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EIGHTEEN REASONS TO VOTE NO ON STATE ISSUE 1

Eighteen reasons to vote NO on State Issue 1, the deceptively named "Neighborhood Safety, Drug Treatment, and Rehabilitation" constitutional amendment:

1. The amendment undermines current effective forms of treatment in the criminal justice system. A judge's ability to enforce treatment orders is nullified and will result in fewer people going to treatment and staying in treatment. Specialized dockets could become effectively useless. The amendment does not replace the current effective forms of treatment in the criminal justice system with any other mechanism that ensures that people who need treatment get it.
2. The amendment potentially creates a class of criminal that cannot be penalized under the law by changing probation revocation sanctions. A felon put on probation but completely unamenable would not be subject to his suspended sentence.
3. The amendment could increase, without funding, the workload of the court system by (a) moving cases from common pleas courts to municipal courts that, importantly, are not currently equipped with the same types of resources, and (b) allowing petitions to the sentencing court to retroactively reclassify drug possession charges. The amendment could increase, without funding, caseloads in family courts as the problem of addicted parents unable to care for their children will only be exacerbated.
4. The amendment should be a legislative initiative; the amendment is poorly drafted and could have been vetted and perfected through the legislative process. Instead, Issue 1 will be enshrined in the Ohio Constitution and it will not be possible to change even a single word without another constitutional amendment, years from now. Neither California nor Oklahoma changed their constitutions – they changed their statutes through ballot vote so that they would retain the flexibility to correct problems as they arise. An example of an unintended consequence that cannot be changed: date rape drugs are treated the same as all other drugs in the Ohio Revised Code. With Issue 1 passage, possession of date rape drugs – which certainly does not indicate an addiction, but does indicate criminogenic behavior – would be a misdemeanor with no prison or jail time.
5. The amendment is not a result of citizen initiative, even though it purports to be. 99.5% of Issue One funding comes from out-of-state groups, including Facebook cofounder Mark Zuckerberg's Chan Zuckerberg Initiative, George Soros's Open Society Policy Center, and the Philanthropy Project, which is funded by Facebook co-founder Dustin Moskovitz. Criminal justice and treatment experts were not asked for their input until after the amendment's language (again, which cannot be changed) was certified.
6. The proponents of this constitutional amendment would like the voters to believe that judges prefer incarceration to treatment. The fact is that every low level felony drug user receives

treatment, and in fact, continues to receive court-ordered treatment even after multiple failures. Judges have emphasized treatment and rehabilitation and de-emphasized imprisonment over most of the last decade. Judges incarcerate felony drug use offenders in prison only as a last resort. Judges understand that failure is a part of rehabilitation and that addiction is an extreme struggle on the part of most offenders. The Ohio prison system may tell you how many offenders are incarcerated on lower level drug possession convictions, but they will not tell you how many are there because of multiple failures of treatment and rehabilitation, as the prison system does not compile that statistic.

7. The constitutional proposal sounds like a great idea at first blush, but the luster wears off in the details. The amendment neither requires treatment and rehabilitation to be offered by the courts, nor requires offenders to accept and participate in treatment and rehabilitation. There would be nothing a judge can do if an offender outright refuses to undergo any treatment whatsoever – that offender cannot be incarcerated except for the commission and conviction of another non-drug crime.

8. The proposal would gut proven, valuable treatment and rehabilitation regimens, such as the jail treatment program (a 30-day locked down treatment program in Lake County, Ohio), or a community based correctional facility treatment program, such as NEOCAP serving northeast Ohio (which is a four to six month rehabilitation program that can address both substance abuse and mental health issues), because they involve incarceration, which State Issue 1 would prohibit until the 3rd conviction within a 24-month period.

9. Frequently, a judge will jail an addicted offender to save that person's life, and allow that addicted person to be in monitored, protective custody while the person struggles through the serious effects of withdrawal. Under the proposal, judges cannot protect offenders in this manner. Judges often will jail individuals while they purge the heroin from their bodies in preparation to receive medicated-assisted treatment such as Vivitrol injections. If not purged, the Vivitrol administration would cause sudden, painful, and violent withdrawal.

10. Drug dealers and cartels will flock to and inundate Ohio because they will know that their customers can be sure they cannot be jailed for their purchases, possession, and use of the illegal commodity. Drug dealers will feel more secure in trafficking their poisons, knowing that their customers will have little incentive to cooperate with law enforcement and turn on their dealers to avoid jail after the purchaser is arrested for possession. State Issue 1 will undoubtedly bestow on Ohio the most lenient drug laws in the nation by making it a constitutional mandate, almost impossible to amend.

11. Issue 1 doesn't only deal with illegal drugs. It mandates up to a 25% reduction of current sentences for every offense other than murder and rape, and "child molestation," which is not a named or titled crime under Ohio criminal law (which indicates just how poorly drafted the measure is). The 25% reduction would apply to even mandatory sentences for OVI or using a firearm in the commission of a crime because the constitution trumps laws made by the legislature. State Issue 1 enables the immediate release of up to 10,000 felony offenders (not simply drug-possession offenders) into our communities.

12. This measure may not help offenders, and may, in fact, hurt them. Under current law, RC 2951.041, if a low level felony substance abuse offender's drug or alcohol usage was a factor leading to a non-violent low level felony or misdemeanor criminal offense, that offender may be afforded the opportunity for intervention in lieu of conviction or a prosecutor's diversion program,

whereby he or she completes a drug or alcohol treatment program and avoids conviction, which assists that person in securing employment and other opportunities (such as getting school loans). Under the proposed constitutional amendment, prosecutors and judges may be less inclined to afford an offender the privilege (it is not a right) of intervention in lieu of conviction or a prosecutor's diversion program, because the offender can be jailed only on a third conviction within 24 months and the judge or prosecutor may rather prefer to get that first conviction on the record. Also, prosecutors and police may be more inclined to add non-drug charges for which the drug offender could be imprisoned, where they might otherwise have settled for the drug charge(s) and treatment with the negative incentive of jail. Moreover, positive drug screens during probation are now usually not charged as possession offenses and are handled simply as a violation of probation – under Issue 1, prosecutors may demand the probationer be charged and convicted to obtain that 3rd conviction within a 24-month period.

13. Under this constitutional measure, it would not be a felony, and one cannot receive jail time, for possession of major amounts of illegal drugs. For instance, possession of 19 grams of powdered fentanyl, which can kill 10,000 humans, could bring the possessor no jail time. The amounts of drugs, including drugs not associated with addiction and date-rape drugs, one can possess before it would be a felony under State Issue 1 is much more than what one would consider to be “personal” use.

14. If a judge cannot enforce orders of drug treatment or rehabilitation with jail time, why would judges frustrate themselves by carefully mapping out individualized treatment programs for offenders when the order has “no teeth” or consequence for a violation, or even for flaunting the judge's order entirely? Drug treatment regimens operate on evidence-based “carrot and stick” protocols; they balance positive reinforcement with punishment to reduce undesired behaviors and replace them with desired prosocial behaviors. The amendment would require reward only – the carrot -- and forbid the punishment incentive – the stick -- of incarceration.

15. The proposed constitutional amendment has retroactive application: offenders convicted before it is passed can request the sentencing court to reclassify their charges and re-sentence or release them from jail or prison. By doing this, proponents say that Issue 1 would remove the collateral effects of a felony conviction on the records of offenders. But, Ohio law (RC 2953.25) already provides that a person convicted of any crime could petition the court to relieve them of the collateral consequences of conviction which could prevent them from obtaining or maintaining certain occupations. It's called a “certificate of qualification for employment,” and judges have been using it since its legislative enactment in 2014 to lessen the stigma and collateral consequences of a criminal conviction.

16. Just because Ohio reduces the penalties for drug possession does not mean that the federal government cannot enforce its drug laws. The federal penalties are greater than even Ohio's current drug penalties, and if Ohio becomes a haven for illegal drug activities, the U.S. government may have more incentive to enforce its laws in Ohio (it already does, but the practice has been to enforce it on only major amounts of drugs), or even at the request of local law enforcement. To get at drug cartels and major traffickers, the federal government might use the leverage of federal incarceration of arrested users to provide more incentive for them to cooperate and turn on their traffickers.

17. I am a common pleas judge. If this constitutional measure passes, my workload on drug possession cases could be significantly reduced, except for the initial hundreds of offenders asking for a reclassification of their drug possession and other convictions and release from

prison or jail. I will not have to concern myself with drug treatment and rehabilitation which currently occupies about ten hearings a week on my docket. All of those cases will go to the municipal judges, who will be so overwhelmed by the unfunded, mandated influx of drug possession cases that they just might make “\$5.00 and costs” a rubber stamp that they will impress on each drug case jacket and be done with it – with no compelled rehabilitation or treatment for anyone. Issue 1 does not require, fund, or guarantee treatment of any drug offender.

18. State Issue 1 is deceptive, illogical, and self-contradictory and cannot be changed except by constitutional amendment. Just four examples are illustrative.

a. The proponents say prison money should be focused only on violent and serious offenders (as opposed to low level felony drug users). Section 12(A). Yet, the proposal would release, up to 25% earlier, all violent and serious offenders, except of course, murderers, rapists, and “child molesters.” The legislature, presumably at the demand of its constituency, has enacted significant, mandatory penalties for various crimes involving firearms, aggravated vehicular homicide, driving under the influence, and many other serious or violent offenses, and specifications to offenses. This proposal would undo all of that effort by reducing it all by up to 25%, except for murder, rape and “child molestation.”

b. The proponents say that drug addiction is a serious societal problem that presents issues of public health and safety, and incarcerating users rather than by providing treatment poses a threat to public safety and is an inefficient use of criminal justice resources. Section 12(A). Yet, nothing in State Issue 1 mandates that treatment be offered by courts or government, or accepted and completed by offenders or drug-addicted persons. The proposal simply says that prison spending should be focused on violent and serious offenses and preparing individuals for release through rehabilitation, and any savings should be used for maximizing alternatives for non-serious non-violent crime. Yet, no new programs or strategies are established or mandated, existing ones that involve any incarceration whatsoever are eliminated, and the threat to public safety is increased by the early release of violent and serious criminal offenders. The proposal insinuates that the courts choose incarceration over treatment and rehabilitation, when that is not the truth – courts already favor treatment and rehabilitation.

c. The proponents say any future savings generated will be invested into substance abuse treatment programs and crime victim programs. Section 12(B). Yet, no study, formal or otherwise, has ever been conducted of what the savings from incarceration would be, balanced against the societal costs of creating a drug law without enforceability on rehabilitation, the influx of criminal gangs, cartels, and traffickers, and the impact on the court system, not to mention the impact on drug-addicted persons. This is a complicated matter that one would logically expect requires significant examination and analysis, including fiscal analysis. Yet, it was cobbled together by the expenditure of millions of dollars by outside influencers with an agenda to make an emotional plea on Ohio voters.

d. The proposal requires the prison system (the Ohio Department of Rehabilitation and Correction) to approve all court guidelines for graduated

responses that may be imposed for a non-criminal violation of probation, which responses cannot include any imprisonment. Section 12(E). This means that prison officials are required to tell judges how to rehabilitate offenders who are on probation to the court. Haven't the proponents of Issue 1 maintained that imprisonment is not rehabilitative and the prison system does not know how to rehabilitate drug-addicted offenders? Ignoring the separation of powers issue (the executive intruding on the judicial, with the legislative having no part), does this even make sense?

Read the actual language of the proposed constitutional amendment – not just the ballot language – and do your duty as an informed voter and decide for yourself whether you agree with 100% of the amendment, 100% of the time:

<https://www.sos.state.oh.us/globalassets/ballotboard/2017/2017-12-01-petition.pdf>.

Issue 1 is good only for drug traffickers, cartels, and gangs, violent criminals serving mandatory prison time, and outsiders with an unknown, hidden agenda. The constitution is not easily changed. The proponents have spent millions of dollars to get it on the ballot, and have a budget of over \$20 million to get it adopted by the voters. VOTE NO on Issue 1, and side with the Ohio judges, law enforcement, and prosecutors. It is bad for Ohio, its citizens, and drug addicted persons, and it is certainly not about "neighborhood safety" or "drug treatment and rehabilitation."