

Fifth in a series of papers about state constitutional issues

At the November 3, 2026, general election, Proposal 2026-01 will ask voters whether a constitutional convention should be convened for the purpose of a general revision of the 1963 Michigan Constitution. Article XII, Section 3 provides that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to voters. If the question is approved, the convention would convene in Lansing on October 5, 2027. If rejected, it will automatically appear on the ballot again in 2042.

Proposal 2026-01 will ask voters:

Shall a convention of elected delegates be called for the purpose of a general revision of the Michigan Constitution, any such revision to be submitted to the voters for ratification?

The Citizens Research Council is publishing a series of papers to provide information which voters may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this time. The Citizens Research Council takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in the papers in this series will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

ARTICLE II – ELECTIONS

The U.S. Constitution grants to the states the main responsibility for running elections. Under the elections clause of Article I, states set the “time, places and manner” of congressional elections subject only to the guardrails established by the federal government. Article II of the 1963 Michigan Constitution deals with federal, state and local elections. It sets the basic rules for who can vote, how elections are run, what powers voters have to repeal state laws and approve new ones, and recall elected officials.

A constitutional convention would likely explore several issues dealing with Michigan’s current structures and processes around voting, voter registration, election administration, as well as examine the workings of existing direct democracy tools including initiative and referendum. A convention almost certainly would remove the three obsolete and inoperative elections provisions of the 1963 Constitution determined to be violative of federal law. The scope and content of any proposed changes to Article II arising from a convention would be bound only by the federal constitution and law. Further, those changes would have to garner the support of Michigan voters if faced with a new constitution.

Inoperative and Obsolete Provisions

State constitutions may not violate the provisions of the United States Constitution. The language of a state constitution should reflect the reality of the law and should be understandable to citizens. Provisions of the state constitution that are inoperable because they violate the provisions of the federal constitution make the language of the state constitution confusing and misleading. Inoperative provisions should be removed or revised to reflect the current state of the law.

Article II, Sections 1, 6, and 10 of the Michigan Constitution are not consistent with the provisions of the federal constitution. A constitutional convention may make it a priority to address provisions such as these, either by bringing them into compliance with the U.S. Constitution or by removing them and deferring to state statutes (which is the current arrangement).

Voting Age

Article II, Section 1 sets the minimum voting age in Michigan at 21 and creates residency requirements to vote. In 1970, President Nixon signed an extension of the Voting Rights Act of 1965, setting a minimum voting age of 18 in all federal, state, and local elections. Oregon and Texas successfully challenged that part of the law; in *Oregon v. Mitchell*¹, a divided U.S. Supreme Court declared unconstitutional that section of the federal law that applied to state and local elections. This raised the possibility that states that had established minimum voting ages other than 18 would have to maintain two sets of voter registration records, one for federal elections and one for state and local elections.

In 1971, three-fourths of the state legislatures ratified the 26th Amendment of the U.S. Constitution, establishing the nationwide minimum voting age at 18 years. The 26th Amendment supersedes any state constitutional or statutory provision, including Article II, Section 1 of the Michigan Constitution. As a result, the minimum voting age in Michigan is 18, as provided in state law.

In addition, the Michigan Attorney General has opined, based on several U.S. Supreme Court cases, that the six-month residency requirement is no longer applicable.² The current statutory requirement is 30 days.

Property Ownership to Vote

Article II, Section 6 requires electors voting on an increase in the ad valorem property tax rate or bond issues to be property owners. In *Kramer v. Union Free School District No. 15*³, the U.S. Supreme Court reversed a decision of a New York District Court. That court had dismissed a complaint by a bachelor who did not own or lease taxable real property, who challenged a state law that provided that in certain school districts, residents who were otherwise eligible to vote could vote only in school district elections if they owned or leased taxable real estate or if they were parents or custodians of children enrolled in the local public schools. The U.S. Supreme Court held that the relevant section of the New York law was unconstitutional because it violated the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

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In *Cipriano v. City of Houma*⁴, the U.S. Supreme Court found that a Louisiana law that provided that only property taxpayers had the right to vote to approve the issuance of revenue bonds for a municipal utility system violated the Equal Protection Clause of the 14th Amendment and was therefore unconstitutional.

Based on these precedent-setting cases and others, Article II, Section 6 would not be sustained were it to be challenged. Municipalities no longer use property ownership as a criterion for participating in elections.

Federal Term Limits

Article II, Section 10 seeks to impose term limits on Michigan members of the United States House of Representatives and Senate. This section, as well as Article IV, Section 54 (term limits for state legislators) and Article V, Section 30 (term limits for state executive branch elected officials), was added to the Constitution in 1992. The 1992 amendment language clearly recognizes that the intent – placing term limits on members of the U.S. Congress – may be unconstitutional and severs this provision from other parts of the initiative that impose limits on state officers (which is not prohibited by the U.S. Constitution).

The 22nd Amendment to the U.S. Constitution limits the president to two terms, but the Constitution does not include limits for members of the U.S. Senate or House of Representatives. Sixteen states, including Michigan, have term limits for state legislators, while six other states have had their legislative term limits repealed or invalidated by the courts. Article I, Section 2 of the U.S. Constitution establishes the minimum qualifications for the U.S. House of Representatives:

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state in which he shall be chosen.

Article I, Section 3 of the U.S. Constitution includes the minimum qualifications for the U.S. Senate:

No person shall be a senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

In *U.S. Term Limits, Inc v Thornton*⁵, the U.S. Supreme Court ruled in a five to four decision that the U.S. Constitution prohibits states from adopting congressional qualifications that are in addition to those enumerated in the Constitution. The case found that Amendment 72 to the Arkansas Constitution, which prohibited an otherwise-eligible candidate for Congress from being on the ballot if that candidate had already served three terms in the House of Representatives and two terms in the Senate, was in violation of the U.S. Constitution.

Voting Rights

Voting and access to the ballot are fundamental to a thriving, well-functioning democracy. While citizens have a responsibility to vote on Election Day, government must ensure that all aspects of the voting process are efficient, secure, transparent, fair, and accurate. This applies to everything from voter registration to election certification. Because of the importance of the franchise, it is critical that fundamental and foundational voting rights be housed in the state constitution. The qualifications to vote and the processes by which eligible voters may avail themselves of the ability to vote are issues that a constitutional convention may wish to address.

Qualifications to Vote

Because states serve as the primary regulators of elections, their constitutions (not the U.S. Constitution) establish and protect the right to vote. In addition to conferring the right to vote for its citizens, a state constitution also sets the qualifications that must be met for citizens to vote. The eligibility to vote is based on a person's identity, residency, age, and citizenship. The Michigan Constitution, like those of the other 49 states, confers the right to vote only to U.S. citizens. It is illegal under both federal and state law for non-citizens to cast a ballot.

While each state's unique voter registration process requires individuals to prove their identity, residency, and age by providing specific documents, in most states, citizenship is confirmed by asking for an individual's attestation, not documentary proof.¹ Voters in Michigan currently register by swearing or affirming in writing that they are U.S. citizens under penalty of perjury. Under the Michigan Election Law, a person who makes a false affidavit or lies under oath to register or vote is guilty of perjury, punishable by a fine of up to \$1,000, up to five years' imprisonment, or both.

In 2004, Arizona became the first state to require documentary proof of U.S. citizenship to register to vote. Since, eight other states have adopted laws to require documentary proof to register to vote, although some states have not yet implemented their requirements or have been blocked by federal courts from doing so.² The exact documents required to show proof of citizenship vary from state to state, but generally include a birth certificate, U.S. passport, naturalization documents, or records documenting the birth of a U.S. citizen abroad.

Supporters of proof of citizenship laws argue that the policy is necessary to ensure that only U.S. citizens can vote in elections and that noncitizen voting is prevalent and should be addressed. Opponents argue that such laws prevent lawful U.S. citizens from being able to vote because of logistical and

1 Every state except North Dakota requires an individual to register before they can vote.

2 The nine states are: Alabama, Arizona, Georgia, Kansas, Louisiana, Mississippi, New Hampshire, Ohio, and Wyoming. Alabama and Louisiana have not implemented their proof of citizenship laws. A federal court blocked Kansas' proof of citizenship law in 2018.

financial obstacles to obtaining required documentation, that noncitizen voting is not prevalent, and that proof of citizenship laws are costly and burdensome to implement for election officials.

Michigan voters may be presented with a proposed constitutional amendment at the November 2026 general election to require individuals to verify, by providing documentary proof, that they are U.S. citizens when registering to vote.³ This proposed constitutional amendment would eliminate Michigan's current practice of self-attestation for confirming a voter's citizenship. It is unknown at the current time whether the ballot question will be certified for the November ballot, and, if certified, approved by voters. Given the level of current public interest and attention around this issue, both at the state and federal level, it is very likely that a future constitutional convention would examine the merits of requiring Michiganders to provide documentary proof of U.S. citizenship when registering to vote

Voting Rights

Two citizen-initiated constitutional amendments approved by voters in 2018 and 2022 enshrined specific voting "rights" within the Michigan Constitution. Known colloquially as the "Promote the Vote" amendments, they added several new provisions to Article II, Section 4. Much of this new material was either covered in existing constitutional language or contained within existing state law. Other provisions included in the two amendments modified time-frames, requirements, and processes related to voter registration and election administration.

The Promote the Vote amendments granted the following rights to every U.S. citizen that is a qualified Michigan voter:

1. To vote a secret ballot in all elections.
2. If serving in the military or living overseas, to have an absent voter ballot sent to them at least 45 days before an election and have their voted ballot counted if received within six days after an election.
3. To a "straight party" vote option on partisan general election ballots.
4. To be automatically registered to vote when conducting business with the secretary of state.
5. To register to vote in an election through mail-in application before the fifteenth day before the election.
6. To register to vote in person on election day.
7. To prove their identity when voting in person or applying for an absent voter ballot in person by (1) presenting their photo identification, or (2) by executing an affidavit verifying their identity.
8. To vote a "no reason" absentee ballot.

³ On March 4, 2026, a ballot committee named Americans for Citizens Voting submitted petition signatures to the Board of State Canvassers to amend Article II, Sections 1 and 4 to require documentary proof of citizenship to vote in Michigan elections. The Board is required to determine, by July 30, 2026, whether the petition meets the minimum number of signatures required to send the proposal to the November 2026 ballot.

9. To receive (1) state-funded prepaid postage to return an absent voter ballot application, (2) state-funded prepaid postage to return a voted absent voter ballot, and (3) a state-funded system to track submitted absent voter ballot applications and absent voter ballots.
10. To access a state-funded secure drop-box for voted ballots in every municipality.
11. To automatically receive an absentee ballot for all future elections.
12. To have the results of statewide elections audited.
13. To access at least nine days of early in-person voting for all state and federal elections.

As with other provisions of the Michigan Constitution that lay out rights and privileges for citizens (e.g., free public education under Article VIII, Section 2), Section 4 entrusts the legislative branch with the responsibility to implement the constitutional elections provisions and to “regulate the time, place and manner of all elections.” To carry out these duties and responsibilities, the legislature has enacted the Michigan Election Law. It regularly undergoes scrutiny in the legislative arena, allowing for regular updates to voter registration and voting requirements, deadlines, and processes to meet the modern-day demands of voters and election administrators. It is through this deliberative process, with the approval of the governor, that the basic constitutional guarantees are met.

The specific policy positions contained in the two Promote the Vote amendments may very well be good, sound positions, and many Michiganders, exercising their fundamental right to vote, may benefit from their adoption and inclusion in the state constitution. In the short time that they have been in operation, several of the provisions have made voting more accessible and convenient, while protecting the integrity and security of the franchise.

However, it must also be pointed out that in addition to affirming specific rights to qualified voters, these amendments added material to the constitution that already existed in state law, as well as new material that might otherwise be found in the Michigan Election Law. The two Promote the Vote amendments increased the length of Section 4 greatly from 111 words to over 1,350 words, a twelve-fold increase. More importantly, the addition of this material has had the practical effect of enshrining or “locking in” election-related material, in some instances with detail and specificity, to the state constitution, shielding provisions from the regular legislative process. But in doing so, these provisions can only be changed through another statewide vote.

In this regard, the Promote the Vote amendments join a growing list of amendments to the 1963 Constitution that contain detailed policy prescriptions that are essentially legislative matters intended to be safeguarded from future legislative involvement. A constitutional convention would likely consider whether housing public policy preferences related to voter registration, voting, and election administration within the state constitution and making them more difficult to remove or modify is the best way to ensure Michigan elections are efficient, secure, transparent, fair, and accurate.

Provisions Related to Direct Democracy

Board of State Canvassers

Originally created by the Michigan Constitution of 1850, Article II, Section 7 of the 1963 Michigan Constitution establishes the modern-day Board of State Canvassers (Board). It requires that the Board consists of four members and that a majority of board members may not be from the same political party. Further, Section 7 states that the duty of the Board is to certify election results based solely on votes cast in an election and that it is the only body authorized to certify results of a federal or statewide election. The Board's powers are "ministerial, clerical, and nondiscretionary" and its election certification is final, subject only to post-certification recounts or court-order.

The Michigan Election law provides that the Board consists of two Democrat and two Republican members who are nominated by their respective political parties and appointed by the governor. As a decision-making body consisting of four members, at least one member of each party must vote in the affirmative for any Board action to pass.

The elected Secretary of State is, by state law, the chief election officer of Michigan. However, the Board of State Canvassers (Board) also has specified duties and responsibilities prescribed in state law related to elections. According to its website, duties of the Board include:

- Canvassing and certifying statewide elections, elections for legislative districts that cross county lines, and all judicial offices except Judge of the Probate Court.
- Conducting recounts for state-level offices.
- Canvassing nominating petitions for candidates running for state offices filed with the Secretary of State.
- Canvassing state-level ballot proposal petitions.
- Assigning ballot designations and adopting ballot language for statewide ballot proposals.
- Approving electronic voting systems for use in the state.

While Section 7 makes clear that the duties of the Board are clerical, ministerial, seemingly self-executing, and without ambiguity, partisan political disagreements have plagued the implementation of these provisions. With a bipartisan vote requirement, controversial Board decisions have often ended in deadlocks along party lines. On several occasions Board members have attempted to broadly define their role in a larger way than the statutory definition.

Historically, the controversy surrounding the Board relates to its function in certifying questions for the statewide ballot. The state Attorney General has opined that the Board is without authority to address questions concerning the merits or constitutionality of an initiated petition. However, political dis-

agreements among Board members have resulted in deadlocked votes and the Board failing to carry out its constitutional duties until directed by a Michigan court. The procedural delays, court proceedings, and political gamesmanship created by the Board's actions/inactions can result in additional costs and delays for petition supporters. Further, the Board's failure to certify petitions can also contribute to confusion around Michigan's ballot question process.⁶

The Michigan Legislature has responded to some of the controversies surrounding the Board's role in the ballot question process through legislation. Today, the Michigan Election Law requires all initiated petitions to be filed with the Secretary of State before signature gathering begins. The law also provides petition supporters with voluntary Board review/approvals of petition forms and summary content at the "front-end" of the ballot question process. These optional pre-circulation steps are intended to better clarify the Board's role and responsibilities and minimize the likelihood of future legal challenges to petitions.

The Board's approval of a petition "as to form" and its "summary content" does not imply endorsement of the proposal, but only that the petition meets the technical requirements of font size and form, and the summary language is true and impartial. If the Board of State Canvassers approves the format and summary of a petition, the sponsor must print the full text of the approved summary in the petition heading. The Board will be barred from considering a subsequent challenge alleging that the summary is misleading or deceptive. It should be noted that the Board's approval does not prevent opponents of a petition from raising legal challenges to the content of a petition.

A constitutional convention might wish to consider whether a constitutional mandate for a Board of State Canvassers is in fact necessary. Should it opt to continue this constitutional mandate, it might choose to reconsider the number of members on the Board, perhaps providing for a tie-breaking vote, provide for their nomination and selection, and consider whether to constitutionally enumerate the role of the Board.

Recall of Elected Officials

Article II Section 8 provides for the recall of elected officials other than judges of courts of record. It allows citizens to seek to remove an elected official before the end of that official's term. Recall is a political process, in contrast to impeachment, which is a legal process for removing an elected official for violating a law.

Recall was one of the Progressive Era initiatives to promote direct democracy and make government more responsive and responsible, by giving citizens power over unresponsive, incompetent, or otherwise unacceptable officials. In Michigan, as in some other states, this includes elected officials that are deemed to be politically unacceptable. Michigan and Oregon were the first states to allow recall of state officials in 1908.

Michigan is one of 18 states that allows the recall of state officials in their state constitutions, and one of at least 36 states that allow the recall of local officials.⁴ Michigan does not allow recall of judicial officers. Eight states require specific grounds for recall (malfeasance, conviction for a felony, misappropriation of public funds, etc.), but Michigan's recall provisions are more representative in acknowledging the political nature of recall efforts: "The sufficiency of any statement of reasons or grounds...shall be a political rather than a judicial question."⁷ The process of recall is specified in the Michigan Election Law.

Michigan requires recall petitions to have valid signatures numbering at least 25 percent of the total number of votes cast for governor in the last gubernatorial election within the electoral district where the officer is elected. In other states, the required minimum number of signatures is based on a variety of criteria. Petitioners for a recall have a 180-day window to collect signatures. Officials cannot be recalled in the first six months or the last six months of their terms.

Nationwide, recall efforts against state officials have generally been unsuccessful, but a member of the Michigan House of Representatives was successfully recalled in 2011. Attempts to recall local government officials are more frequent in Michigan than efforts to remove state officials. This is also the case across other states.

Issues related to recall that a constitutional convention would be asked to address include the effect the possibility of recall may have on elected officials faced with necessary, but politically unpopular decisions. Policy questions include whether Michigan should continue to allow recall, and if so, under what conditions. Should recall be more, or less, difficult than now required (e.g. should the number of signatures required be increased or decreased, should the time allotted for signature gathering be altered, or should the reasons that justify recall exclude valid political positions)? Should judges continue to be exempt from recall? Should the mechanics of the recall process be altered?

Initiative and Referendum

In the late 19th Century, U.S. efforts to challenge the special interests that controlled the political process were informed by the Swiss, who had adopted direct democracy in the forms of referendum in 1844 and initiative in 1891. In Michigan, a limited and restrictive form of initiative (only on constitutional amendments, on petition of 20 percent of the number that had voted in the previous election, and with the approval of the legislature voting in joint session) first appeared in the 1908 Constitution.⁸ In 1913, the 1908 Constitution was amended to permit the initiative (adding the authority for a statutory initiative) and the referendum in essentially the same form as they appear in the 1963 Constitution.

Article II, Section 9 of the 1963 Michigan Constitution authorizes the use of

⁴ Montana gives its citizens the power to recall state officials in state law.

initiative and referendum. A constitution convention may consider whether Michigan should continue to permit use of these tools of direct democracy.

Initiative

The “initiative” is a proposal for a new law that is placed on the ballot by a citizen petition.⁵ Michigan is one of 21 states that allow initiatives to propose new laws. The Michigan Constitution provides for an “indirect” form of the initiative. Rather than sending a proposed law directly to voters to approve, Article II, Section 9 states that once enough valid petition signatures have been collected, the proposed law goes to the legislature for consideration. If approved within 40 days, the proposal becomes law without a vote of the people or approval by the governor. If the legislature does not approve the legislation, the proposal is submitted to the voters. Michigan is one of five states where the legislature may, within the 40-day window, reject a proposed initiated law and propose an alternative law to be placed side-by-side on the ballot with the proposed law for the voters to decide at the next general election.

In the direct initiative process used in some other states, once enough valid signatures have been collected, the issue is placed directly on the ballot for determination by the voters. Two states allow both direct and indirect initiatives, 12 states allow direct initiatives for statutes, and nine (including Michigan) allow indirect initiatives.

Purposes and Form. If the initiative is retained, a constitutional convention may wish to insert language clarifying how the initiative may be used. Some states restrict the purposes for which the initiative can be used. Various states prohibit initiatives that modify the rights of individuals; that affect the judiciary or prescribe court rules; that amend the state constitution; that enact emergency measures; that propose local or special legislation; or that make appropriations. Some states prohibit the same measure from being set before the voters more often than once in three years. In Michigan, the initiative extends only to laws that the legislature may enact (the initiative may not be used, for example, to statutorily reestablish a minimum voting age of 21).

Some states restrict statutory initiatives to a single subject, which advocates claim enhances clarity and transparency. Michigan is one of 11 states that do not have this restriction.

A constitutional convention may revisit the signature requirements for putting initiatives on the ballot considering communication and technology advances since the mid-1960s. Means and methods for qualifying for the ballot have changed with the expanded roles played by paid signature gatherers. The Michigan Constitution establishes a minimum number of signatures on petitions for initiatives equal to eight percent of the total votes cast for all candidates for governor at the last gubernatorial election. The required number of signatures

⁵ In addition to allowing citizens to initiate new laws, the 1963 Constitution (Article XII, Section 2) provides citizens with the right to propose constitutional amendments through petition. Although somewhat similar in form and function to the initiative, issues and concerns dealing with amending the state constitution will be covered in the Research Council's separate report on Article XII (published September 2026).

must be collected within any 180-day period, according to Michigan statute.

Of the 21 states that allow the statutory initiative, Massachusetts requires the fewest signatures (three percent of votes cast for governor in the last election) and allows the shortest time for gathering signatures (60 days). A few states require a number of signatures equal to as much as ten percent of the votes cast in last general election; some states allow an unlimited amount of time to collect signatures.

Michigan is one of nine states (21 states allow initiative) that do not require a geographical distribution for petition signatures, although a 2018 state law requiring no more than 15 percent of signatures from any one congressional district was ruled unconstitutional by the Michigan Supreme Court.⁹ Other states require minimum percentages of signatures to be from different regions as defined by counties or congressional districts.

Initiatives in Michigan. Since 1963, 23 initiatives proposing statutes have been certified to go to legislature for consideration. The Michigan legislature approved nine of these within the 40-day period allowed; those nine proposals became law by legislative action and did not appear on the ballot. Of the 14 initiated legislative proposals that did appear on the ballot, eight were approved by the voters and six were rejected.

Article II, Section 9 states a law submitted by initiative and approved by the voters takes effect ten days after the vote is certified. After an initiative petition is approved by the voters, no gubernatorial approval is necessary, nor may the governor veto the proposal. An initiated law can be amended or repealed by a statewide vote or by a supermajority three-fourths affirmative vote in both the House of Representatives and Senate.

Ten states restrict the legislature's power to repeal or amend an initiated statute; the California legislature is prohibited from amending or repealing an initiated statute. In 14 states, the legislature may repeal or amend an initiated statute at any time.

Notably, Section 9 is concerned with the effective date and vote requirements to amend and repeal an initiated law but does not cover "when" the legislature can act to amend or repeal such a law. This perceived "loophole" in Michigan's constitutional language around the initiative was used by the Republican-controlled Michigan Legislature in 2018 to "adopt and amend" two initiated laws (earned sick time and minimum wage) that were certified for 2018 general election ballot. By doing so, the legislature was able to adopt the laws (without governor's approval) and subsequently amend them in the same legislative session. This allowed current lawmakers to remove several objectionable provisions of the laws with a simple majority vote.

The "adopt and amend" tactic was challenged in court and found to violate the purpose of Section 9. The Michigan Supreme Court in *Mother Justice et al v Nessel*¹⁰ found that under Section 9, the Legislature has only three options, adopt the initiative as presented, reject the petition, or propose a new

alternative law. The Michigan Constitution does not allow the petition to be adopted and then amended in the same legislative session and without the say of the people.

Referendum

A popular “referendum” is a proposal placed on the ballot by a citizen petition to repeal a law that has been enacted by the legislature and signed by the governor. Like the initiative, adoption of the referendum was a Progressive Era response to the control of state legislatures by special interests. Michigan is one of 24 states that permit citizen-initiated referenda. Separate from a citizen-initiated referendum, Article IV, Section authorizes another type of a referendum; this allows that a bill (except an appropriations bill) that is passed by the legislature and approved by the governor will not become law unless approved by voters.⁶

Besides considering continuation of the power of referendum, a constitutional convention may wish to revisit the process of initiating the referendum. Citizen-initiated referenda in Michigan require a number of valid signatures equal to five percent of the total vote cast for governor in the last gubernatorial election. The petition may be circulated from the date the law being challenged is enacted until the filing deadline, which is 90 days after the final adjournment of the legislative session in which the law was enacted.

If the referenda petition is certified by the Board of State Canvassers as having sufficient signatures, the implementation of the law that is being contested is suspended, pending the determination by the voters.

Referenda cannot be used to rescind acts that make appropriations for state institutions or to meet deficiencies in state funds. This provision is worded in such a way that the legislature on several occasions has used it to include what some may consider “token” appropriations in controversial legislation to effectively make the legislation “referenda proof.” The Michigan Supreme Court has ruled that regardless of the amount, purpose or motive behind an appropriation, the constitutional language is clear that the power to rescind public acts does not extend to those that contain an appropriation for a state institution.¹¹ Because this prohibition is in the constitution, any limitation that would prevent perceived abuse of the provision by the legislature would have to be included in the constitution.

Since 1963, ten referenda have been placed on the ballot by petition, and of those, only one was approved to allow the enacted law to remain effective. That November 1988 referendum targeted Public Act 59 of 1987, to prohibit the appropriation of public funds to pay for abortions unless abortion is necessary to save the life of the mother. In addition to the ten petition-initiated referenda, 14 referenda were placed on the ballot by the Michigan Legislature, 10 of which were approved by the voters. Laws approved by referenda may be amended by the legislature at any time.

⁶ Discussion of the legislative referendum topic is covered in the Research Council’s separate report on Article IV (published May 2026).

Initiative and Referendum Policy

The controversy surrounding the initiative and referendum centers on the right of citizens to directly participate in the process of passing and repealing laws. Concerns arise about the effect of direct democracy on the functioning of government when important and complicated issues are placed directly before the voters, without the benefit of a legislative balancing of competing policy needs. Some have raised concerns about the ease or difficulty of placing an issue on the ballot. There are concerns about the often-confusing language that makes it difficult for voters and public officials to interpret and predict the actual effect of proposals. More recently, there have been instances of alleged fraud in signature gathering efforts to place matters before voters. There are concerns about “outsiders” and special interests funding initiatives. One perceived weakness of Michigan’s indirect initiative structure is the ability of special interest-supported petitions to be effectively “rubber stamped” into law, without approval or veto by the governor, when the two legislative chambers are controlled by the same political party and legislative leaders are aligned with those special interests.

Conclusion

Article II, Section 1 of the 1963 Michigan Constitution should be updated to make it conform to the U.S. Constitution’s minimum voting age. Based on various U.S. Supreme Court decisions, it is clear that Section 6 (property ownership to vote) would also be declared unconstitutional if challenged. Section 10 should be eliminated because it seeks to establish congressional term limits, a goal that the U.S. Supreme Court has found to be unconstitutional. All of these changes could be accomplished by amendment or as part of a general revision, but at this time, neither the legislature nor citizens have introduced amendments to alter or repeal these provisions.

Sections 7, 8, and 9, which allow citizens to exercise direct democracy through recall, initiative, and referendum, are the more interesting policy issues. Not all states provide for direct democracy in this way, and questions arise concerning the effect these citizen rights have on the adoption of considered, balanced legislation. A further question, in the context of a constitutional convention, is whether, and which, aspects of these issues should be addressed constitutionally or statutorily.

Recall, initiative, and referendum were adopted as means to empower citizens to challenge the perceived control of special interests over the state legislature. Ironically, in recent times, these tools of direct democracy have, on occasion, been used by special interests to achieve their goals. The result is to shield certain public policy issues from the regular legislative process and, in cases of initiated constitutional amendments, enshrine specific policies into the state constitution. While these processes exclude the checks and balances, the debate, deliberation, and compromise that characterize representative democracy, they do engage citizens in discussions and determinations of important public policy issues.

Endnotes

- 1 *Oregon v Mitchell*, 400 U.S. 112 (1970)
- 2 OAG, 1978, No. 5356, Aug. 23, 1978
- 3 *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969)
- 4 *Cipriano v. City of Houma*, 395 U.S. 701 (1969)
- 5 *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)
- 6 See Citizens Research Council of Michigan Report #386, [Reform of Michigan's Ballot Question Process](#), January 2014.
- 7 National Council of State Legislatures, Recall of State Officials, March 21, 2006
- 8 Steven L. Piott, University of Missouri Press, Giving Voters a Voice: Origins of the Initiative and Referendum in America, 2003
- 9 *League of Women Voters of Michigan v. Secretary of State*, Mich. (2022)
- 10 *Mothering Justice v. Nessel*, Mich. (2024)
- 11 *Michigan United Conservation Clubs v. Secretary of State*, Mich. (2001)