minds before the campaign started. There was a general awareness of a big problem, showing up in many ways, such as grown children moving back home to save money, Wal-Mart employees on welfare, or the "shrinking middle class." The Ohio measure was part of a nationwide trend, winning easily in six of six states that year: Arizona (66% to 34%), Colorado (53% to 47%), Missouri (76% to 24%), Montana (73% to 27%), Nevada (69% to 31%), and Ohio (56% to 44%).
 - ✓ Minimum-wage proponents had enough money for a strong television buy, but instead spent it all on get-out-the-vote activities, which they believed would benefit all Democratic candidates. These expenditures included "robocalls" (\$345,735), mailings (\$529,950), and get-out-the-vote canvassing (\$907,808 to Citizens Services, part of New Orleans-based Association of Community Organizations for Reform Now (ACORN)).

- ✓ The proposal and the message were simple: Everyone knows what a minimum wage is.
 - ✗ The issue required a "yes" vote, which is typically more difficult to win, but the other keys to winning were so strong that it didn't matter.

- The smoking ban issue (2006) was historic: It marked the first example of a contested issue, requiring a 'yes' vote, in which the citizens' side had money for television ads and a simple message, resulting in a win. Its passage was not only a big victory for public health; it showed the way for future citizen initiatives.
 - ✗ It was contested, with the tobacco industry spending \$3,116,562 on media. The main tactic used by opponents was a competing similar-sounding ballot issue. The competing issue was a Constitutional amendment, rather than the statutory change mandated by the smoking ban. Accordingly, had both issues won, the Constitutional measure would have overridden the statutory change, and had both lost, the status quo would continue. The only way the smoking ban could prevail would be if the voters could pick their way through the ballot, voting for the smoking ban and against the competing similar-sounding issue.
 - ✓ The issue was well-defined in voters' minds long before the campaign began. The dangers of second-hand smoke have been understood for decades.
 - ✓ Citizen proponents had some money to get their message across to the voters. The \$1.3 million they spent on media was lower than desirable to get a message across to Ohio voters. In this case, it didn't matter because of the considerable free news coverage of the trick the tobacco industry was trying to play on Ohio voters. Given this, and the low credibility of the tobacco industry, every television message for the industry-sponsored measure served as a reminder to voters not to be tricked.
 - ✓ The citizens' campaign had the self-discipline to keep their proposal and message simple.
 - ✗ As above, to win, the issue required both a 'yes' vote for one issue, and a "no" vote on another, so it had to rely on an attentive, educated electorate.

- The 2011 referendum on Ohio Governor John Kasich's S.B. 5 collective bargaining law ended up as a 39% - 61% landslide for the repeal campaign. Kasich had money, but all other factors were against him.
 - ✗ The issue was hotly contested. It was as partisan as it could be and became the focus of national attention. Gov. Kasich's supporters contributed \$11.4 million into the campaign for a "Yes" vote.
 - ✓ The issue was well-defined in voters' minds due to the early extensive news coverage, state and national, and the linking of the Ohio law with the 2011 public employee rebellion in Wisconsin. Also, the Ohio legislature and governor had moved suddenly to act on an issue for which neither had a public mandate, and which was directly contrary to a solid consensus of Ohioans. Voters were surprised and unhappy.

- ✓ The pro-repeal side had plenty of money. Unions poured \$29.8 million into the “No” campaign.
- ✓ While the bill itself was long and complicated, the message of repeal proponents could be simple. Gov. Kasich had made a tactical error by including police and firefighters in his crackdown on public employees, so his opponents filled TV screens statewide with images of police and firefighters.
- ✓ For the referendum to succeed in repealing the new law required a majority “no” vote. This is always much easier, as explained above, than getting a majority “yes” vote.

2012 Update:

Every time an initiative goes to the voters, it is a chance both to advance an issue and to learn lessons about what it takes to win on the Ohio ballot. In 2012, not only was the cause of redistricting reform set back years, also no new lessons were learned. Regardless of the merits of the proposal, its defeat was already certain on February 15, 2012, the day supporters began circulating petitions.

The redistricting constitutional amendment was drubbed on November 6, 63%-37% statewide, losing in 87 of Ohio’s 88 counties, all but Athens County.

From the start, the political fundamentals were overwhelmingly negative:

- ✗ The measure was sure to be heavily contested. Since the amendment would throw out the new political maps favoring Republicans, the GOP would of course strenuously fight it. They did, with \$7,243,545 going into the “No” campaign as of October 17. It also resulted in unfavorable decisions on ballot language by the Ballot Board, controlled 3-2 by Republicans.
- ✗ The issue was not already well-defined in voters’ minds. Redistricting is in an arcane corner of the political world. As fascinating as it may be to some, especially in Columbus, most voters are not absorbed with it, don’t study it, and do not rank it as an important issue.
- ✗ The proposal and the message were quite complicated.
- ✗ Petitioners needed a “yes” vote to win; this is always more difficult than a “no” vote.
- ✓ The petitioners did have enough money to get their message out to voters. After May 8, when the Democratic election law referendum was taken off the ballot, Democratic money began flowing into the redistricting initiative. The campaign took in \$6,110,735 as of October 17, almost all from unions tied to the Democratic Party.

In ballot issue campaigns, the outcome is not determined by which side spends more money. (See, for example, the 1997 workers compensation referendum, the 2006 smoking ban, and the 2008 payday lending referendum, all described above.) The money question is this: Does the campaign have enough money to get its message out to the voters? In this

case, proponents did have enough. If they didn't get their message out, it wasn't for lack of money.

At the same time, the only place proponents could get the money was the Democratic Party. They thus traded away the non-partisan nature of the campaign.