

Inquiry Design Model (IDM) Blueprint™  
Created by Ohio Center for Law-Related Education

Compelling Question	Is the Ohio General Assembly more representative than the United States Congress?		
Standards and Practices	American Government 17. Individuals in Ohio have a responsibility to assist state and local governments as they address relevant and often controversial problems that directly affect their communities.		
Staging the Question	<p>Have the students analyze the public opinion polls on Congress Job Approval from <a href="#">Congress and the Public   Gallup Historical Trends</a> and recall their knowledge on legislature as studied in Unit 2.</p> <p>Ask the students to brainstorm five reasons the approval rating for Congressional Job Performance is so low and discuss their reasoning.</p>		
Supporting Question 1	Supporting Question 2	Supporting Question 3	
How are the legislatures of the State of Ohio and the United States structured?	In what ways do legislatures fulfill the Guarantee Clause in the U.S. Constitution (Art. IV §4)?	What are some historic and contemporary examples of legislative policy mirroring (or not) the will of the constituents?	
Formative Performance Task	Formative Performance Task	Formative Performance Task	
Compare and contrast the legislatures of Ohio and the United States in a Venn diagram or similar.	Write a paragraph explaining the link between republicanism and representative legislatures.	List at least 5 examples of legislative policy. Order them from most closely aligned with the will of their constituents to least closely aligned.	
Featured Sources	Featured Sources	Featured Sources	

<p><u><a href="#">Oh. Const. art. II, § 1</a></u></p> <p><u><a href="#">Luikart, K., &amp; Rhee, K. (Eds.). (2021). Chapter 2: The Legislative Branch Version (17) In A Guidebook for Ohio Legislature (Vol 17<sup>th</sup>, pp. 7-22). Ohio Legislative Service Commission. Retrieved from <a href="https://www.lsc.ohio.gov/documents/reference/guidebook/17/Guidebook.pdf">https://www.lsc.ohio.gov/documents/reference/guidebook/17/Guidebook.pdf</a>.</a></u></p> <p><i>Branches of the U.S. government.</i> USA Gov. (2022, August 5). Retrieved from <a href="https://www.usa.gov/branches-of-government">https://www.usa.gov/branches-of-government</a></p>	<p><u><a href="#">U.S. Const. art. 4 §4</a></u></p> <p>Center for Civic Education. (2016) What Did the Founders Think About Constitutional Government. In <i>We the people: The citizen &amp; the Constitution</i> (4<sup>th</sup> ed., p. 7-8). Essay.</p> <p>Chin, G., &amp; Hawley, E. (n.d.). The Guarantee Clause. National Constitution Center-constitutioncenter.org. Retrieved from <a href="https://constitutioncenter.org/the-constitution/articles/article-iv/clauses/42">https://constitutioncenter.org/the-constitution/articles/article-iv/clauses/42</a></p>	<p>5 federal legislative policies to watch in 2020. NFIB. (2020, January 16). Retrieved from <a href="https://www.nfib.com/content/news/alabama/5-federal-legislative-policies-to-watch-in-2020/">https://www.nfib.com/content/news/alabama/5-federal-legislative-policies-to-watch-in-2020/</a></p> <p>Center for Civic Education. (2016). How Does Congress Perform Its Functions in the American Constitution System. In <i>We the People: The Citizen and the Constitution</i> (4<sup>th</sup> ed., pp. 156-150). Essay.</p> <p><u><a href="#">Ohio Chamber of Commerce. (2021). Public Policy Priorities 2021-2022. Columbus.</a></u></p> <p>Lessig, L., (2021). The Unrepresentative Us. In <i>They Don't Represent Us: And Here's How They Could-A Blueprint for Reclaiming our Democracy</i> (pp. 137-140). Essay. HARPERCOLLINS PUBLISHERS.</p>
<p>Summative Performance Task</p>	<p><b>Argument</b></p> <p><b>Extension</b></p>	<p>In a four-minute presentation, using supporting evidence, a panel of 3-6 students will answer as a group whether Congress accurately represents the people they serve.</p> <p>Students answer direct questions from a panel in a Q &amp; A interview format to showcase knowledge of the compelling question.</p>
<p>Taking Informed Action</p>	<p><b>Understand</b> Review the current methods of electing members to the Ohio General Assembly</p> <p><b>Assess</b> Determine whether the current methods should be revised or left alone in the best interest of the people.</p> <p><b>Act</b> Write a letter to your Congressional representative that advocates for a change in legislative elections</p>	

*Featured Sources*

**The Ohio Constitution**  
**Article II Section I**

as it applies to Lake Erie or the navigable waters of the state.

(G) Nothing in Section 1e of Article II, Section 36 of Article II, Article VIII, Section 1 of Article X, Section 3 of Article XVIII, or Section 7 of Article XVIII of the Constitution shall impair or limit the rights established in this section.

(2008)

***Powers reserved to the people.***

§20 This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

(1851)

***Preservation of the freedom to choose health care and health care coverage***

§21 (A) No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.

(B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.

(C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

(D) This section does not affect laws or rules in effect as of March 19, 2010; affect which services a health care provider or hospital is required to perform or provide; affect terms and

conditions of government employment; or affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.

(E) As used in this Section,

(1) “Compel” includes the levying of penalties or fines.

(2) “Health care system” means any public or private entity or program whose function or purpose includes the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services, health care data, or health care information for its participants.

(3) “Penalty or fine” means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

(2011)

**Article II: Legislative**

---

***In whom power vested.***

§1 The legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any



law or any item in any law appropriating money passed by the General Assembly, except as herein after provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

(1851, am. 1912, 1918, 1953)

***Initiative and referendum to amend constitution.***

§1a The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

(1912, am. 2008)

***Initiative and referendum to enact laws.***

§1b When at any time, not less than ten days prior to the commencement of any session of the General Assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the General Assembly as soon as it convenes. If said proposed law shall be passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the General Assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the General Assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the General Assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition

is filed in the form demanded by such supplementary petition which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the General Assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the General Assembly, and such amended law passed by the General Assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the

electors shall be subject to the veto of the governor.

(1912, am. 2008)

***Referendum to challenge laws enacted by General Assembly.***

§1c The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the General Assembly. No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any

such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

(1912, am. 2008)

***Emergency laws; not subject to referendum.***

§1d Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two thirds of all the members elected to each branch of the General Assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

(1912)

***Powers; limitation of use.***

§1e (A) The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

(B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall

not be used to pass an amendment to this constitution that would grant or 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 nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows:

“Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?”

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

(1912, am. 2015)

***Power of municipalities.***

§1f The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

(1912)

***Petition requirements and preparation; submission; ballot language; by Ohio ballot board.***

§1g Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or the post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If

no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state,

petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted.

The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution: The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. 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.

(1912, am. 1971, 1978, 2008)

***Election and term of state  
legislators.***

§2 Representatives shall be elected biennially by the electors of the respective House of Representatives districts; their term of office shall commence on the first day of January next thereafter and continue two years.

Senators shall be elected by the electors

of the respective Senate districts; their terms of office shall commence on the first day of January next after their election. All terms of senators which commence on the first day of January, 1969 shall be four years, and all terms which commence on the first day of January, 1971 shall be four years. Thereafter, except for the filling of vacancies for unexpired terms, senators shall be elected to and hold office for terms of four years.

No person shall hold the office of State Senator for a period longer than two successive terms of four years. No person shall hold the office of State Representative for a period longer than four successive terms of two years. Terms shall be considered successive unless separated by a period of four or more years. Only terms beginning on or after January 1, 1993 shall be considered in determining an individual's eligibility to hold office.

In determining the eligibility of an individual to hold office in accordance with this article, (A) time spent in an office in fulfillment of a term to which another person was first elected shall not be considered provided that a period of at least four years passed between the time, if any, in which the individual previously held that office, and the time the individual is elected or appointed to fulfill the unexpired term; and (B) a person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.

(1967, am. 1992)

*Featured Sources*

**A Guidebook for Ohio Legislature**

**Chapter 2: The Legislative Branch**

The General Assembly is limited in its power to pay unauthorized claims. Unless authorized by a 2/3 vote of the members elected to each house, the General Assembly cannot enact a law that provides for paying any claim that was not authorized by law at the time it was incurred.

The General Assembly generally cannot delegate its legislative power. Except in the case of laws affecting public schools, the General Assembly cannot enact any law that takes effect upon the approval of any authority other than the General Assembly. However, the General Assembly is not prohibited from delegating power to administrative agencies so long as the delegating legislation includes standards to guide the agency in executing the delegated power.

The General Assembly is required to enact laws fixing the terms and compensation of officers, but no change in either of these matters can affect the salary of an officer during a term unless the office is abolished.

### **Federal Jurisdiction**

The states have delegated certain of their powers to the federal government. These “delegated powers,” which are embodied in the United States Constitution, are exercised under statutes enacted by Congress. Ohio, like the other 49 states, retains all the powers not delegated to the federal government. These “reserved powers” are embodied in the Ohio Constitution and the common law and are exercised under statutes enacted by the General Assembly and judgments made by the courts. Statutes and the common law are discussed in greater detail in [Appendix D](#).

When Congress acts within the scope of the power delegated to it by the United States Constitution, these federal laws preempt state laws on the same subject to the extent the two laws conflict. For example, the United States Constitution delegates to Congress the power to regulate interstate commerce. A federal law enacted within the scope of this power may preempt Ohio laws affecting interstate commerce.

When Congress acts outside the scope of its constitutionally delegated power, the General Assembly may accept, reject, or ignore the federal law. Often, though, Congress induces state acceptance by providing federal funds if the federal law is accepted and complied with or by withholding federal funds if it is not. An example of this type of federal inducement is the provision of federal funds to states that set the minimum age for drinking alcohol at 21 years.

The United States Constitution also places certain direct limitations upon the states. For example, the states cannot tax imports or exports of goods crossing their borders without Congressional consent. Another example is that the states cannot, without Congressional consent, enter into compacts or agreements with other states or foreign countries.

### **Membership in the General Assembly**

The General Assembly is a two-house (bicameral) legislature consisting of the Senate and House of Representatives. The Senate has 33 members called Senators; the House has 99 members called Representatives. One Senator is elected from each Senate district, and one Representative is elected from each House district.



## Qualifications for Membership

To hold office as a Senator or Representative, a person must meet certain qualifications. A person must:

- Be a qualified voter (that is, be a citizen of the United States who is 18 years of age or older, a resident of Ohio for at least 30 days, a resident of the county and precinct in which he or she votes, and registered to vote for at least 30 days);
- Be elected to the office;
- Be a resident of the Senate or House district from which he or she was elected for at least one year before the election unless absent from the district on the public business of the United States or of Ohio; and
- Present a certificate of election (when sworn into office).

A Senator or Representative must take an oath or affirmation to support the United States and Ohio Constitutions and to faithfully discharge the duties of the office.

In addition, a Senator or Representative who holds money in the public trust must account for those funds before taking a seat in the General Assembly.

---

Among the requirements for a person seeking the office of Senator or Representative is that the person be a qualified voter and be a resident of the district from which he or she was elected for at least one year.

---

## Holding More Than One Office Prohibited

Senators and Representatives are prohibited from holding certain other offices and positions during their terms. Some of these prohibitions are imposed by the Ohio Constitution while others are imposed by statute. A detailed discussion of these prohibitions is included in [Chapter 3](#).

## Legislative Elections and Terms of Office

Elections to the Senate and House of Representatives are held in even-numbered years. Terms of office begin on January 1 of the odd-numbered year following the election. Senators are elected to terms of four years with approximately 1/2 of the Senators being elected every other year. Senators from even-numbered districts are up for election at the same time. Senators from odd-numbered districts are up for election two years later. Representatives are elected to terms of two years. Unlike the Senate, the entire membership of the House is subject to election every even-numbered year.

### Term Limits

Under the Ohio Constitution, a person cannot hold the office of Senator for longer than two successive four-year terms. A person cannot hold the office of Representative for longer than four successive two-year terms.

Terms are considered to be successive unless they are separated by four or more years. Consequently, a Senator or Representative who becomes ineligible for reelection under term limits becomes eligible for election to the same office again after a four-year absence from the office.

---

Under term limits, members elected to the General Assembly may serve eight consecutive years. Representatives are limited to four successive two-year terms. Senators are limited to two successive four-year terms.

---

Occasionally, members resign before the expiration of their terms. A person appointed or elected to fill a vacancy is not charged with the remaining portion of the term as long as four or more years have passed since that person last served in the same house. Because the eight-year clock does not start running in such cases until the next regularly scheduled election for a full term for that seat, a person who fills a vacancy may serve longer than eight years. However, the member who resigned is considered to have served the full term for purposes of determining his or her eligibility to run again.

### **Contested Elections**

The Ohio Constitution makes each house the judge of the election, returns of the election, and qualifications of its members. Although this power is vested exclusively in the Senate and House, under the election contest laws, the courts perform an initial fact-finding function when a member's election is contested. The court does not resolve the contest, however. The court transmits the evidence to the Senate or House, and the Senate or House resolves the contest. The only limitation on the Senate and House in resolving an election contest with respect to one of its members is that neither house can declare a person to be eligible if the person is ineligible under the Ohio Constitution. Election contests involving seats in the General Assembly, once common, now rarely occur. The Revised Code authorizes a defeated candidate to apply for a recount and requires a recount if the margin of victory is not more than 0.5%. Election contests are explained in more detail in [Appendix C](#).

### **Resignations**

The procedure by which a Senator or Representative may resign differs according to whether the General Assembly is in session at the time of resignation.

If the General Assembly is in session, a Senator who wishes to resign does so by presenting a letter of resignation to the President. A Representative who wishes to resign does so by presenting a letter of resignation to the Speaker. The President or Speaker verifies the letter's authenticity and, upon doing so, sends a letter of acknowledgment to the resigning Senator or Representative.

If, however, the General Assembly has adjourned without fixing a day for reconvening (*sine die*), thereby ending its session for the biennium, a Senator or Representative who wishes to resign does so by presenting a letter of resignation to the Governor. The Governor verifies the letter's authenticity and, upon doing so, sends a letter of acknowledgment to the resigning Senator or Representative.

An acknowledged resignation takes effect at the time specified in the letter of resignation.

If a resignation occurs while the General Assembly is in session, the Senate or House Clerk prints the letters of resignation and acknowledgment in the *Journal*.

## **Vacancies**

When a vacancy occurs in the Senate or House of Representatives, a successor is elected by means of a resolution adopted by the Senators or Representatives who are affiliated with the same political party as the member who vacated the seat. The resolution is certified to the Secretary of State, who issues a certificate of election to the member-elect.

---

Vacancies in the Senate and House are filled by vote of the members affiliated with the same political party as the former member whose seat is vacant.

---

In the House, the person elected to fill the vacancy holds office for the remainder of the unexpired term. In the Senate, the person elected to fill the vacancy holds office for the remainder of the unexpired term only if the vacancy occurs after the first 20 months of the former Senator's term. If the vacancy occurs during the first 20 months of the former Senator's term, the person elected to fill the vacancy holds office only temporarily. At the next general election in an even-numbered year, the Senate district's voters elect a Senator to hold office for the last two years of the unexpired term. The Senator elected takes office on January 1 following the election.

## **Redistricting**

### **General Assembly Districts**

#### **Procedure for Drawing Districts**

Under a constitutional amendment that takes effect in 2021, the seven-member Ohio Redistricting Commission is responsible for dividing Ohio into Senate and House districts. The Commission is composed of the Governor, the Auditor of State, the Secretary of State, a person chosen by the Speaker of the House, a person chosen by the Minority Leader of the House, a person chosen by the President of the Senate, and a person chosen by the Minority Leader of the Senate. No appointed member of the Commission may be a current member of Congress. The Commission meets in each year ending in "1" on a date designated by the Governor. The Commission prepares and adopts a redistricting plan based upon the federal decennial census taken in the preceding year. The Commission is required to adopt the redistricting plan by September 15 and generally must do so by a specified bipartisan vote. Except in certain circumstances, the plan cannot be changed until the next decennial redistricting.

If a federal court or the Ohio Supreme Court invalidates the redistricting plan, the Commission is required to meet and prepare a new plan. A new plan must allow Senators and Representatives 30 days to change residence in order to be eligible for election under its provisions. The new plan generally cannot be changed until the next decennial redistricting.

### District Populations

Given Ohio's 2010 census population of 11,536,504 people, the ideal population of a state House district is 116,530 while the ideal population of a Senate district is 349,591. The ideal populations are known technically as ratios of representation.

## District Standards

In preparing the redistricting plan for the state House of Representatives and Senate, the Ohio Redistricting Commission first divides Ohio's population by 99. The resulting quotient is the "ratio of representation" in the House for the next ten years. The Commission then divides Ohio's population by 33. The resulting quotient is the ratio of representation in the Senate for the next ten years. The Commission then draws lines dividing the state into 33 Senate and 99 House districts.

In drawing district lines, the Commission is subject to the "one person, one vote" principle. Although the goal in drawing district lines under this principle is exact population equality among House and Senate districts, achieving absolute equality is practically impossible and some deviation from the ratios of representation is therefore unavoidable. Consequently, the population of each Senate and House district must be only substantially equal to the applicable ratio of representation, and a Senate or House district cannot contain less than 95% nor more than 105% of the applicable ratio of representation.

In drawing districts, the Commission must follow procedures to keep counties, municipal corporations, and townships together. And, the Commission must attempt to create a district plan that (1) is not drawn primarily to favor or disfavor a political party, (2) corresponds closely to the statewide partisan preferences of Ohio voters, and (3) includes compact districts.

## House of Representatives Districts

Ohio House districts must be composed of contiguous territory that is bounded by a single, nonintersecting, continuous line. A county that has a population greater than 105% of the House ratio of representation is entitled to as many House districts wholly within its boundaries as it has whole ratios. (Any fraction of such a county's population in excess of the whole ratio is to be made part of only one adjoining House district.) A county that has a population between 95% and 105% of the House ratio of representation must be designated a House district. The remaining territory of the state must be divided into House districts by combining counties, municipal corporations, and townships. The Ohio Redistricting Commission must follow rules designed to minimize the number of political subdivisions split under the redistricting plan.

## Senate Districts

Ohio Senate districts must be composed of three contiguous House districts. A county that has a population equal to one or more Senate ratios of representation is entitled to as many Senate districts wholly within its boundaries as it has whole ratios. (Any fraction of such a county's population in excess of the whole ratio is to be made part of only one adjoining Senate

district.) Counties having less than one whole Senate ratio but at least one whole House ratio are to be part of only one Senate district.

If a redistricting plan changes the boundaries of an existing Senate district and if a Senator's term will not expire within two years after the adoption of the plan, the Senator represents, for the remainder of that term, the new Senate district that contains the largest portion of the population of the old Senate district from which the Senator was elected. If more than one incumbent Senator would represent such a new Senate district by following this rule, the plan must designate which Senator is to represent the new district and which district each of the other Senators will represent for the remainder of his or her term.

## **Congressional Districts**

### **Procedure for Drawing Districts**

Similarly, Ohio's congressional districts must be redrawn in each year ending in "1" based upon the federal decennial census. Based on the 2010 census and the resulting reapportionment of U.S. House of Representatives seats by Congress, Ohio has 16 seats in the U.S. House, two fewer than it had under the 2000 census.

Beginning in 2021, the Ohio Constitution requires the General Assembly to adopt a congressional district plan by a specified bipartisan vote and in the form of a bill by September 30. If the General Assembly does not do so, the Ohio Redistricting Commission must adopt a plan by a specified bipartisan vote by October 31. And, if the Commission does not adopt a plan by that date, the General Assembly must adopt a plan by November 30. Except in certain circumstances, the plan cannot be changed until the next decennial redistricting.

If a federal court or the Ohio Supreme Court invalidates the redistricting plan, the General Assembly has 30 days to pass a replacement plan that remedies the legal defects but includes no other changes. If the General Assembly does not do so by that deadline, the Commission has another 30 days to adopt a replacement plan in the same manner.

### **District Standards**

In preparing the redistricting plan for the U.S. House of Representatives, the authority drawing the districts must divide Ohio's population by the number of districts apportioned to the state. The resulting quotient is the congressional ratio of representation for the next ten years.

The authority drawing the districts is subject to the "one person, one vote" principle. In general, the district populations must be as equal as practicable. Congressional districts must be

#### **The "One Person, One Vote" Principle**

In 1964, the United States Supreme Court ruled that under the Equal Protection Clause of the 14<sup>th</sup> Amendment, the government must ensure that the vote of a person in one district is as nearly equal as practicable to the vote of a person in every other district.

Prior to this decision, Ohio's state Senate and House districts were based roughly on population, but district boundaries followed county lines, and beginning in 1903, every county was required to have at least one representative. Similarly, congressional districts were not required to have equal populations. Under that system, a member from one district might have represented significantly more or fewer constituents than a member from another district, especially in the Ohio House. The votes of persons in some districts thus counted for more or less than did the votes of persons in other districts.

composed of contiguous territory that is bounded by a single, nonintersecting, continuous line. The authority also generally must follow procedures to keep districts compact and to keep counties, municipal corporations, and townships together instead of splitting them between districts.

If the General Assembly passes a congressional district plan by a simple majority vote instead of by the specified bipartisan vote, additional district standards apply, including requirements that the plan not unduly favor or disfavor a political party or its incumbents and that the plan not unduly split governmental units.

*Featured Sources*

## **Branches of the U.S. Government**



## < About the U.S.

[American Flag](#)

[Branches of the U.S. Government](#)

[Budget of the U.S. Government](#)

[Data and Statistics About the U.S.](#)

[Government Agencies and Elected Officials](#)

[History and Historical Documents](#)

[Laws and Legal Issues](#)

[Learn About Life in the U.S.](#)

[Presidents, Vice Presidents, and First Ladies](#)

# Branches of the U.S. Government

Learn about the executive, legislative, and judicial branches of the U.S. government.

## On This Page

- [How the U.S. Government Is Organized](#)
- [Legislative Branch of the U.S. Government](#)
- [Executive Branch of the U.S. Government](#)
- [Judicial Branch of the U.S. Government](#)
- [Infographic: How the Supreme Court Works](#)

## How the U.S. Government Is Organized

The [Constitution of the United States](#) divides the federal government into three branches to make sure no individual or group will have too much power:

- Legislative—Makes laws (Congress, comprised of the House of Representatives and Senate)
- Executive—Carries out laws (president, vice president,



Cabinet, most federal agencies)

- Judicial—Evaluates laws (Supreme Court and other courts)

Each branch of government can change acts of the other branches:

- The president can veto legislation created by Congress and nominates heads of federal agencies.
- Congress confirms or rejects the president's nominees and can remove the president from office in exceptional circumstances.
- The Justices of the Supreme Court, who can overturn unconstitutional laws, are nominated by the president and confirmed by the Senate.

This ability of each branch to respond to the actions of the other branches is called the system of checks and balances.

## Legislative Branch of the U.S. Government

The legislative branch [drafts proposed laws](#), confirms or rejects presidential nominations for heads of federal agencies, federal judges, and the Supreme Court, and has the authority to declare war. This branch includes Congress (the Senate and House of Representatives) and special agencies and offices that provide support services to Congress. American citizens have the right to vote for Senators and Representatives through free, confidential ballots.

### Congress

Congress is composed of two parts:

- [Senate](#)—There are two elected Senators per state, totaling 100 Senators. A Senate term is six years and there is no limit to the number of terms an individual can serve.
- [House of Representatives](#)—There are 435 elected Representatives, which are divided among the 50 states in proportion to their total population. There are additional non-voting delegates who represent the District of Columbia and the territories. A Representative serves a two-year term, and there is no limit to the number of terms an individual can serve.

## Legislative Branch Agencies

The legislative branch includes Congress and the agencies that support its work.

- [Architect of the Capitol](#)
- [Congressional Budget Office](#)
- [Congressional Research Service](#)
- [Copyright Office](#)
- [Government Accountability Office](#)
- [Government Publishing Office](#)
- [House Office of Inspector General](#)

*Featured Sources*

**U.S. Constitution**  
**Article 4 Sections 1-4**

## Article. IV.

---

### Section. 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

### Section. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

### Section. 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### Section. 4.

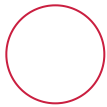
The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

*Featured Sources*

## **The Guarantee Clause**

## INTERPRETATION &amp; DEBATE

# The Guarantee Clause



Share

**Common Interpretations**[More in The Constitution](#)**by Gabriel J. Chin**

Edward L. Barrett Jr. Chair of Law, Martin Luther King, Jr. Professor of Law, and Director of Clinical Legal Education at the University of California - Davis School of Law

**by Erin M. Hawley**

Associate Professor of Law, University of Missouri School of Law

The Guarantee Clause requires the United States to guarantee to the states a republican form of government, and provide protection from foreign invasion and domestic violence. Although rarely formally invoked by Congress, the President, or the courts, there is some consensus on what it means.

At its core, the Guarantee Clause provides for majority rule. A republican government is one in which the people govern through elections. This is the constant refrain of the *Federalist Papers*. Alexander Hamilton, for example, put it this way in *The Federalist No. 57*: “The elective mode of obtaining rulers is the characteristic policy of republican government.”

Thus, the Guarantee Clause imposes limitations on the *type* of government a state may have. The Clause requires the United States to prevent any state from imposing rule by monarchy, dictatorship, aristocracy, or permanent military rule, even

---

## Common Interpretation

One of the purposes of the republican government that the United States is to guarantee. For example, it is difficult to imagine that those who enacted the Constitution believed the Guarantee Clause would be concerned with state denial of the right to vote on the basis of race, sex, age, wealth, or property ownership. Article I, Section 2 of the Constitution left voting qualifications in the hands of the states, although state authority in this area has been altered by subsequent amendments.

The Guarantee Clause also does not require any particular form of republican governmental structure. Thus, in cases such as *Pacific States Telephone & Telegraph Co. v. Oregon* (1912), the Supreme Court has refused to invalidate various forms of direct

democracy permitted by state law, such as popular initiative and referendum, on the ground that they violate the Guarantee Clause. While these decisions were often on jurisdictional grounds, they are consistent with James Madison's observation in *The Federalist No. 43* that "the States may choose to substitute other republican forms."

It is also clear that federal actions regarding states, authorized by other parts of the Constitution, do not ordinarily violate the Guarantee Clause, even if those federal actions prevent a particular state decision from going into effect. Under the Supremacy Clause, federal law will sometimes supersede otherwise valid state laws.

The question whether a Guarantee Clause challenge may be heard in federal court—that is, whether it is judicially enforceable—is a difficult one. In *Luther v. Borden* (1849), the Supreme Court held questions involving the Guarantee Clause nonjusticiable, meaning that any remedy for a violation would lie with Congress or the President, not the federal judiciary. Nearly one hundred years later, the Court sweepingly declared that the guarantee of a republican form of government cannot be challenged in court. *Colegrove v. Green* (1946).

More recently, however, the Supreme Court has left the door open to a Guarantee Clause challenge, intimating that the justiciability of such a claim must be decided on a case-by-case basis. Nevertheless, because protection against invasion or domestic violence is normally available only from Congress and the President, the structure of this section suggests that the political branches have at least the primary duty to carry out its obligations.



*Featured Sources*

## **Five Legislative Policies to Watch**



(<https://www.nfib.com>) 

## 5 Federal Legislative Policies to Watch in 2020

**Date:** December 23, 2019

**These are among the most important legislative issues for small business owners next year.**

With the presidential campaigns in full swing and less than a year until the 2020 election, there will be plenty of policies proposed and debated in the coming year that will affect small business owners. Here are five of the top legislative issues that NFIB will be monitoring in 2020.

### **The Corporate Transparency Act and ILLICIT CASH Act**

The Corporate Transparency Act and the ILLICIT CASH Act could have a tremendous impact on small business owners. Under these bills, small business owners would have to report to a federal database the names, dates of birth, addresses, and driver's license or passport numbers of anyone with a 25 percent ownership stake in the business or who receives economic assets from the business for the life of the business, plus five additional years.

Not only does this grant broad access to sensitive information without a subpoena or warrant, but it would also impose \$573 million and 13.2 million hours in compliance costs and burden, according to a recent NFIB Research Center study.

**RELATED:** [Learn more about the ILLICIT CASH Act](https://www.nfib.com/protect-small-business-privacy/) (<https://www.nfib.com/protect-small-business-privacy/>) .

### **\$15 Minimum Wage**

In 2019, the Raise the Wage Act legislation, which would rapidly increase the federal minimum wage to \$15 per hour by 2025, was introduced in the U.S. House and Senate. The NFIB Research Center studied the economic effects of enacting this legislation and found that it would lead to more than \$980 billion in real gross domestic product loss over 10 years and 1.6 million fewer jobs in the U.S. in 2029, with nearly 700,000 of those from businesses with fewer than 100 employees.

While the U.S. House passed the legislation in July 2019, it is unlikely that Senate Majority Leader Mitch McConnell will take up the bill. NFIB will continue to monitor the issue throughout the year.

### **Medicare for All**

One of the biggest policy stories coming out of 2019 and into 2020 is the proposal for a single-payer healthcare system, sometimes referred to as

Medicare for All, and how much the system would cost and how it would be funded.

NFIB believes that small businesses deserve health insurance that is affordable, flexible, and predictable and will continue to pursue legislative and regulatory solutions for small businesses that focus on lowering costs and increasing choices for small business owners and employees.

## New Employer Mandates

In addition to Medicare for All, there are a variety of proposals for additional employer mandates, such as paid sick leave, paid family leave, and paid vacation.

The keyword with the workplace mandates is “paid,” says NFIB Government Relations Manager Jeff Brabant, who stresses that small business owners want to offer the best possible benefits to their employees but don’t have the ability to absorb huge mandated cost increases and must be able to decide what they can do with the finite budget they have.

Beyond employers, employees would also bear the brunt. For example, the FAMILY Act would be funded through a monthly 0.2 percent payroll tax paid by employees and employers.

## The PRO Act

Recent legislation in Congress would reverse long-standing employment law to the detriment of small businesses.

The Protecting the Right to Organize Act of 2019 includes the elimination of state right-to-work laws, codification of the National Labor Relations Board’s expanded joint-employer standard, elimination of the use of secret ballots for union representation votes, and reporting requirements that would breach confidentiality between small business owners and attorneys and infringe upon employer-employee relationships. NFIB opposes [the PRO Act](https://www.nfib.com/assets/HR-2474-PRO-Act-NFIB-Letter-of-Opposition.pdf) (<https://www.nfib.com/assets/HR-2474-PRO-Act-NFIB-Letter-of-Opposition.pdf>) and will continue to monitor it.

For the latest information on policy trends and issues, download the [NFIB Engage app](https://www.nfib.com/app/) (<https://www.nfib.com/app/>) .

### Get to know NFIB

NFIB is a member-driven organization advocating on behalf of small and independent businesses nationwide.

Or call us today  
[1-800-634-2669](tel:1-800-634-2669)

© 2001 - 2022 National Federation of Independent Business. All Rights Reserved. |

*Featured Sources*

**Public Policy Priorities**  
**Ohio Chamber of Commerce**

# PUBLIC POLICY PRIORITIES

## CIVIL JUSTICE

*The Ohio Chamber supports efforts to improve the legal climate in Ohio by promoting fairness and reducing liability and incentives for litigation.*

### **Our priorities are to:**

- Reduce Ohio's statute of limitation for written contracts.
- Ban the practice of third-party litigation financing for cases involving class actions.
- Defend against efforts to expand civil liability for employers and overturn monetary limits for damages in tort actions.

## EDUCATION & WORKFORCE

*The Ohio Chamber urges policies that meet the demands of today's workplace and respond to the needs of Ohio employers for qualified, well-trained employees.*

### **Our priorities are to:**

- Advocate for a financial literacy high school graduation requirement.
- Support increased efforts towards FAFSA completion for Ohioans.
- Strengthen school district Business Advisory Councils to assist in building a stronger relationship with local employers.
- Ensure the continuation of the TechCred Program.
- Continue efforts to alleviate the "benefits cliff."
- Explore opportunities to expand the workforce to help meet existing employer needs.

## ENERGY & ENVIRONMENT

*The Ohio Chamber encourages energy policies that protect businesses' access to affordable, dependable energy and seeks environmental regulations based on sound science and comprehensive information.*

### **Our priorities are to:**

- Remove barriers to entry and push back against new barriers to entry for all energy sources.
- Support comprehensive reforms to Ohio's energy policy that both balances a diverse portfolio of energy sources and provides for reliable, affordable sources of energy.
- Continue to oppose all efforts that grant nature or specific ecosystems with judicially enforceable legal rights.
- Address the unintended consequences of newly-enacted water withdrawal requirements.
- Support remediation of brownfield properties and redevelopment of those properties to support economic development.
- Protect against costly federal environmental regulations and make sure state regulations are no more stringent than their federal counterparts.

## HEALTH CARE

*The Ohio Chamber seeks to lower the overall cost of health care so it is more affordable for employers.*

### **Our priorities are to:**

- Advocate for greater health care cost and quality transparency to effectively empower employers and consumers to be better purchasers.
- Oppose health insurance mandates.
- Codify ACA requirement that the state must defray actuarial cost of any new state-mandated benefits.
- Encourage utilization of technological advancements in health care delivery.
- Identify an appropriate role that employers can play in helping reduce health care disparities.

## LABOR & EMPLOYMENT

*The Ohio Chamber supports protecting employers from unfair and harmful workplace rules and mandates.*

### **Our priorities are to:**

- Address the long-term solvency of the Unemployment Compensation Trust Fund.
- Reduce the complexity and administrative burden of Ohio's unemployment compensation system.
- Defend against onerous government mandates that drive up labor costs.
- Continue to stress the need to ultimately make Ohio a right-to-work state.
- Reinforce employers' ability to make employment decisions based upon an individual's medical marijuana use.



## PUBLIC AFFAIRS

*The Ohio Chamber seeks to preserve employers' ability to effectively advocate for policy solutions and engage in political activity.*

### **Our priorities are to:**

- Battle ballot initiatives proposed by anti-business special interest groups.
- Safeguard the Ohio Constitution by requiring broader public support for proposed amendments.
- Clarify and reinforce laws governing the ballot issue petition process.
- Preserve the First Amendment right of businesses to unrestricted political advocacy.

## TAXES

*The Ohio Chamber encourages a fair and equitable tax system that stimulates growth, innovation, and job creation.*

### **Our priorities are to:**

- Work to keep and improve the Business Income Deduction (BID).
- Reform the withholding requirements for pass-through entities.
- Repeal equity claw-back and clarify business income definition.
- Repeal the existing sales tax on employment services.
- Modernize and clarify the rules regarding what constitutes electronic information services and their sales and use tax treatment.
- Simplify municipal income tax compliance.
- Improve Ohio's grade on the Council on State Taxation (COST) Property Tax Administration Scorecard.

## WORKERS' COMPENSATION

*The Ohio Chamber supports a workers' compensation system that runs efficiently and effectively and keeps premium costs competitive with other states' systems.*

### **Our priorities are to:**

- Ensure that non-medical benefits are only payable for loss of earning capacity.
- Establish performance, outcome, and cost metrics by which providers can be measured and ranked.
- Clarify when claimants receiving wage continuation may apply for permanent partial disability.
- Ensure employers are not unreasonably penalized for an employee's failure to attend medical or other appointments.
- Make claimants more responsible for their care.
- Guard against expansion of workers' compensation coverage to psychological-only claims.







## OHIO SMALL BUSINESS COUNCIL

*The Ohio Chamber knows that small businesses are powerful economic growth drivers and employ nearly half of the state's private sector workforce. While their concerns are the same as larger employers in many instances, some small business problems and priorities are unique.*

### OUR PRIORITIES ARE TO:

- Retain the Business Income Deduction (BID).
- Provide fairness to businesses as it relates to property taxes.
- Advocate for responsible, increased price transparency for health care services.
- Oppose policies such as health care mandates that contribute to the rising costs of health care.
- Support legislation that strengthens small business options when faced with unknown and/or uncertain regulations.
- Support the Common Sense Initiative (CSI) office and pursue attempts to expand their responsibilities.
- Support a fair and equitable plan for the Unemployment Compensation Trust Fund to achieve solvency.



## POLICY COMMITTEES

*The Public Policy Committees are the lifeblood of the Ohio Chamber. They study the needs of Ohio's business community and establish the Ohio Chamber's position on key legislative issues and make policy recommendations to the board of directors.*

## EDUCATION & WORKFORCE DEVELOPMENT

## ENERGY & ENVIRONMENT

## HEALTH CARE

## INNOVATION & TECHNOLOGY

## LABOR & EMPLOYMENT

## OHIO SMALL BUSINESS COUNCIL

## PUBLIC AFFAIRS

## TAXATION & PUBLIC EXPENDITURES

## WORKERS' COMPENSATION

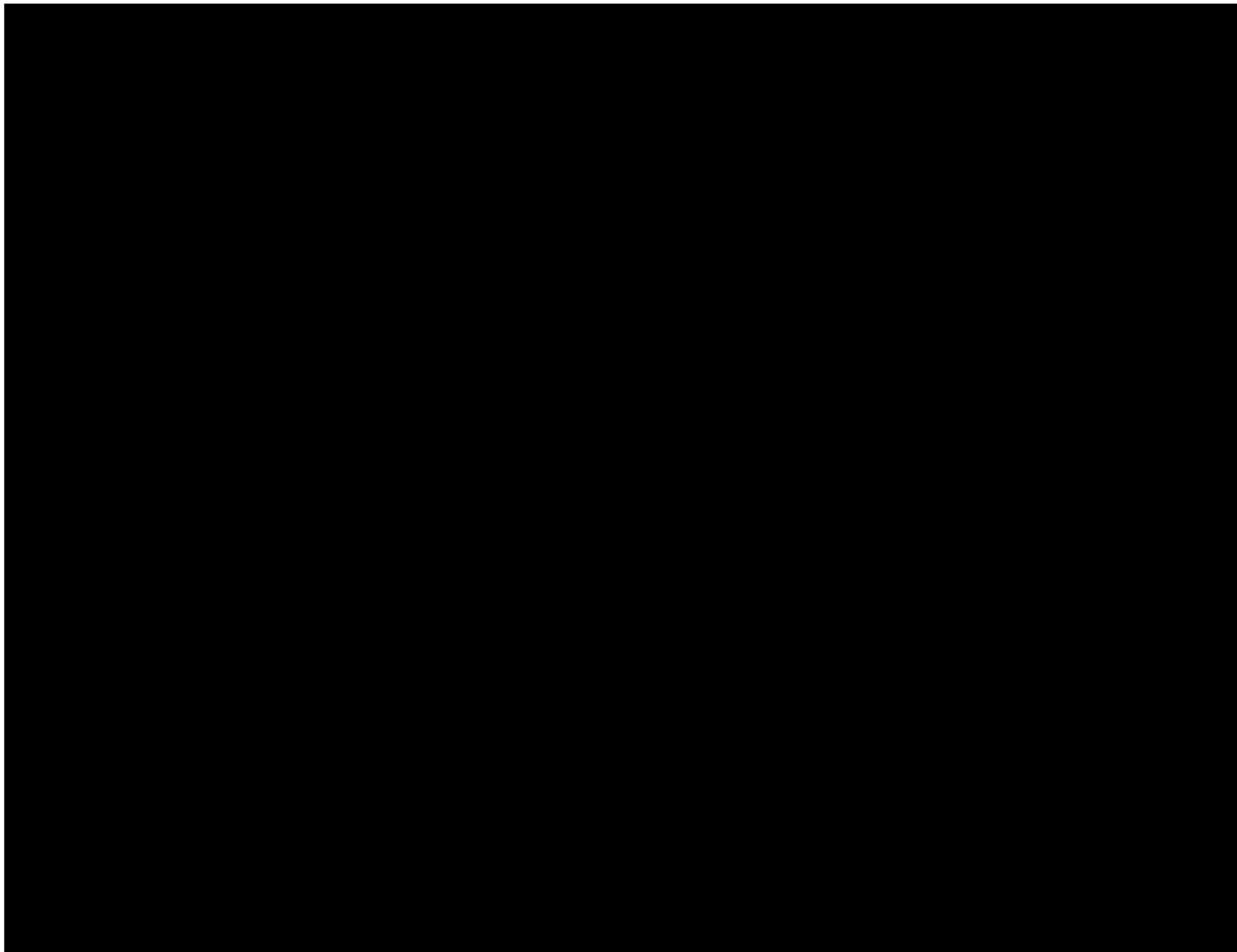


*Featured Sources*

***They Don't Represent Us***

**Lawrence Lessig**





In the history of republican thought, “citizen” has long been considered a public office, too.<sup>124</sup> Like a juror, president, judge, or representative, a citizen, too, is a kind of public officer. Yet what’s striking about the citizen, as contrasted with the juror, president, judge, or representative, is that we believe we can know the views of the citizen through a pop quiz. The jury gives its views at the end of a process; the citizen gives her view on a telephone, while preparing dinner or to put the kids to bed. The president considers both sides of a question. The citizen doesn’t even know there are two sides. The judge or representative is to deliberate with other judges or representatives. But the citizen is given no chance to deliberate. The phone rings. The questions are asked. The aim of the person answering the questions is either to get off the phone as quickly as possible or at least not to seem like an idiot—or worse, for a Democrat/Republican, to seem like a Republican/Democrat!

Most important, in this process the citizen gets no staff. The jury has the lawyers and the judge spoon-feeding the information they need to make their decisions; the president has an army of brilliant souls feeding every relevant fact and consideration; the judge has clerks as well as lawyers to frame her decisions; the representative has a modest number of staff and an endless army of lobbyists. All of these public officers get support before they are “represented.” But the citizen gets no support before she is “represented.”

It is a system designed to render us embarrassing.<sup>125</sup> So is there any doubt that public opinion polls make Americans look stupid? Is there any wonder that it seems crazy to anyone who knows anything that public policy would be driven by the “will of the people”? Professor Kirby Goidel speaks for many when he writes,

**“We the people” are simply not up to the task of self-governance; we are easily misled and controlled by corporate power and interest group campaigns. In truth, we never have been up to the task, but, for a variety of reasons, our failings are more evident, more troublesome, and more dangerous in contemporary politics.**<sup>126</sup>

How does Goidel evince our ignorance? Through a series of public opinion polls that demonstrate we don’t know squat about anything.<sup>127</sup>

The people are certainly ignorant—there is plenty we don’t know. And we may be increasingly polarized in our ignorance—so that there are different things that different sides just don’t know. But again, ignorance is not stupidity. And a system that imagines we can just quiz the public about matters of public import and produce through that process anything that should guide anyone—at least when there is no common understanding held by all—is not an ignorant system. *It* is a stupid system. There is no wonder we are embarrassing when we are represented like this. What is puzzling is not our ignorance. What is puzzling is that anyone believes this is how “we” should be understood to speak.

This point about us is urgent today, even if not so urgent in the past. In the age before polling, our ignorance just didn’t matter as much. We had no way to find the “will of the people,” except through

an inherently edifying process of interpretation. In the age of broadcasting, it mattered, of course, but we were better informed. I don't mean we knew more—the Internet today gives us more access to more knowledge than at any time in human history. I mean instead that “we” had a common basis upon which to make judgments, and that common basis in fact more often than not overwhelmed differences in values. That common ground shows us to be “reasonable,” at least as found by Page and Shapiro.

But when that common basis is removed, and partisan becomes the norm, then differences flourish. And as they flourish, we get rendered as ignorant. Or at least, “they” are ignorant; “we” know what's true. “They” think [global warming is fake/GMOs are dangerous]; “we” know they are just bonkers. The polling of a fragmented and polarized public then feeds democratic self-loathing. Pew found 56 percent of Americans have “little or no confidence in the political wisdom of the American people.”<sup>128</sup> That's certainly the dynamic for the “exhausted majority,” as one extraordinary study of tribalism in America characterized it.<sup>129</sup> It is true, as Markus Prior reports, that average knowledge about matters of public policy has not declined in the post-broadcast era. But as Prior notes, “average” means average. The news junkies know much more than the average person knew in the age of broadcasting; the rest of society knows much less.<sup>130</sup>

Yet rather than self-loathing, what this polling should feed is a little bit of “what the hell?!” Just as we'd say that a jury quizzed mid-deliberation does not “represent” the jury, or justices quizzed on the street do not represent the Supreme Court, or an offhand remark by a president just stepping off a transcontinental flight does not “represent” the presidency, or the quip of a member of Congress does not “represent” Congress, so, too, should we say that “we the people” as represented through George Gallup's technology in the age of fragmented and polarized media does not “represent” us. We should not be speaking as if it represents us. And we should demand better support before “we” are asked what “we” believe about matters of public import.

And thus, the point of this chapter: *they*—the people who speak in those polls, or in the million similar ways in which our ignorance gets manifested—*don't represent us*. They don't have the *integrity* to represent us. Integrity demands more than a representative sample. Integrity demands the opportunity to understand and deliberate, always and with everyone.

This might be a jarring point at first. It can be domesticated with just a little thought. In a statistical sense, of course, the “we” captured in Gallup’s poll represents us. (Or maybe it does, or maybe it just did. There is plenty of skepticism about the science in modern polling that I point to in the notes.<sup>131</sup>) Yet as we’ve seen throughout this book, the idea of “representative” is not itself obvious, or self-defining. We need a normative argument for how anything gets represented. That argument can be successful only if it can trade on common judgment or common values. The point of this section is to trade on what I believe should be common values: Even in this hyperpartisan moment, and populism notwithstanding, no one should defend a “we” that is constructed from ignorance, or especially from tribal ignorance. The politicians aren’t required to be so embarrassed—even if some seem quite eager to embarrass themselves. Neither should we be required to be so embarrassed.

Instead we all, whether Republican or not, should openly and loudly proclaim—hey, that “we” does not represent us.

## CONSEQUENCES

The year I graduated from law school, the Berlin Wall fell. Two years later, I started teaching. From the start of my career as an academic, I was obsessed with how those newly independent nations would govern themselves. My first job was at the University of Chicago. That institution had the Center for the Study of Constitutionalism in Eastern Europe. I joined the center and spent many nights on cramped flights crisscrossing Eastern Europe and the former Soviet republics.