

The Supreme Court of Ohio

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The Hidden Disaster of State Issue 1

Too many people in our criminal justice system are there because of substance abuse disorders. This is undeniable. We know that substance abuse disorders are a major driver in criminal justice spending. We also know that through long-term treatment and therapy, those addicted can lead law-abiding, productive lives.

Issue 1 on Ohio's November 6 ballot purports to address this problem by reducing drug possession penalties and directing the savings from reduced incarcerations to expanded drug treatment and resources for crime victims. A superficial reading of Issue 1 could lead voters to see it as a thoughtful, compassionate, and reasonable response to a difficult and intractable problem. It seems so, until you peel back its layers and see that it will have catastrophic consequences for our state. If Issue 1 passes, Ohio may have some of the most lenient drug crime laws in the nation. We could easily become a magnet for substance abuse activity because there will be, in effect, very little consequence to engaging in such behavior.

Let me put the issue in context by explaining just one of Issue 1's consequences as it relates to possession of fentanyl, a lethal opioid. According to the Ohio Department of Health (ODH), drug overdose (poisoning) deaths in Ohio increased from 3,050 in 2015 to 4,050 in 2016. This is roughly four times the number of people who die in traffic accidents in Ohio annually. The ODH reported that 58.2 percent of the overdose deaths in Ohio in 2016 involved fentanyl compared with only 4 percent in 2013. This dramatic rise is due to the fact that fentanyl is 50 times more potent than heroin. According to the U.S. Drug Enforcement Administration, it takes just 2 *milligrams* of fentanyl – an amount barely able to cover Abraham Lincoln's beard on a penny – to kill the average person. Fentanyl is addictive, lethal, and simple to manufacture. It is easy to smuggle into our country from foreign sources, even using express mail envelopes. Its potency is not just a problem for abusers. It can be absorbed through the skin, putting freight handlers and first responders at serious risk.

Issue 1 would make the possession of powdered fentanyl in amounts less than 20 grams a misdemeanor with only probation as the consequence. This means that a drug offender caught with less than 20 grams walks away with no possibility of jail time. Since the lethal dose of fentanyl is just 2 *milligrams* (one-thousandth of a gram), 19 *grams* of fentanyl is enough to kill approximately 10,000 people. So if Issue 1 passes, an offender charged with possession of 19 grams of fentanyl would automatically get probation and could only be charged with a misdemeanor. Issue 1 does this by *constitutionally* dictating that any drug possession conviction that is now a Felony 4 or Felony 5 would be reduced to a misdemeanor. The requirement of probation ties the hands of the judge when it comes to sentencing. The judge **MUST** sentence an individual to probation for these offenses under Issue 1. This is unconscionable. Drug dealers would be incentivized to distribute fentanyl in amounts less than 20 grams so those caught possessing it would avoid incarceration.

The lack of consequences for fentanyl possession is shared with possession of other lethal drugs -- cocaine, K2, meth and heroin among them. Across the range of illegal substances, many current felonies would become misdemeanors. Who wouldn't want to set up their drug distribution business in Ohio knowing that possessing 19 grams of fentanyl or lethal amounts of other drugs would result only in a first class misdemeanor with mandatory probation?

The adoption of Issue 1 would, I predict, have another devastating consequence: Severely hampering the use of our very effective drug court programs across this state. Drug courts would be impeded by taking jail time off the table. We know, through multiple studies, that drug courts are effective only when they combine the "carrot" of treatment and support with the "stick" of judicial accountability, including incarceration when needed. It is this carrot-and-stick approach that enables judges and drug court teams to use a variety of tools to help people overcome addiction. But Issue 1, while providing a lot of carrots by expanding treatment, takes away the stick.

We are not talking about possession of marijuana. We are talking about Ohio becoming, in effect, unable by its constitution to offer drug court participation and to incentivize that involvement by the "carrot" of not having a felony conviction record. Who would want to participate in a drug court program knowing that they only face probation for possession of fentanyl, cocaine, methamphetamine, K2, heroin, and so forth? I predict that we will see a severe drop-off in drug court participation at the very moment when it is needed most should voters approve Issue 1.

To make matters worse, Issue 1 would freeze our criminal drug offense laws in time. It expressly mandates that its provisions be implemented based on the laws in effect on January 1, 2018. Our General Assembly couldn't, by passing a statute, fix all that is wrong with Issue 1. Our elected leaders could not pass laws to contradict Issue 1 -- laws meant to keep us safe. Another constitutional amendment would be necessary to repeal or modify the Issue 1 constitutional amendment. This would take another statewide election.

Keep in mind that special interest groups spent more than \$4 million to put Issue 1 on the ballot. Those same special interest groups will fully fund a campaign before this November's election that will try to mislead and confuse you regarding Issue 1. Please don't be fooled. Do your homework on Issue 1.

The proponents of Issue 1 seek to address a very real problem in our criminal justice system: the impact of substance abuse on our society and our criminal justice system. But by taking a hammer to that problem, the proponents have set Ohio on a dangerous course to adopting some of the most lenient drug laws in the country. It would limit the ability of the state to confront very real dangers, now and in the future, in battling substance abuse. Issue 1 may be well-intentioned in design, but its passage would gravely endanger Ohioans. It would be devastating in effect.



Maureen O'Connor
Chief Justice
The Supreme Court of Ohio



Five Reasons Issue 1 Must Be Defeated

Issue 1 on the November ballot, funded by George Soros and Facebook billionaire Mark Zuckerberg, purports to be about getting treatment for drug users. But it's much more than that. It will also reduce even major drug possession offenses to the equivalent of traffic violations, it usurps the power and flexibility of Ohio's judges and drug courts, it will levy huge costs on our counties with no funds to pay them, and it will endanger our families and children by flooding our streets with drugs – all at a time when opioid deaths in Ohio are exceeding the death toll from the Vietnam War. Issue 1 is a danger to Ohio. Here is what Issue 1 really does, and why it must be defeated:

- 1. Issue 1 makes possession of any amount of deadly drugs (including fentanyl, heroin, methamphetamine, and cocaine) nothing more than a misdemeanor, and forbids jail sentencing for the first two offenses, no matter what quantities of drugs are involved.**
- 2. Issue 1 significantly damages Ohio's economy and our job development efforts. Ohio would be alone among states in our region with ultraliberal Issue 1 drug laws – at a time when Ohio employers already complain that they can't find workers who can pass drug tests. Issue 1 will drive jobs from Ohio.**
- 3. Issue 1 puts Ohio drug law in the Constitution where it can be changed only through lengthy process and vote of the electorate. Ohio will be unable to respond rapidly to any new drug threat.**
- 4. Issue 1 will flood Ohio's streets with drugs. With all deterrent gone except for traffic-violation level fines, possessors of drugs will laugh at police knowing they cannot be jailed.**
- 5. Issue 1 enables the immediate release of as many as 10,000 felony offenders from Ohio prisons into our communities.***

BOTTOM LINE:

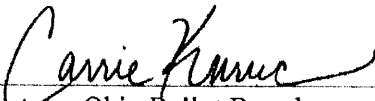
Despite claims from supporters, experts including judges, prosecutors, and treatment professionals agree this issue will result in less people in treatment, not more.

*Proponents of Issue 1 say fourth and fifth degree non-violent felony offenses are "minor" and those in prison for them should be eligible to be released. But the fact is the vast majority of such offenders are in prison because of plea bargaining down from more serious offenses. Judges in Ohio do not imprison people they believe are not a threat to society.

CERTIFICATION

Acting in my capacity as the secretary of the Ohio Ballot Board, I hereby certify to the Secretary of the State of Ohio that the foregoing text is the ballot language prescribed by the Ohio Ballot Board, acting pursuant to Article II, Section 1g of the Ohio Constitution and section 3505.062 of the Revised Code of Ohio, for this constitutional amendment proposed by petition for submission to the Ohio electorate at the election to be held on November 6, 2018.

In testimony whereof, I have subscribed my name in Columbus, Ohio, this 22nd day of August, 2018.


Secretary, Ohio Ballot Board

Issue 1

To Reduce Penalties for Crimes of Obtaining, Possessing, and Using Illegal Drugs

Proposed Constitutional Amendment

Proposed by Initiative Petition

To add a new Section 12 to Article XV of the Constitution of the State of Ohio

A majority yes vote is necessary for the amendment to pass.

If adopted, the amendment would:

- Require sentence reductions of incarcerated individuals, except individuals incarcerated for murder, rape, or child molestation, by up to 25% if the individual participates in rehabilitative, work, or educational programming.
- Mandate that criminal offenses of obtaining, possessing, or using any drug such as fentanyl, heroin, methamphetamine, cocaine, LSD, and other controlled substances cannot be classified as a felony, but only a misdemeanor.
- Prohibit jail time as a sentence for obtaining, possessing, or using such drugs until an individual's third offense within 24 months.
- Allow an individual convicted of obtaining, possessing, or using any such drug prior to the effective date of the amendment to ask a court to reduce the conviction to a misdemeanor, regardless of whether the individual has completed the sentence.
- Require any available funding, based on projected savings, to be applied to state-administered rehabilitation programs and crime victim funds.
- Require a graduated series of responses, such as community service, drug treatment, or jail time, for minor, non-criminal probation violations.

	YES	SHALL THE AMENDMENT BE APPROVED?
X	NO	