



NOVEMBER
2022
BALLOT PROPOSAL
22-1

An Overview

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On November 8, 2022, Michigan voters will decide whether to adopt an amendment to the State Constitution to require the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, and each member of the Legislature to file an annual financial disclosure, and to modify the term limits for a member of the Legislature. Proposal 22-1 is the result of House Joint Resolution (HJR) R of 2022, which passed the Michigan Senate and the Michigan House of Representatives with more than a two-thirds vote in each chamber. Proposal 22-1 will appear on the ballot at follows:

Proposal 22-1

A proposal to amend the state constitution to require annual public financial disclosure reports by legislators and other state officers and change state legislator term limit to 12 total years in legislature

This proposed constitutional amendment would:

- Require members of legislature, governor, lieutenant governor, secretary of state, and attorney general file annual public financial disclosure reports after 2023, including assets, liabilities, income sources, future employment agreements, gifts, travel reimbursements, and positions held in organizations except religious, social, and political organizations.
- Require legislature implement but not limit or restrict reporting requirements.
- Replace current term limits for state representatives and state senators with a 12-year total limit in any combination between house and senate, except a person elected to senate in 2022 may be elected the number of times allowed when that person became a candidate.

Should this proposal be adopted?

YES

NO

If a majority of the electors vote "yes" on Proposal 22-1, Article IV, Sections 10 and 54 of the State Constitution will be amended to include the proposed language.

BACKGROUND

Financial Disclosure

In June 2021, the House passed House Bills 4680-4692, which, taken together, would enact various lobbying, financial disclosure, and ethics reforms. The bills have been referred to the Senate Committee on Government Operations.

In March 2022, the Board of State Canvassers approved the form and summary of an initiative petition sponsored by a group called Voters for Transparency and Term Limits. Generally, the initiative petition seeks to amend the Michigan Constitution to require members of the Legislature, the Governor, the Secretary of State, and the Attorney General to file annual public financial disclosure reports and modify Michigan's term limits requirement to allow an individual to serve a total of 12 years in any combination between the Senate and the House. The organization would have had to collect over 425,000 signatures by July 11, 2022, to have the initiation petition placed on the November ballot. However, that threshold was not reached; instead, the House and Senate adopted HJR R which placed the initiative on the ballot.

Term Limits

In 1992, Michigan voters approved Proposal B, which amended the Michigan Constitution to prescribe term limits for an individual elected to State Executive and Legislative offices in Michigan. Proposal B imposed the following term limits:

- State Representative: three two-year terms.
- State Senator: two four-year terms.
- Governor: two four-year terms.
- Secretary of State: two four-year terms.
- Attorney General: two four-year terms.

Proposal B also prescribed three two-year terms in 12 years for an individual elected as United States Representative and two six-year terms in 24 years for an individual elected as US Senator. (However, these term limits were found to be unconstitutional due to an earlier US Supreme Court case).¹

After Proposal B took effect, some Michigan voters sued, alleging that the term limits violated their rights under the First and Fourteenth Amendments to the US Constitution.² The US Court of Appeals for the Sixth Circuit disagreed and upheld Michigan's term limits for State legislators.³

In 2019, a group of bipartisan former Michigan legislators filed a Federal lawsuit against Secretary of State Benson seeking to invalidate term limits, arguing that term limits violate their ballot-access and freedom of association rights under the First and Fourteenth Amendments to the US Constitution. A US District judge granted the State's motion for summary judgment and the legislators appealed.

In November 2021, the US Court of Appeals for the Sixth Circuit, relying on *Miller*, affirmed the District Court's decision regarding the Federal claims.⁴ The legislators also challenged the term limits under two procedural provisions of the Michigan Constitution. The Sixth Circuit opined that the State claims were better left for a State court to decide, vacated the district court's decision, and remanded for the district court to dismiss those claims without prejudice.⁵ The plaintiffs appealed to the US Supreme Court.

Legal Challenge to Proposal 22-1

In 2022, a group of plaintiffs filed a lawsuit with the Michigan Supreme Court after the Board of State Canvassers approved HJR R as Proposal 22-1, arguing that the proposal should be kept off the ballot because it did not comply with requirements that a proposal be limited to one purpose or subject. In an unsigned order, the Court denied the plaintiffs' request to compel the Board to decertify the initiative.⁶

¹ In *US Term Limits, Inc. v. Thornton*, 514 US 779 (1995), the US Supreme Court ruled that states may not impose qualifications, including term limits, for prospective members of Congress that are stricter than those prescribed in the US Constitution.

² See *Citizens for Legislative Choice v. Miller*, 144 F3d 916, 918 (US Court of Appeals for the Sixth Circuit) (1998).

³ *Id.* at 925.

⁴ *Kowall v. Benson*, 18 F4th 542, 546 (US Court of Appeals for the Sixth Circuit) (2021).

⁵ *Id.* at 549.

⁶ *Anderson v. Board of State Canvassers*, order of the Michigan Supreme Court, Docket No. 164747 (2022). In a concurring opinion, Justice Viviano wrote that the State Constitution does not establish a single-purpose test. He went on to state, "Plaintiffs might have presented a better argument if the amendment here was being proposed via an initiative petition. Those amendments are governed by Const 1963, art XII, § 2. In *Citizens Protecting Michigan's Constitution v Secretary of State*, we noted the possibility that § 2 prohibited amendments containing multiple purposes, but we did not decide the issue because the plaintiffs there had not made the argument."

DISCUSSION

According to the Center for Public Integrity, Michigan is one of two states that do not require lawmakers to disclose their personal financial interests and is ranked 50th in the nation in transparency. Proponents of Proposal 22-1 argue that the financial disclosure requirements would align Michigan with the 48 other states that require their elected officials to disclose their finances. Also, they believe it would enhance public confidence in government and would enact conflict of interest standards by requiring State officials to publicly disclose all relevant financial information.

Regarding the modifications to term limits, proponents believe that allowing lawmakers to serve a total of 12 years combined in either the House or Senate would have a long-term positive impact on public policy by allowing lawmakers to gain additional experience before they are termed out, to build better relationships with other lawmakers, and to campaign for election or reelection to the same office instead of seeking other opportunities. Proponents also argue that the current term limit rules encourage lawmakers to focus more on movement from office to office and ensure that lobbyists or career civil servants within the executive branch have more institutional knowledge than lawmakers.

Some opponents believe that the term limit aspect of the proposal should have originated through the initiative process instead of through the Legislature, arguing that the legislative approach lacked transparency and input from Michigan residents. Also, they argue that the proposal would increase the number of terms a lawmaker could serve, even doubling the number of terms a lawmaker could serve in the House, which is counter to the impetus for prescribing term limits when Proposal B passed in 1992.

FISCAL IMPACT

Proposal 22-1 could result in increased costs for the Department of State because of the requirements to receive the required financial disclosure statements and to make them publicly available on its website. Any additional programming or staffing costs likely would be minimal and would be absorbed within the Department's annual appropriations.