



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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Coordinating Committee

Kathleen M. Trafford, Chair  
Jo Ann Davidson, Vice-chair

October 8, 2015

Ohio Statehouse  
Room 018

## OCMC Coordinating Committee

Chair Ms. Kathleen Trafford  
Vice-chair Ms. Jo Ann Davidson  
Ms. Janet Abaray  
Sen. Bill Coley  
Judge Patrick Fischer  
Mr. Dennis Mulvihill  
Sen. Larry Obhof  
Rep. Emilia Sykes

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**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

**COORDINATING COMMITTEE**

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**THURSDAY, OCTOBER 8, 2015  
12:30 P.M.  
OHIO STATEHOUSE ROOM 018**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
  - Meeting of July 9, 2015
- IV. Reports and Recommendations
  - Article VI, Section 1 (Funds for Religious and Educational Purposes)
    - Presentation
    - Discussion
    - **Action Item: Consideration and Approval**
  - Article VI, Section 2 (School Funds)
    - Presentation
    - Discussion
    - **Action Item: Consideration and Approval**
- V. Committee Discussion
- VI. Old Business
- VII. New Business
- VIII. Public Comment
- IX. Adjourn

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**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**MINUTES OF THE  
COORDINATING COMMITTEE**

**FOR THE MEETING HELD  
THURSDAY, JULY 9, 2015**

**Call to Order:**

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 12:42 p.m.

**Members Present:**

A quorum was present with Chair Trafford and committee members Abaray, Fischer, Obhof, and Sykes in attendance.

**Approval of Minutes:**

The minutes of the April 9, 2015 meeting of the committee were approved.

**Reports and Recommendations:**

The committee first reviewed two reports and recommendations from the Bill of Rights and Voting Committee for Article I, Section 13 (Quartering Troops) and Section 17 (No Hereditary Titles). Chair Trafford complimented staff's work, saying these reports and recommendations were well-written and would be useful for those interested in the constitution, both currently and in the future.

On motion by Judge Patrick Fischer, and second by Senator Larry Obhof, the committee voted unanimously to approve the report and recommendation for Article I, Section 13.

On motion by Judge Patrick Fischer, and second by Representative Emilia Sykes, the committee voted unanimously to approve the report and recommendation for Article I, Section 17.

Chair Trafford indicated these reports and recommendations are now ready to be submitted for approval by the full Commission.

**Old Business:**

Turning to old business, Chair Trafford reminded the committee of its previous discussion of how the Commission should approach public proposals for constitutional change. She said the committee had discussed this, and had consulted with both the Public Education and Information Committee and the Liaisons with Public Offices Committee. She said the chairs of the committees had concluded that the simple answer is that the role of the Coordinating Committee is to look at the reports and recommendations as they come up. She said public comments or proposals are not covered by the Rules of Procedure and Conduct, so the chairs determined that the preferred procedure would be for staff to pass those proposals along to the most logical subject matter committee, and it then would be up to that committee to determine the next steps. She said it was the consensus that this procedure would be the simplest way to address the situation.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:52 p.m.

**Approval:**

The minutes of the July 9, 2015 meeting of the Coordinating Committee were approved at the October 8, 2015 meeting of the committee.

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Kathleen M. Trafford, Chair

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Jo Ann Davidson, Vice-chair



**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**REPORT AND RECOMMENDATION OF THE  
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**OHIO CONSTITUTION  
ARTICLE VI, SECTION 1**

**FUNDS FOR RELIGIOUS AND EDUCATIONAL PURPOSES**

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The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 1 of the Ohio Constitution concerning funds for religious and educational purposes. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

**Recommendation**

*The committee recommends that no change be made to Article VI, Section 1 of the Ohio Constitution and that the provision be retained in its current form.*

**Background**

Article VI, Section 1 reads as follows:

The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law.

Article VI of the Ohio Constitution concerns education, and Section 1 deals more specifically with lands provided to the state for educational and religious purposes.

As originally adopted in the 1851 constitution, Article VI, Section 1 provides:

The principal of all funds arising from the sale or other disposition of lands or other property granted or entrusted to this state for educational or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

### *School Lands*

School lands provided by the federal government to Ohio and other states played an important role in the development of public education in this country, and school lands supported education in virtually all the new states beginning with Ohio in 1803.<sup>1</sup>

The history of school lands dates to the days before statehood, when the Confederation Congress, through the Land Ordinance of 1785,<sup>2</sup> reserved in every township in the survey of the land tract in the eastern portion of the state (which was known as the Seven Ranges) a one-mile square section for the maintenance of public schools.<sup>3</sup> The Northwest Ordinance,<sup>4</sup> enacted in 1787 by the Confederation Congress and reaffirmed by the first United States Congress in 1789,<sup>5</sup> established a path to statehood for Ohio and the other states that were carved from the Northwest Territory. It also continued the commitment to public education by providing, in part, that “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”<sup>6</sup> The founders’ emphasis on the value of education, and particularly on its relationship to religion and morality, is recognized as stemming from the view that the establishment of a new nation required “an educated, moral, sober citizenry in the new states that would have the stability and civil responsibility of a republican society.”<sup>7</sup>

In the 1802 Enabling Act, Congress moved Ohio along the path to statehood by enacting legislation to “enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government and for the admission of such State into the Union \* \* \*.”<sup>8</sup> It also contains an unusual provision offering the new state one “section, number 16, in every township” or other equivalent lands.<sup>9</sup> The 1802 Constitutional Convention made a counteroffer<sup>10</sup> that, in turn, was accepted by the federal government. This resulted in Ohio ultimately gaining control of 704,204 acres (or 2.77 percent of its land area) of federally-donated land to support public schools.<sup>11</sup>

The importance of education to the new state was reflected in the 1802 constitution, which followed the Northwest Ordinance in providing, in Article VIII, Section 3, that “religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

After statehood, the General Assembly leased much of this land, with some leases being as long as 99 years and renewable forever. In 1826, however, Congress permitted land sales with the consent of township residents.<sup>12</sup> And in 1827, the General Assembly adopted legislation providing that proceeds from the sale of school lands were to be deposited in the Common School Fund and earmarked for the benefit of schools within the townships.<sup>13</sup>

Because of concerns about the local stewardship of the school lands, the General Assembly in 1914 and 1917 transferred supervision of the school (and ministerial) lands to the Auditor of State. In 1985, the General Assembly transferred supervision to the Director of Administrative Services, and in 1988, the General Assembly transferred supervision of all remaining monies to



the Board of Education in each school district that had been allotted these lands, with title held in trust by the State of Ohio.<sup>14</sup>

### *Ministerial Lands*

In addition to allocating land to support education, the federal government allocated land in Ohio to support religion by providing that section 29 of certain land purchases be used to support religion.<sup>15</sup> The granting of real property for religious purposes has been identified as a “holdover from English and other European traditions where one denomination constituted a state church and received its support and other perquisites from the state.”<sup>16</sup> Ohio’s “ministerial lands,” which totaled 43,525 acres, represented only a small part of the total land originally granted to Ohio by Congress.<sup>17</sup>

The Confederation Congress (in the Ohio Company’s First Purchase in 1787) and the United States Congress (in the Symmes Purchase in 1794) reserved section 29 for the purpose of religion in what are today Washington, Meigs, Gallia, Lawrence, and Athens counties (from the Ohio Company’s First Purchase), and in Butler, Hamilton, and Warren Counties (from the Symmes Purchase). In addition, the Ohio Company on its own reserved section 29 from its Second Purchase in what are now Hocking and Vinton Counties.<sup>18</sup> “ ‘Ministerial land,’ as these lands have since been termed, are found nowhere in the United States, except within these three parts of the state of Ohio.”<sup>19</sup>

In 1833, Congress allowed the sale of lands that had been granted to the state for the support of churches and religious societies, with the proceeds to be placed in a trust fund and interest thereon paid to local schools and religious societies.<sup>20</sup>

The 1851 constitution addressed these issues by adopting a provision, Article VI, Section 1, which addressed both educational and ministerial lands and provided that the proceeds from the sale of lands granted for educational or religious purposes must be applied to the objects of the original grants.

### **Amendments, Proposed Amendments, and Other Review**

By 1968, the practice of state payments to religious organizations was recognized as problematic under the Establishment Clause of the First Amendment to the United States Constitution, and Congress acted to limit the use of sale proceeds to educational purposes only, subject to the discretion of the General Assembly.<sup>21</sup> Ohio voters subsequently approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.<sup>22</sup> Thus, Article VI, Section 1 was altered to provide that funds arising from these lands would not be restricted to school or religious purposes, but “shall be used or disposed of in such manner as the General Assembly shall prescribe by law.” In the May 7, 1968, election, the voters approved an amendment proposed by the General Assembly to this section by a vote of 847,861 to 695,368, or 55 percent to 45 percent.<sup>23</sup>

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section.<sup>24</sup>

## **Litigation Involving the Provision**

There has been no significant litigation involving Article VI, Section 1.

## **Presentations and Resources Considered**

On November 13, 2014, the committee heard a presentation by former Ohio Supreme Court Justice Robert R. Cupp, who was at that time chief legal counsel for the Ohio Auditor of State.<sup>25</sup> Mr. Cupp explained that while some may consider Article VI, Section 1 as an obsolete provision, the section remains necessary as the state still possesses some “school lands” as referenced in the provision.

Mr. Cupp provided a brief history of the provision, indicating that these lands first had been managed and supervised by township trustees, then by the auditor of state, and later by the director of the Department of Administrative Services. However, in 1988, legislation went into effect that transferred supervision, management, and all remaining monies of school lands to the board of education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature remains under state title, but the most recent transfer by the state took place in 2009 to the Upper Scioto School District in Hardin County. He said the Hardin County property has a current market value of \$2.5 million and is leased by the school district for farming. The school district derives \$247,000.00 in annual revenue from this lease.

## **Conclusion**

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 1 should be retained in its current form.

## **Date Adopted**

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to adopt this report and recommendation on \_\_\_\_\_.

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## **Endnotes**

<sup>1</sup> See generally Souder, Jon A. and Sally K. Fairfax, *State Trust Lands: History, Management, and Sustainable Use*. Lawrence: UP of Kansas 1996. Print.; O’Day, Sean E. *School Trust Lands: The Land Manager’s Dilemma Between Educational Funding and Environmental Conservation, A Hobson’s Choice?*, 8 N.Y.U. Env’tl. L.J. 163 (1999). For a compendium of the various legislative enactments relating to the creation and preservation of Ohio school lands in the early 1800s, see *A Compilation of Laws, Treaties, Resolutions, and Ordinances, of the General and State Governments, which Relate to Lands in the State of Ohio; including The Laws Adopted by the Governor and Judges; The Laws of the Territorial Legislature; and the Laws of this State, to the Years 1815-16*. Published in Pursuance of Resolutions of the General Assembly, passed January 22, 1825. Columbus: Geo. Nashee, State Printer, 1825. Print.

<sup>2</sup> General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 1774-1789, at 375.

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<sup>3</sup> See generally Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 220. Print.

<sup>4</sup> Journals of the Continental Congress, 1774-1789, ed. Worthington C. Ford et al. Washington, D.C. 1904-37, 32:334; Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787. Available at <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim> (Office of the Law Revision Counsel of the House of Representatives ed.) (Accessed May 6, 2015).

See also [http://avalon.law.yale.edu/18th\\_century/nworder.asp](http://avalon.law.yale.edu/18th_century/nworder.asp) (accessed April 27, 2015).

<sup>5</sup> Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50, 51.

<sup>6</sup> Ordinance of 1787, *supra*, at Section 14 (Compact), Article III.

<sup>7</sup> Festa, Matthew J. *Property and Republicanism in the Northwest Ordinance*, 45 Ariz. St. L.J. 409, 460 (2013). See also Usher, Alexandra. “Public Schools in the Original Federal Land Grant Program.” The Center on Education Policy; April 2011. Web. 5. Available at:

[http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?\\_nfpb=true&\\_ERICExtSearch\\_SearchValue\\_0=ED518388&ERICExtSearch\\_SearchType\\_0=no&accno=ED518388](http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED518388&ERICExtSearch_SearchType_0=no&accno=ED518388) (Accessed April 27, 2015), citing Culp, P.W., D.B. Conradi, D.B., and C.C. Tuell, (2005). *Trust land in the American west: A legal overview and policy assessment*. Cambridge, MA: Lincoln Institute of Land Policy. Web. 4-8. Available at: <https://www.lincolninst.edu/subcenters/managing-state-trust-lands/publications/trustlands-report.pdf> (accessed April 27, 2015).

<sup>8</sup> Ohio Enabling Act, ch. 40, § 7, 2 Stat. 173, 175 (1802). Available at: [http://www.ohiohistorycentral.org/w/Enabling\\_Act\\_of\\_1802?rec=1490](http://www.ohiohistorycentral.org/w/Enabling_Act_of_1802?rec=1490) (accessed April 27, 2015) <http://research.archives.gov/description/299949> (accessed April 27, 2015).

<sup>9</sup> *Id.* at Sec. 7.

<sup>10</sup> *Propositions From the Ohio Constitutional Convention to the Congress of the United States, Relating to the Admission of Ohio, Ordinance and Resolution Passed in Convention, Nov. 29, 1802*, as reprinted in Ryan, Daniel J. *From Charter to Constitution, Ohio Archaeological and Historical Publications*, Volume 5. Columbus: Ohio State Archaeological and Historical Society, 1897. Print. 78 *et seq.* Available at: [http://publications.ohiohistory.org/ohj/browse/displaypages.php?display\[\]=0005&display\[\]=1&display\[\]=164](http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0005&display[]=1&display[]=164) (Accessed May 5, 2015).

<sup>11</sup> Knepper, George W. *The Official Ohio Lands Book*. Columbus: The Auditor of the State of Ohio. 2002. 57. Print. See also Steinglass & Scarselli, *supra*.

<sup>12</sup> Knepper, *supra*.

<sup>13</sup> *Id.* at 58.

<sup>14</sup> *Id.* at 58-59.

<sup>15</sup> See generally Peters, William E. *Ohio Lands and Their Subdivision*. Athens: W.E. Peters (2<sup>nd</sup> Ed.), 1918. 340-357. Print.

<sup>16</sup> Knepper, *supra*, at 59.

<sup>17</sup> *Id.* at 60.

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<sup>18</sup> Peters, *supra*, at 362-364.

<sup>19</sup> *Id.* at 364.

<sup>20</sup> Steinglass & Scarselli, *supra*.

<sup>21</sup> *Id.* at 220-21, citing Public Law 90-304 (May 13, 1968).

<sup>22</sup> *Id.* at 221.

<sup>23</sup> Source: Secretary of State's website; May 7, 1968 Primary (Official Results). Web. Available at: <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1960-1969Results/68priconst.aspx> (accessed May 5, 2015).

<sup>24</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, June 30, 1977, at 53.

<sup>25</sup> On November 4, 2014, Mr. Cupp was elected state representative for the Fourth District (Allen County) for a term beginning January 6, 2015. Upon being sworn as state representative, Rep. Cupp was selected to serve as a legislative member of the Ohio Constitutional Modernization Commission.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VI, SECTION 2

#### SCHOOL FUNDS

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The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 2 of the Ohio Constitution concerning school funding. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that no change be made to Article VI, Section 2 of the Ohio Constitution and that the provision be retained in its current form.*

#### **Background**

Article VI, Section 2 reads as follows:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

Article VI of the Ohio Constitution concerns education.

Section 2, adopted as part of the Ohio Constitution of 1851 and never amended, includes the first use of the phrase "thorough and efficient" in the constitution of any state.<sup>1</sup> The provision was influenced by an 1837 report about education in England and Europe commissioned by the Ohio legislature and prepared by Calvin Ellis Stowe, a professor of biblical literature at Lane Theological Seminary in Cincinnati.<sup>2</sup> Stowe, the husband of Harriet Beecher Stowe, was a strong supporter of universal public education, and urged Ohio to follow the Prussian example of state-supported education.<sup>3</sup> Stowe's report was republished by the legislatures of Michigan, Massachusetts, Pennsylvania, North Carolina, and Virginia.<sup>4</sup> In fact, some 22 states are

recognized as having constitutional provisions imposing educational standards similar or identical to Ohio's "thorough and efficient" clause.<sup>5</sup> Despite these similarities, the definition of "common schools," as well as what constitutes a "thorough and efficient" system for providing education, varies widely from state to state due to differences in history, demographics, geography, and other factors.<sup>6</sup>

### **Amendments, Proposed Amendments, and Other Review**

In 1977, the Ohio Constitutional Revision Commission ("1970s Commission") recommended no change to this section, concluding that adding specific language that dealt with school finance would undermine the view that a constitution should only state general principles and guidelines.

The 1970s Commission succinctly summarized its position on retaining current language by stating:

A system of school finance poses unique problems because so many factors are involved, many of which are legislative, economic and geographical considerations, and being subject to change, are not likely to be more adequately provided for in the [c]onstitution than by the language presently contained in that document.<sup>7</sup>

### **Litigation Involving the Provision**

The most recent, and notable, litigation involving school funding is the *DeRolph* line of cases,<sup>8</sup> in which a coalition of individuals and five Ohio school districts sued the state in 1991, alleging that the state educational funding system violated the "thorough and efficient" clause found in Article VI, Section 2.<sup>9</sup> Specifically, the *DeRolph* plaintiffs argued that the school funding scheme in place at the time relied too heavily on local property taxes, resulting in disparities in the quality of educational facilities and resources in different communities across the state. Concluding that the school funding system was "wholly inadequate" to meet the constitutional mandate, the Ohio Supreme Court directed in 1997 that the General Assembly "create an entirely new school financing system" that was not overly dependent on local property taxes. *DeRolph v. State*, 78 Ohio St.3d 193, 239, 213, 1997-Ohio-84, 677 N.E.2d 733, 765, 747 (*DeRolph I*).<sup>10</sup>

The *DeRolph* litigation brought to light evidence that a lack of funding in many districts had resulted in deteriorating school facilities, outdated textbooks, insufficient school supplies, overcrowded classrooms, and other conditions that were seen to impede learning. In *DeRolph I*, a majority of the court concluded that "state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment." *Id.*, 78 Ohio St.3d at 208, 677 N.E.2d at 744. The court ordered the General Assembly to "first determine the cost of a basic quality education in both primary and secondary schools in Ohio, and then ensure sufficient funds to provide each student with that education, realizing that local property taxes can no longer be the primary means of providing the finances for a thorough and efficient system of schools." *Id.*, 78 Ohio St.3d at 261-262, 677 N.E.2d at 780.

In 2000, after the state undertook measures to institute reforms, the case again came before the court on the same question of whether the constitutional requirement that the state provide a “thorough and efficient system of common schools” had been met. Noting the complexity of the state’s educational system, a majority of the court observed that setting a per-pupil funding amount, or otherwise providing some specific funding scheme, would violate the separation of powers doctrine; thus, the court left the specific remedy to the General Assembly. *DeRolph v. State*, 89 Ohio St.3d 1, 6, 11-12, 2000-Ohio-437, 728 N.E.2d 993, 998, 1002-03 (*DeRolph II*). While recognizing that the General Assembly’s creation of the Ohio School Facilities Commission, as well as its enactment of other remedial legislation, had constituted a “good faith attempt to comply with the constitutional requirements” and had improved conditions around the state, the court nevertheless concluded that the state defendants needed more time to institute reforms before the court could declare the state had met its obligation to provide a “thorough and efficient system of common schools.”<sup>11</sup> *Id.*, 78 Ohio St.3d at 35-36, 728 N.E.2d at 1020.

In 2001, the court continued its review of the reforms adopted by the General Assembly, finding further measures were needed to conform with Article VI, Section 2. Specifically, the court ordered the state to modify its base cost formula, by which the state calculated the per-pupil cost of providing an adequate education; to accelerate the phase-in of a parity aid program that was designed to provide additional funding to poorer districts; and to consider alternative means of funding school buildings and facilities. *DeRolph v. State*, 93 Ohio St.3d 309, 324-25, 2001-Ohio-1343, 754 N.E.2d 1184, 1200-01 (*DeRolph III*).

In 2002, upon reconsideration of its decision in *DeRolph III*, a divided court agreed to vacate the judgment. However, despite this action, a majority of the court maintained that Ohio’s school funding system continued to be unconstitutional because the General Assembly, despite enacting reforms, had not performed “ ‘a complete systematic overhaul’ of the school-funding system.” *DeRolph v. State*, 97 Ohio St.3d 434, 435, 2002-Ohio-6750, 780 N.E.2d 529, 530 (*DeRolph IV*), quoting from *DeRolph I*. Commenting during a presentation before the committee about the impact of *DeRolph*, Justice Paul E. Pfeifer indicated that the consensus of the court in *DeRolph IV* was to release jurisdiction because litigation was not proving to be the answer to the problem, and because, by that time, reforms had resulted in school facility improvement.<sup>12</sup>

In May 2003, the Ohio Supreme Court granted a peremptory writ of prohibition, preventing the trial court from exercising further jurisdiction over *DeRolph*. *State ex rel. State v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195. In so deciding, the court clarified that its mandate in *DeRolph IV* was not for the trial court to conduct further proceedings, and determined that allowing the trial court to take further action would be an improper attempt to require judicial approval for proposed remedies. *Id.*, 99 Ohio St.3d at 103, 789 N.E.2d at 202. Thus, the court ended further litigation in *DeRolph*. *Id.*, 99 Ohio St.3d at 104, 789 N.E.2d at 202.<sup>13</sup>

Although the *DeRolph* litigation ended without there being a judicial determination that the state had complied with the constitutional mandate, *DeRolph* did bring to light school funding insufficiencies, and resulted in the adoption of changes that were intended to improve school facilities and other educational resources.<sup>14</sup>

## **Presentations and Resources Considered**

### *DeMaria Presentation*

Paolo DeMaria of Education First presented to the committee on August 8, 2013. His presentation focused on the importance of education to the public good, the role of government, the elements of an excellent education, the governance of education at the state and local level, the variety of local educational structures, and funding. He also identified emerging issues, including: standards, assessments, educating all students, early childhood education, accountability, teacher/leader quality, technology, data, school operational improvement, competency-based education, finances, and the relationship between education policy and tax policy. Finally, he concluded with a brief review of state and local support for K-12 education, observing that more spending does not result in better student outcomes.

### *Lewis Presentation*

Richard C. Lewis, Executive Director of the Ohio School Boards Association, also appeared before the committee on August 8, 2013, focusing on the constitutional structure of education in Ohio; the importance of local control; the importance of reliable and equitable funding; the spectrum of urban, suburban, and rural districts; the impact of privatization; the importance of balancing the traditional and the innovative; and accountability. He also provided the committee with some detailed materials on the elements of a model school funding formula.

### *Wilson Presentation*

Charles Wilson, professor emeritus of the Ohio State University Moritz College of Law, provided a broad overview of Article VI at his November 14, 2013, presentation to the committee. Subsequently, he submitted two alternative proposals. Both alternatives retain the “thorough and efficient” language and expressly characterize education as a “fundamental right.” One proposal requires the General Assembly to provide for and fund an “efficient, safe, secure, thorough, equitable, and high quality education.” Another alternative requires the General Assembly to fund and provide a “uniformly high quality educational system designed to prepare Ohio’s people to function effectively as citizens,” as well as an early childhood educational system.

### *Phillis Presentation*

William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, presented to the committee on December 12, 2013, and on March 13, 2014. Mr. Phillis provided the committee with information on public education, relevant methodologies for determining the cost of public education, and information on the impact of charter schools. He also provided drafts of specific amendments for the committee’s consideration.

Mr. Phillis recommended that the “thorough and efficient” clause be maintained. He also provided the committee with the text of three proposed amendments to Article VI. Under his proposal, a new Section 2a would provide state officials with direction in determining what



constitutes a “thorough and efficient” education. Mr. Phillis proposed a second provision that would require the institution of early childhood educational programs to all children beginning at three years of age. Mr. Phillis’ third proposed amendment concerns the state board of education and provides that “[s]tate board of education members shall be elected, one from each congressional district.”

#### *Pittner Presentation*

Nicholas A. Pittner, the lead attorney in the *DeRolph* litigation, appeared with William L. Phillis on December 12, 2013, and summarized the history of the *DeRolph* cases. Mr. Pittner opined that Ohio’s educational funding system remains inadequate because the current system is still over-reliant on local property taxes. According to Mr. Pittner, “Section 2, Article VI of the Ohio Constitution is clear and needs no revision. What is needed are specific standards by which compliance with the mandates of Section 2, Article VI can be measured and enforced.” Mr. Pittner expressed his support for a proposed amendment, submitted by Mr. Phillis, that would provide additional constitutional direction.

#### *Dyer Presentation*

On June 12, 2014, Stephen Dyer, the Education Policy Fellow at Innovation, Ohio, presented to the committee on the financing of education in Ohio, specifically, his concerns about the level of state support and the disparity in the ability of districts to support education. With respect to the “thorough and efficient” requirement, he urged that if the requirement is to be replaced it should be replaced with language that is even stronger. He pointed to provisions in the Florida and Montana Constitutions, and he provided the committee with proposed changes to Article VI, Section 2 that included a requirement that Ohio residents receive a “world-class education,” which the legislature would be responsible for funding.

#### *Reedy Presentation*

Maureen Reedy, co-founder of Ohio Friends of Public Education and a former grade school and special education teacher, presented to the committee on June 12, 2014. Her remarks emphasized the importance of public schools and expressed alarm at the possible removal of the “thorough and efficient” requirement from the constitution.

#### *Alt Presentation*

Robert Alt, President and CEO of the Buckeye Institute for Public Policy, appeared before the committee on September 11, 2014. In his comments, Mr. Alt gave an overview of the history of educational policy issues in Ohio, emphasizing that it is the role of the legislature, not the courts, to define the contours of education. Mr. Alt was critical of judicial intervention in education, and expressed concern that broad or generalized language in the constitution could invite improper judicial intervention. Criticizing some of the proposals being considered by the committee as being vague and too aspirational, Mr. Alt said he did not like the “thorough and efficient” phrase, but did not believe it should be repealed. Mr. Alt declined to suggest new

language because of his position that the General Assembly should have primary responsibility for education issues.

#### *Pfeifer Presentation*

Hon. Paul E. Pfeifer, Justice of the Ohio Supreme Court, presented to the committee on November 13, 2014. His talk focused upon the *DeRolph* decisions, specifically referencing his concurring opinions in two of the four *DeRolph* decisions. Justice Pfeifer, who is the only current justice to have participated in all four *DeRolph* decisions, provided background on the litigation. He expressed the view that not all decisions regarding education should be left to the legislature, but he observed that the court in *DeRolph* did not intend to tell the legislature what to do. Justice Pfeifer expressed the view that “thorough and efficient” served a worthy purpose, and he did not advocate removing it from the constitution. He did comment that he would not be opposed to more modern language to replace “thorough and efficient.”

#### *Morales Presentation*

Stephanie Morales, a member of the Board of the Cleveland Municipal School District, a graduate of the Cleveland public schools, and the parent of three children currently in the Cleveland public schools, made a presentation on January 15, 2015. Ms. Morales described the challenges faced by the school district, the efforts made by the district to support its mission, and the importance of state funds to the district. She acknowledged the substantial support provided to the district through the Ohio Facilities Construction Commission. With respect to the “thorough and efficient” requirement, she urged the committee to not take any action that might be interpreted as weakening the state’s duty to provide a quality education for all of Ohio’s children.

#### *Middleton Presentation*

Dr. Renee A. Middleton, Dean of the Patton College of Education at Ohio University, appeared before the committee on January 15, 2015. Dr. Middleton stressed the history of public education in Ohio and its importance in ensuring an educated citizenry and in safeguarding democracy. She urged that public education be fair and equitable, she expressed support for maintaining judicial oversight, and she advised the committee not to turn its back on “thorough and efficient.” She emphasized the importance of determining and funding a high-quality education without an overreliance on property taxes, as well as the importance of adequate funding to promote essential educational opportunities for all.

#### *Johnson Presentation*

On March 12, 2015, Darold Johnson, Director of Legislative and Political Action for the Ohio Federation of Teachers, appeared before the committee to express his organization’s position that the current language in Article VI, Section 2, be retained. He said that the Ohio Supreme Court in the *DeRolph* cases defined “thorough and efficient,” and that changing the provision would result in more litigation in order to provide clarity about whatever replacement language might signify. Mr. Johnson indicated that because civil rights already exist in federal law, and in

federal constitutional amendments, and because case law in this area is settled, the Ohio Constitution should only be changed in order to correct problems for which there are no other options. Mr. Johnson said that “thorough and efficient” is better than “equitable” or “equal” because *DeRolph* has defined the phrase and is a benchmark. He stressed that removing “thorough and efficient” would cause a bigger loss than would be gained from including the word “equitable.”

## Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 2 should be retained in its current form.

## Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to adopt this report and recommendation on \_\_\_\_\_.

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## Endnotes

<sup>1</sup> See, e.g., Neff, Jeremy J. *A Thorough and Efficient Definition of “Thorough and Efficient”: The Starting Point for Meaningful School Funding Reform*, 33:1 J. of Educ. Finance 69 (2007).

<sup>2</sup> Stowe, C.E. *Report on Elementary Public Instruction in Europe, Made to the Thirty-Sixth General Assembly of the State of Ohio*, Columbus: Medary, 1837. Print.

<sup>3</sup> A history of the concept and implementation of a “system of common schools” in Ohio may be found in O’Brien, Molly and Amanda Woodrum. *The Constitutional Common School*, 51 Clev.St.L.Rev. 581 (2004).

<sup>4</sup> See, e.g., Bunker, Frank Forest. *Reorganization of the Public School System*, Department of the Interior, Bureau of Education Bulletin No. 8. Washington, D.C.: Government Printing Office. 1916. 24. Print.

<sup>5</sup> Thro, William E. *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 Educ. L. Rep. 19, note 10 at 23-24, as cited in O’Brien & Woodrum, *supra*, at 584, note 14.

<sup>6</sup> Tractenberg, Paul L. “Education,” in *State Constitutions for the Twenty-First Century*. Eds. Tarr, G. Alan and Robert F. Williams. Albany: SUNY Press, 2006. 241-42. Print.

<sup>7</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, June 30, 1977, 65-66.

<sup>8</sup> See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

<sup>9</sup> A comprehensive overview of the *DeRolph* litigation may be found in Obhof, Larry J. *DeRolph v. State and Ohio’s Long Road to an Adequate Education*, 2005 B.Y.U. Educ. & L.J. 83 (2005).

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<sup>10</sup> Summarizing the comments of delegates to the Constitutional Convention of 1850-51 in the fourth, and final, *DeRolph* decision, Justice Paul Pfeifer emphasized that the purpose of the provision is to express the state's commitment to education for all:

“James Taylor, a delegate from Erie County, stated, ‘I think it must be clear to every reflecting mind that the true policy of the statesman is to provide the means of education, and consequent moral improvement, to every child in the State, the offspring of the black man equally with that of the white man, the children of the poor equally with the rich.’ [citation omitted.] Samuel Quigley, a delegate from Columbiana County, stated, ‘The report directs the Legislature to make full and ample provision for securing a thorough and efficient system of common school education, free to all the children in the State. The language of this section is expressive of the liberality worthy a great State, and a great people. There is no stopping place here short of a common school education to all children in the State.’ [citation omitted.] The delegates knew what they wanted, what the people wanted, and that it was necessary to use the Constitution to achieve what they wanted.”

*DeRolph IV*, *supra*, 97 Ohio St.3d at 436, 2002-Ohio-6750, 780 N.E.2d at 531.

<sup>12</sup> Ohio Constitutional Modernization Commission, November 13, 2015, Meeting Minutes of the Education, Public Institutions, and Local Government Committee. Available at [http://ocmc.ohio.gov/ocmc/committees/educ\\_pubinst\\_misc\\_localgovt;jsessionid=b957049e1ac01b4e1baacea4fc97](http://ocmc.ohio.gov/ocmc/committees/educ_pubinst_misc_localgovt;jsessionid=b957049e1ac01b4e1baacea4fc97) (accessed April 30, 2015).

<sup>13</sup> In October 2003, the United States Supreme Court denied a petition for a writ of certiorari. *DeRolph v. Ohio*, 540 U.S. 966 (2003).

<sup>14</sup> See *Obhof*, *supra*, at 145-149.

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### **Remaining 2015 Meeting Dates**

November 12

December 10

### **2016 Meeting Dates (Tentative)**

January 14

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8