

Ohioans should vote no on Issue 1

Another viewpoint is a column The News-Herald makes available so all sides of an issue may be aired. Judge Eugene A. Lucci is the administrative judge on the Lake County Common Pleas Court.



Judge Eugene Lucci

State Issue 1 is a proposed amendment to the Ohio Constitution on the Nov. 6 ballot which promises to “save money, improve public safety” by reducing prison sentences for drug and other offenders, reducing penalties for drug possession to the misdemeanor level with no jail or prison possible until the third offense within 24 months, requiring any available savings to be applied to state-administrated rehabilitation programs, and requiring a graduated series of responses for a violation of probation by all drug and other offenders which cannot include prison or jail.

There will be promised savings to apply to rehabilitation programs, and it will likely cost the taxpayers more money.

The Ohio prison system has an inmate population of about 49,500. Under the statutes and regulations, 100 percent of rated capacity is 37,000. Even if State Issue 1 releases immediately the 10,000 prisoners it calculates will be released, no prison will be closed, no corrections officer will be laid off, and all of the fixed costs will remain the same. Any savings will come only at the margin, being mainly food, medical care and consumables.

The Office of Budget and Management conducted and released, on Oct. 10, 2018, its fiscal analysis, and concluded, “Therefore, OBM concludes that the proposed amendment would not produce significant savings to the state and could (depending on interpretation) actually increase costs to the state by tens of millions of dollars. For local governments, the proposed amendment would add costs that likely would not be covered by potentially available appropriations under amendment.”

Any savings will be earmarked for state-administered rehabilitation programs and crime victim funds, much the same way that Ohio lottery funds were earmarked for the state school system. We all know how that worked out for our children.

State Issue 1 was cobbled together in a rush to ballot, in an effort to get the measure to the voters as swiftly as possible. Amazingly, the proponents did not conduct a fiscal analysis to be sure the promise of money saved

is not merely a “pipe dream” (pun intended).

Issue 1 expressly supersedes the constitutional principle of separation of powers by requiring the prison system to tell judges how to rehabilitate drug-addicted offenders without the use of jail or prison as a negative consequence to enforce compliance.

It supersedes Marsy’s Law, another constitutional right of victims of crime to be secure in the prison sentences imposed on their offenders. It supersedes the statutory mandate for “truth in sentencing” that the people demanded in Ohio in 1997. It insidiously freezes the drug laws based on volume or weight as of Jan. 1, 2018, to prevent the legislature from making changes in anticipation of Issue 1 passage. And it forces, without funding, the majority of drug possession cases onto the municipal courts, which are ill-equipped in terms of the numbers of judges, probation officers and clerks to handle the deluge of cases. The proponents even included in this constitutional amendment the name or description of an activity (“child molestation”) that is not, and never has been, a term of art or the name of a criminal conduct in Ohio.

State Issue 1 will not improve public safety as promised, but will, in fact, endanger the public because it will let out of prison violent offenders and not allow judges to send violent offenders to prison for non-criminal probation violations, such as a failure to report or drug-test.

In fact, State Issue 1 lets out of prison up to 10,000 inmates, only 2,800 of them lower level drug possessors. The remainder include burglars, robbers, arsonists, drug traffickers, felonious assailants, kidnappers, those who committed violent crimes while in possession of or using firearms, those serving mandatory prison for aggravated vehicular homicide or assault, those serving prison on their fourth or more OVI conviction, and gangsters and racketeers — everyone but murderers, rapists, and the undefined “child molesters.”

Drug addicts will not have any pressure or incentive to turn on their traffickers because they face no jail time, and cartels, gangs and other drug dealers will feel safer knowing their customers will have not incentive to turn on them. Moreover, Issue 1 protects all drug possessors, even those who possess 19 grams of fentanyl (which can kill 10,000 persons) or MDMA (ecstasy, a date rape drug not even associated with addiction.)

Drug-addicted offenders will not receive treatment for several reasons: there will be no savings as promised to use for rehabilitation; State Issue 1 does not require offenders to participate in drug treatment; and State Issue 1 does not provide for any method of rehabilitation other than what the criminal justice system already is doing (minus jail or prison); and it will decimate the drug treatment programs already being utilized by courts, such as drug courts, jail treatment programs, and community-based correctional facility programs because these all involve the “carrot and stick” approach — encouraging prosocial behaviors with positive reinforcement and punishing antisocial behaviors with negative, such as jail or prison.

Drug-addicted offenders likely will no longer be offered intervention in lieu of conviction, prosecutor diversion programs, or reduction or dismissal of charges (drug or otherwise), and the positive drug screen while on probation may be treated as the commission of yet another drug possession offense in order to get the conviction for two possession offenses within 24 months on the record so that jail is available as a sanction for the commission of more drug offenses within two years of the first.

And it’s all enshrined in the constitution

State Issue 1, as presently worded, would be “set in stone.” Not one word can change in the constitution without securing the hundreds of thousands of valid signatures for the petition and putting it to the a state-wide vote of the people. The three out-of-state billionaires who are pulling the strings and funded State Issue 1 cannot be counted on to again front \$4 million they spent to get it on the ballot and the \$20 million they expect to spend to advertise this month, to step up and do the same for any and all adjustments that will be needed. They will leave the people of this state to wallow in the wake of their catastrophic mistake. This is the worst way to experiment with social, behavioral and criminal legal policy in the seventh most populous state of the nation.

State Issue 1, the deceptively titled “Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment,” is a wolf in sheep’s clothing.

Voters cannot rely on the title or the ballot language summarizing it. The devil is in the details of the full 1930-word text of the amendment.

Ohio voters should vote NO on State Issue 1.