

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**COORDINATING COMMITTEE
AGENDA**

DATE: Thursday, October 9, 2014

TIME: 11:30 am

ROOM: Statehouse Room 115

- Call to Order
- Roll Call
- Approval of March 13, 2014 Minutes
- Review of formatting for Report and Recommendations
- Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

[TEMPLATE]

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE I, SECTION 1

INALIENABLE RIGHTS

This Report and Recommendation is issued by the Bill of Rights and Voting Committee (“Committee”) of the Ohio Constitutional Modernization Commission regarding Article I, Section 1 of the Ohio Constitution concerning inalienable rights. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission’s Rules of Procedure and Conduct.

Recommendation

Based on the following report and for the reasons stated herein, the committee recommends that no change be made to Article I, Section 1 of the Ohio Constitution and the provision be retained in its current form.

Background

Article I, Section 1, reads as follows:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

- Set out the purpose of the article in which the section is placed.
- State the purpose of the section and what it does.
- State whether the section is original to the 1851 Constitution or when it was added.

Amendments

- State whether the section has been altered since it was adopted, in what year the amendment was passed, and the circumstances surrounding the amendment.
- State whether a proposal has ever been put to the voters to amend the section and failed, including a review of the circumstances surrounding the failure.

Review by Constitutional Conventions and Constitutional Revision Commission

- Provide a summary of what the Constitutional Conventions in the 1870s and 1910s stated about the section, if important to the report.
- Provide a summary of what the 1970s Constitutional Revision Commission stated about the section, if applicable to the report.

Litigation Involving the Provision

- Provide a summary of any major/significant state litigation involving the provision and how it has been interpreted over the years, primarily by the Ohio Supreme Court.
- Provide a summary of any major/significant federal litigation that may impact upon the appropriateness of the section in relation to the U.S. Constitution.

Presentations to and Consideration by the Committee

- Provide a summary of any presentations to the committee on the topic, including information about the speaker and the speaker's background and any materials the speaker presents to the committee for its review.
- Provide a summary of the discussion and other consideration given by committee members to the topic under review.
- Provide a summary of surveys of similar provisions in the constitutions of other states, if prepared and relevant to the topic under review.

Rationale and Conclusion

- Provide a statement of the recommendation the committee is making regarding the section under review and state the rationale for the recommendation.
- If no change in the provision is recommended, then a short statement that the matter was discussed and the committee believes the provision has served the state well sufficiently states the rationale.
- If a change is recommended, then this section should set out the reasoning behind the committee's recommendation to change the provision.

Additional Resources

- If it would be helpful to Commission members or future readers of the report, this section should contain a list of additional resources that might provide background information on the section(s) under consideration.

Date Adopted by Committee

After review and consideration by the Bill of Rights and Voting Committee on _____, 2014, and _____, 2014, the committee voted to adopt this Report and Recommendation on _____, 2014 and forward it to the full Commission for its consideration.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION

ARTICLE I, SECTION 2

RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT, AND REPEAL SPECIAL PRIVILEGES

This Report and Recommendation is issued by the Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission regarding Article I, Section 2 of the Ohio Constitution concerning the right to alter, reform, or abolish government, and to repeal special privileges. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

Based upon the following and for the reasons stated herein, the committee recommends that no change be made to Article I, Section 2 of the Ohio Constitution and that the provision should be retained in its current form.

Background

Article I, Section 2, reads as follows:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

The Bill of Rights as set forth in Article I is a declaration of the individual's rights and freedoms that correlates to the federal Bill of Rights as contained in the first ten amendments to the United States Constitution.

Although original to the 1851 Ohio Constitution, a portion of Article I, Section 2 derives from Article VIII, section 1 of the 1802 Constitution, which states, in part: “every free republican government, being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence; to effect these ends, they have at all times a complete power to alter, reform or abolish their government, whenever they deem it necessary.” Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), p. 85.

Most of Article I, Section 2 has no corollary in the federal constitution, but does compare favorably with the Declaration of Independence, with its recognition that all political power is inherent in the people, who have a right to alter, reform, or abolish government when deemed necessary. This Jeffersonian concept is widely recognized as the foundational principle of democratic government.¹

Significantly, Article I, Section 2 contains Ohio’s “Equal Protection Clause,” stating that “government is instituted for [the people’s] equal protection and benefit,” a phrase that corresponds to the Fourteenth Amendment of the U.S. Constitution with its prohibition against denying any person the “equal protection of the laws.” Although federal equal protection analysis has focused upon issues of gender, race, or other immutable characteristics, the framers of Ohio’s “equal protection” provision contemplated the phrase as prohibiting discrimination based upon economic or other distinctions. Steinglass & Scarselli, p. 86. As noted by Steinglass and Scarselli, the white male landowners who drafted and adopted the provision never intended it to provide equal rights of citizenship for African-Americans and women, although more recently courts interpreting Art. I, Section 2 have recognized its application to all citizens.

The section’s requirement that special privileges and immunities, where granted, are subject to General Assembly alteration has no counterpart in either the Declaration of Independence or the U.S. Constitution. Seldom referenced in modern times, this clause was heavily debated during the Constitutional Convention of 1850-51 because it addressed a concern at the time over the ability of the General Assembly to grant corporate charters containing special privileges and immunities, such as exemptions from taxation and monopolies on toll roads. Steinglass & Scarselli, p. 88. Proponents of the language that ultimately was included in the section held the view that the state’s granting of privileges serves to diminish the power retained by the people and so should be restrained. The inclusion of this clause reflects a final compromise by conventioners that allowed the General Assembly to change future immunities and privileges but prevented legislators from revoking past privileges and immunities without an express reservation. Privileges and immunities ultimately were seen as a corporate franchise that was subject to the will of the legislature.

Amendments

¹ The Declaration states that governments “derive[e] their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness.”

Article I, Section 2 has not been altered since its adoption as part of the 1851 Ohio Constitution.

Findings by the Constitutional Revision Commission

The 1970s Ohio Constitutional Revision Commission reviewed the provision, and recommended that no change be made.

Litigation Involving the Provision

There has been limited significant litigation involving Article I, Section 2. In reported cases it is primarily cited for its “equal protection” clause, held to be the functional equivalent of its federal constitutional Fourteenth Amendment counterpart, and generally construed identically to that provision. See, e.g., *Pickaway Cty. Skilled Gaming, LLC v. Cordray*, 127 Ohio St.3d 104, 109, 2010-Ohio-4908, 936 N.E.2d 944, 951; *American Assn. of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55, 59, 1999-Ohio-254, 717 N.E.2d 286, 291.

Additional Resources

Additional resources that provide further background and understanding regarding this topic include the following:

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Date Adopted by Committee

After formal consideration by the Bill of Rights and Voting Committee on _____, 2014 and _____, 2014, the committee voted to adopt this Report and Recommendation on _____, 2014.

TIMELINE FOR APPROVAL OF REPORTS AND RECOMMENDATIONS

Pursuant to Sections 8.0, 9.0, and 10.0 of the Rules of Procedure and Conduct, subject matter committees, the coordinating committee, and the full Commission shall be called upon at different times to review and approve reports and recommendations regarding each of the sections of the Ohio Constitution. The purpose of this document is to set out the timelines for approval of the reports and recommendations.

Approval by Subject Matter Committee – two to three months

Pursuant to Rules 8.3 and 9.4 of the Rules of Procedure and Conduct, once a report and recommendation is prepared it is to be placed on the agenda of a subject matter committee for not less than two consecutive meetings before it can be approved. Depending on how often subject matter committees meet in the future, this may take a minimum of two to three months to complete. Of course, if there are revisions based upon committee discussion, this process may take longer.

Approval by Coordinating Committee – one to two months

Pursuant to Rules 8.6 and 9.7 of the Rules of Procedure and Conduct, once a report and recommendation has been approved by a subject matter committee, it is forwarded to the Coordinating Committee for its review and approval. Depending on how often the Coordinating Committee meets, this may take a minimum of one to two months to complete, assuming the Coordinating Committee does not return the report and recommendation to the subject matter committee which issued it.

Approval by Full Commission – two to four months

Pursuant to Rules 10.2 and 10.3 of the Rules of Procedure and Conduct, once a report and recommendation has been approved by the Coordinating Committee, it is to be placed on the agenda of the full Commission for presentation and the opportunity for the public to comment. The Commission may approve the report and recommendation at its next meeting. As with the process followed by the subject matter committee and the Coordinating Committee, this may take a minimum of two to four months, depending on how often the full Commission meets. This process may also take longer if the Commission votes to table the report and recommendation to the next meeting of the Commission or refers the matter back to the subject matter committee for further action.

Total Timeline – five to nine months

Based on the foregoing, and absent the calling of a special meeting of a subject matter committee or the full Commission, Commission approval may take a minimum of five to nine months once a report and recommendation is prepared and first appears on the agenda for a subject matter committee meeting.

Fast Track Alternative (Monthly Meetings - No Specially Called Meetings)

Month 1 - First Consideration by Subject Matter Committee

Month 2 - Approval by Subject Matter Committee

Month 3 – Approval by Coordinating Committee

Month 4 – First Consideration by Commission

Month 5 – Commission Action

Slower Track Alternative (Bi-monthly Meetings – No Specially Called Meetings)

Month 1 – First Consideration by Subject Matter Committee

Month 3 – Approval by Subject Matter Committee

Month 5 – Approval by Coordinating Committee

Month 7 – First Consideration by Commission

Month 9 – Commission Action