



Important Information About Issue 2

The Executive Board of SPAN Ohio has voted to oppose Issue 2. Issue 2 masquerades as a protection against monopolies, but the hidden language that is not talked about is the **real danger** in the issue.

Issue 2 would make a citizen's initiative almost impossible. If passed, Issue 2 would make every vote on an initiative a two-stage process. The first hurdle would be this ballot language - this express wording, asking the voter whether he/she wishes to vote into law something that violates the Constitution! Surely that is a guarantee that there would never, ever be passage of a constitutional amendment! Only if this hurdle is passed, would you be able to vote on the proposal itself.

There is concern that this would not only prohibit the marijuana proposal (Issue 3), but could also affect initiatives involving constitutional protections of civil rights, community rights, labor rights and, of course, a single payer health care plan.

Our friends at Common Cause Ohio sum it up very well:

Issue 2 is a poison pill for direct democracy in Ohio. While pretending to stop monopolies, Issue 2's real impact would be to give Ohio's ballot board the power to kill any initiative it dislikes. Issue 2 would therefore undermine direct democracy in Ohio, taking power away from the People and giving it to the partisan politician-bureaucrats on Ohio's ballot board.

Ohio's citizen's initiative is an essential component of our constitutional system. It gives ordinary citizens a voice, allowing them to enact laws that serve the public interest when incumbent politicians won't. It's no surprise that some of the most important political reforms in our nation's history have been adopted through the citizen's initiative. Oftentimes these initiatives are opposed by career politicians, even though they serve the public interest.

No one likes a monopoly, least of all Common Cause. But to understand the harm that Issue 2

would do to direct democracy in Ohio, you need to read its fine print. A careful reading shows that it's not actually limited to monopolies. Issue 2 would apply to initiatives that create a "monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or public entities." The key terms aren't defined anywhere in the measure, so it's precise meaning and application is anyone's guess.

Issue 2 also suffers from sloppy draftsmanship. Most notably, it's not clear what the limiting clause at the end of the sentence above (starting with "to any person...") refers to. Does it apply only to the phrase "commercial interest, commercial right, or commercial license," or to everything that precedes it? The last antecedent canon of construction would suggest that it's only the former. If that's correct, then the initiative would bar a wide range of measures, possibly anything that affects anyone's tax rate. But it's hard to know exactly how this broad and vague language will be construed.

Issue 2's careless language isn't even the worst part of it. Buried deep in Issue 2 is language expressly gives the ballot board the power – apparently unreviewable power – to decide whether an initiative meets its nebulous standard. Issue 2 says that if "in the opinion of the Ohio ballot board" this standard is satisfied, that board shall brand the initiative a "monopoly" (among other things) on the ballot. We can be confident that any initiative so branded will be defeated -- whether or not it actually creates a monopoly. Who after all will vote for an initiative with such scary-sounding language? This is a scarlet letter that the ballot board can manipulate to exclude any initiative of which it disapproves.

And here's the kicker: the italicized language seems to foreclose judicial review. If it's left to "the opinion of the Ohio ballot board" to determine which initiatives get the scarlet letter, there would seem to be no authority in the courts to remove this fatal brand. This is perhaps the most devious feature of Issue 2. It gives our highly partisan ballot board – no stranger to political controversy – a silent veto of citizens initiatives. That's directly contrary to the core purpose of the initiative.

No one likes a monopoly. But that's not really what Issue 2 is about. Issue 2 would give Ohio's partisan ballot board a poison pill with which to kill citizens initiatives it opposes. Because Issue 2 would undermine direct democracy while empowering Ohio's hyper-partisan ballot board, Common Cause urges Ohioans to vote No on 2.