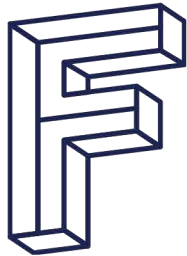


**The Direct Democracy and
Voting Rights Crisis**
July 2023



**FAIRNESS
PROJECT**

Who We Are

The Fairness Project is a nonprofit, nonpartisan organization dedicated to advancing social and economic justice via ballot measures. Born out of the labor movement, our organization has won more than 30 campaigns in more than a dozen states to raise wages, stop predatory lenders, expand health care access, secure paid leave, and other life-changing policies.

We also work to proactively defend the ballot measure process against attempts to diminish voters' rights to use direct democracy, hold their legislators accountable, and create change through the power of the ballot.



Washington minimum wage initiative, 2017



Vermont reproductive freedom initiative, 2022



Missouri Medicaid expansion initiative, 2018

This report catalogs the myriad of ways reactionary state legislatures across the country have attempted to undermine direct democracy and disempower voters over the last decade. This voter suppression crisis is an under-the-radar attempt to solidify power for out-of-touch lawmakers who are not interested in following the will of the people and are invested in insulating themselves from popular political pressure. This report, authored by the Fairness Project, highlights these attacks and the desperate need to fight back.

PART ONE

Rapidly Accelerated Attacks on Direct Democracy

Direct democracy is facing a coordinated attack from extremist politicians who are either unresponsive to or intent on silencing the voices of their constituents. These attacks have multiplied and become more nuanced and sophisticated over time, with reactionary lawmakers favoring a “death by a thousand cuts” approach to undermining the initiative process.

Ohio has now taken center stage in the initiative process debate, with a special election scheduled for August 8th to raise the threshold for passing ballot measures. Ohio voters will be asked if they want to raise the bar from a simple majority to a 60% supermajority to successfully pass initiatives – a change that would allow a minority of 41% of voters to dictate policy choices. Special interests and politicians, including Ohio Secretary of State Frank LaRose, are so committed to denying voters their say on issues like abortion rights that they have reinstated the use of special elections, after

having previously abolished them due to high costs to taxpayers and low voter turnout.

Their admitted immediate aim is to thwart a reproductive rights amendment which is expected to appear on the November ballot.

The proposed Ohio amendment would also require initiative petitions for future amendments to be signed by at least 5% of the electors in each of Ohio's 88 counties, rather than in 44 counties, a preview of other tactics lawmakers have used to undermine direct democracy.

While the aftermath of the U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision has put renewed focus on the ballot measure process as a battleground for reproductive freedom, the Fairness Project's Ballot Measure Rescue Campaign has tracked how these attacks on citizen-led ballot

measures have percolated for years and has organized to fight back. Efforts to restrict direct democracy

in Ohio represent the latest tactics in the extremist and reactionary playbook conservative politicians are using across the country.



The Tactics of Undermining Ballot Measure Access

Over the last decade, attempts to undermine the ballot measure process have significantly ramped up. While supermajority thresholds like the one proposed in Ohio are a popular tactic to undermine direct democracy (it has also been used in Missouri, Florida, Arizona and Arkansas), other tactics used to short-circuit citizen-led ballot measures include increasing signature requirements for petitions, creating new mandates for how and where signatures are collected, limiting how many “subjects” a ballot measure can address, and passing counter-legislation to hinder or slow-roll the implementation of successful ballot measures. Here, the Fairness Project has cataloged the most pernicious and under-the-radar attacks on the ballot measure process.

Types of Attacks

Expanded Supermajority Requirements:

- A common attack on citizen-initiated ballot measures is to increase the vote threshold needed to pass such measures beyond a simple majority. States including Ohio, North Dakota, Missouri, Arkansas, Arizona, and Florida have either passed, attempted to pass, or are currently working to pass such restrictions.
- Reactionary lawmakers have also recently favored holding supermajority requirement ballot measure votes during primary or special elections, when there is particularly low turnout, essentially enabling a small minority of residents to end majority rule. Some states considered (Florida) or are considering (North Dakota) legislation to require ballot measures to pass twice in order to become law.

Onerous Signature Regulations

- Placing restrictions on where, when, and how signatures are collected has become more popular over the last decade. Also included in this category are restrictions on who is allowed to be involved in the signature collection process.
- Lawmakers in states including North Dakota, Missouri, Ohio, Arkansas, Idaho, and Arizona want to increase either the number of counties from which a campaign must collect signatures, the number of congressional districts from which a campaign must collect signatures, or the percent of the population within a county/congressional district from which a campaign must collect signatures. This is in addition to a statewide requirement for signature collection, which in many states is already very high.

Onerous Signature Regulations (cont.)

- Many states – including Oregon, Montana, Wyoming, Utah, Arizona, North Dakota, South Dakota, Arkansas, and Florida – have prohibited campaigns from paying circulators based on the number of signatures collected. Eighteen states require circulators to swear under oath that they witnessed the collection of every signature. This includes Arizona and South Dakota, where each circulator must verify each petition sheet in the presence of a notary. In South Dakota, signatures are also required to be collected on a single page and are required to be in 14-point font, creating a so-called “beach towel effect” of massive petitions.
- Out-of-state signature gatherers are prohibited in North Dakota, South Dakota, Idaho, Utah, Montana, and Ohio. In South Dakota, circulators must go through a specific registration process with the state and must wear a specific ID while collecting signatures. In Arkansas, signature gatherers must be registered with the Secretary of State, and paid collectors must undergo a background screening. In Oregon, only those who have completed a specific training program can become circulators.

“It’s important to situate the attacks on the ballot measure process as part of the broader set of attacks on voting rights and democracy writ large.”

Kelly Hall, Fairness Project Executive Director

Increased Issue Scrutiny

- Another trend is to place restrictions on the content of the ballot measure or constitutional amendment itself. There are now seventeen states that have a “single-subject” rule that require initiatives to address a single subject or topic. While sound in theory, such a requirement enables judges to decide what constitutes a “subject,” leading to partisan judicial decisions. Recent single-subject requirements were approved in Arizona (2022) and South Dakota (2018).

Attempted Post-Passage Sabotage

- Even when a progressive measure is passed, Republican legislatures use countermeasures to slow-roll or block its implementation. In Florida, for example, voters approved Amendment 4, which restored the right to vote for most people with prior felony convictions. Florida Gov. Ron DeSantis and the Florida legislature responded by creating a modern-day poll tax law that requires people convicted of felonies to pay off all fines and fees before their voting rights are restored.

Attempted Post-Passage Sabotage (cont.)

- Arizona politicians tried to formalize this process in 2022, putting an initiative on the ballot that would have enabled the legislature to “amend, divert funds from, or supersede an initiative or referendum approved by voters” if the state Supreme Court (or U.S. Supreme Court) found that the measure included “illegal or unconstitutional language.” In most states, lawmakers are required to remove or amend the offending provision if such a court decision occurs. If this Arizona initiative passed, however, it would have enabled opposing legislators to use such court decisions to alter or reverse an entire measure.
- In Mississippi, the state Supreme Court struck down the entire initiative process on a constitutional technicality after residents passed a medical marijuana ballot measure. The court delegated the authority to revive the petition process to the state legislature, which for two years has refused to return initiative authority to the people.
- In Missouri, the Republican-led General Assembly responded to a 2020 ballot measure that expanded Medicaid by passing an annual budget without additional funding for the expansion, but the state Supreme Court ruled that benefits cannot be denied for those who are eligible (they also tried to place work requirements on those enrolled in the program). In 2022, Republicans again tried to hinder the expansion by attempting to pass a resolution that would give them legal authority to deny funding to those eligible under the expansion, but the resolution failed to pass the state senate. Additionally, the state was so slow to process new applications for the expansion that the federal government was brought in to help.

Attacks From Powerful Individuals

- Powerful GOP members within states are using their influence to hinder the ballot initiative process and other forms of direct democracy. Missouri Attorney General Andrew Bailey, for example, has refused to complete his constitutionally required duty to release a summary of a proposed abortion-related ballot measure as a means of preventing signature collection from even starting.

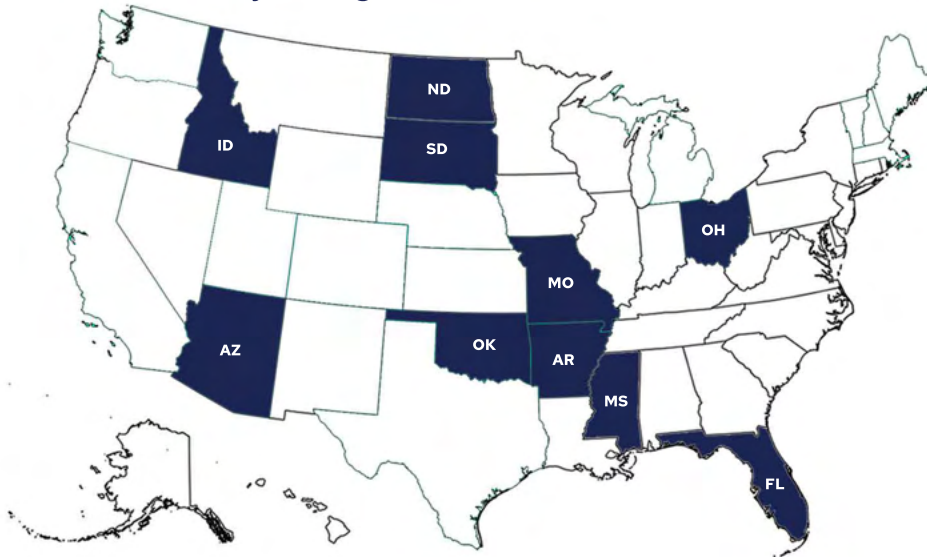
Taken separately, these attacks on direct democracy may not seem fatal to the ballot measure process. Taken collectively over years of bad-faith legislation, these requirements create serious blockades to the citizen-led ballot measure process, creating insurmountable hurdles for organizers and allowing reactionary lawmakers multiple avenues to hamper progress despite the clear will of the majority in individual states. This “death by a thousand cuts” approach snowballs into a concerted campaign to disempower voters and take decision making out of their hands.

State-by-State Attacks

Ohio

- Ohio Republicans passed legislation this year to hold a special election in August to increase the threshold for passing constitutional amendments from 50%+1 to 60%, meaning that a minority of 41% would get to dictate policy change in the state. The proposal, Issue 1, would also require that signatures be collected from all 88 counties, up from 44 counties, and eliminate the 10-day “cure period” for petitioners to provide additional signatures.
- Out-of-state petition circulators are already prohibited, and each proposed measure must only address one subject.

Key Battlegrounds for Ballot Measure Access



Missouri

With Republicans holding supermajorities in each chamber, their concerted efforts to go after the initiative process include:

- A proposed requirement for petition circulators to be registered Missouri voters and apply a 60% majority requirement to initiatives that would increase taxes or require the state to spend more than \$10 million;
- And requiring that the total vote in favor of a constitutional amendment proposed by initiative be equal to a majority of all registered voters in the state. In elections with voter turnout below 50%, it would be mathematically impossible for a ballot initiative to pass.
- Missouri Republicans proposed an amendment that would increase the threshold for passing future amendments from a simple majority to 57%, but the proposal failed in the Senate. The proposal was intended to block an abortion rights amendment that is expected to appear on the 2024 ballot.

Missouri (cont.)

- Current law requires initiative petitions proposing constitutional amendments to be signed by 8% of the legal voters in each of two-thirds of the congressional districts, but a bill proposed by State Sen. Sandy Crawford (R-28) would require all petitions be signed by 10% of the legal voters in every congressional district.
- Notable individuals are also using their power to thwart proposed amendments before they make it to the ballot. Missouri Attorney General Andrew Bailey, for example, refused to release a summary of a proposed abortion-related ballot measure despite being constitutionally required to do so.
- After Medicaid expansion was passed via ballot measure in 2020, the Republican-led General Assembly responded to by passing an annual budget without additional funding for the expansion. The state Supreme Court ruled that benefits cannot be denied for those who are eligible (they also tried to place work requirements on those enrolled in the program). In 2022, Republicans attempted to pass a resolution that would give them legal authority to deny funding to those eligible under the expansion, but the resolution failed to pass the state senate. Additionally, the state was so slow to process new applications that the federal government was brought in to help.

North Dakota

On the 2024 ballot is SCR 4013, which, if passed, would:

- Establish a single-subject rule for initiatives (both statutory and constitutional), as determined by the secretary of state;
- Increase the signature requirement for constitutional amendment initiatives from 4% of the resident population to 5% of the resident population of the state;
- And require proposed constitutional initiatives that have qualified for the ballot to be placed on the next primary election ballot, and, if approved, be placed on the next general election ballot, where it must be approved again to become effective.
- North Dakota has approved a constitutional amendment to ban out-of-state signature gatherers. Paid signature gatherers are not permitted to be paid based on the number of signatures they collect.
- A group called "Protect North Dakota's Constitution" wants to raise the threshold for voter approval of constitutional amendments from a simple majority to 60%. This change failed to make the ballot in 2022, but may be on the ballot in 2024.
- In 2014, the filing deadline for initiated petitions was pushed back from 90 to 120 days before a statewide election.

South Dakota

- In 2022, the South Dakota legislature referred a proposal called Amendment C to the ballot. It would have enacted a 60% threshold for citizen-initiated constitutional amendments, aimed at blocking a citizen-driven Medicaid expansion campaign. Voters later rejected Amendment C and then passed Medicaid expansion in November 2022.
- The Republican state legislature in South Dakota implemented distribution requirements mandating ballot measures must be signed by a certain number of voters from different legislative and congressional districts in order for the initiative to qualify for the ballot.
- Signatures are required to be in 14-point font, an additional logistical hurdle in a state that already requires petitions to be on a single page, leading to massive sheets of paper with thousands of signatures, creating a “beach-towel effect.”
- Beginning in July 2023, petition circulators must identify on the petition form whether they are paid or a volunteer. If paid, the form must state how much the circulator is earning and must include their state-issued identification number. Paid circulators are not allowed to be paid based on how many signatures they collect. Paid circulators must register with the state and wear a specific badge. Out-of-state circulators are prohibited.
- Once signatures have been collected, each circulator must verify each petition sheet in the presence of a notary. The circulator must also disclose extensive personal information to prove residency, including the length of time spent at their current address and the addresses of their previous two residences.
- All citizen initiatives must address only one subject.
- Although ruled unconstitutional, South Dakota Republicans also backed a measure banning individuals, political action committees, and other entities from outside South Dakota from making contributions to ballot question committees (2018).

Montana

- Republicans passed a new law that adds a \$3,700 filing fee, prohibits the use of electronic signatures, and gives the secretary of state and attorney general more say in the ballot measure process, among other requirements.
- Paying circulators based on the number of signatures collected is prohibited in Montana. Out-of-state circulators are also prohibited. Circulators must swear under oath that they personally witnessed each signature.

Arizona

- The state legislature approved a constitutional amendment to require signatures from each legislative district to qualify a citizen initiative for the ballot. The amendment will be on the ballot on Nov. 5, 2024.
- Arizona Proposition 129, the Single-Subject Requirement for Ballot Initiatives Amendment, was approved in 2022 and requires that citizen-initiated ballot measures embrace a single subject.
- Arizona Proposition 132, the 60% Vote Requirement for Ballot Measures to Approve Taxes Amendment, was also approved in 2022. Arizonans may be asked if they want to increase the threshold to pass all constitutional amendments to 60% in 2024.
- Circulators in Arizona must use an official time-and-date marked petition from the Secretary of State to collect signatures. Copies of such petition forms are prohibited. A petition must also state whether the circulator is paid or a volunteer by requiring that the circulator mark the appropriate box on the form before beginning to collect signatures. Paying circulators based on the number of signatures collected is banned. Once signatures are collected, each petition sheet must be verified in the presence of a notary.

Oklahoma

- Republican-authored Senate Bill 518 may soon be considered by the state's House of Representatives. The law would:
- Require that anyone who files a petition be charged a minimum fee of \$750 for publication costs;
- Implement a stricter verification process by mandating an additional "data point." Specifically, signatures and personal information must correlate with the data points listed on the Oklahoma voter portal, which include the voter's legal first name, legal last name, ZIP code, address, and numerical month and day of birth.
- Change the protest period from 10 to 20 days, thus increasing the time, money, and effort a campaign would need to spend to defend signatures it has collected.

Mississippi

- After the Mississippi Supreme Court invalidated the state's initiative process in 2021, Republican lawmakers failed to restore the ballot initiative process two years in a row. Currently, it is impossible for Mississippians to exercise their right to petition their government despite such a right existing in the state constitution.

Florida

- Paying circulators based on the number of signatures they collect is prohibited as of 2019.
- Proposed measures must only address one subject.
- In 2018, voters approved Amendment 4, which restored the right to vote for people with prior felony convictions (except those convicted of murder or a felony sexual offense) upon completion of their sentences. To slow the implementation of the amendment, Gov. Ron DeSantis and the state Legislature created a modern-day poll tax law that requires former felons to pay off all fines and fees before their voting rights are restored.
- In 2020, a proposed amendment would have required voter-approved constitutional amendments to be approved by voters at a second general election to become effective.
- Florida already requires a 60% supermajority to pass constitutional amendments. During this past legislative session, Republicans attempted to increase the vote threshold to pass constitutional amendments even further to 67%.

Idaho

- A potential 2024 ballot measure in Idaho would ask voters to increase the signature requirements for petition gatherers. The measure would require that initiative petitions receive signatures from 6% of legal voters at the last general election in each of the 35 legislative districts, as opposed to only 18 districts.
- Out-of-state signature gatherers are prohibited in Idaho.
- Proposed initiatives must "embrace only one subject and matters properly connected with it."

Arkansas

- Arkansas prohibits paying canvassers based on the number of signatures they collect on a ballot petition and requires them to be state residents. Paid circulators must also undergo a background screening.
- Republican lawmakers are actively attempting to end citizens' rights to pass ballot measures with a 50% majority vote, raising it to a 60% vote requirement instead. In November 2022, voters rejected Issue 2, a proposal from state legislators to create a 60% threshold for ballot measures.
- In Arkansas, the League of Women Voters is currently challenging recently approved legislation that increases the number of counties from which signatures must be collected. The new law could increase the signature collection requirement from 15 to 50 of the state's 75 counties.



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