



**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**MINUTES OF THE  
BILL OF RIGHTS AND VOTING COMMITTEE**

**FOR THE MEETING HELD  
THURSDAY, SEPTEMBER 11, 2014**

**Call to Order:**

Chairman Saphire called to order the meeting of the Bill of Rights and Voting Committee at 2:30 p.m.

**Members Present:**

A quorum was present with committee members Saphire, Bell, Clyde, Cole, Fischer, Gilbert, Peterson, and Skindell in attendance.

**Approval of Minutes:**

The committee approved the minutes of the July 10, 2014 meeting.

**Topics Discussed:**

*Article I, Section 7 (Rights of Conscience; Education; the Necessity of Religion and Knowledge)*

Chairman Saphire indicated that discussion regarding Article I, Section 7 would be deferred until a later date.

*Article V, Section 4 (Exclusion from Franchise)*

Chairman Saphire stated that Professor Berman would be speaking to this topic at the next committee meeting.

*Article I, Sections 21 and 19 (Preservation of the Freedom to Choose Health Care; Eminent Domain)*

Chairman Saphire stated discussion regarding Article I, Sections 19 and 21 would take place at a later date, once background questions could be researched.

*Article I, Section 4 (Bearing Arms; Standing Armies; Military Powers)*

As a follow up to the committee's prior discussion regarding the right to bear arms and the prohibition on standing armies, the committee discussed retaining the current language as set out in this section. As part of its discussion, the committee reviewed a 50 state survey on the topic. Following discussion, a motion was made to retain Article I, Section 4, in its current form. The motion was seconded and approved.

*Article V, Section 6 (Idiots or Insane Persons)*

Committee member Karla Bell took the lead in discussing this issue. She noted that the words used in the provision have no contextual meaning and may be constitutionally suspect for being vague and ambiguous. She also indicated that there is no provision in the Revised Code allowing for adjudication for the purposes of voting. Finally, she noted that she spoke with a magistrate in the Cuyahoga County Court of Common Pleas, Probate Division, who said there is no procedure for adjudicating this issue and that a guardianship does not contain an automatic loss of the right to vote.

A question was asked as to what a repeal of Section 6 would do if there were no replacement. Counsel Shari O'Neill answered that there are provisions in the Revised Code dealing with the issue and that there are states lacking a constitutional provision that, nevertheless, disenfranchise mentally incompetent persons via statute. One committee member noted that eliminating Section 6 would create a problem in that Section 1 indicates that everyone 18 years of age or older can vote, meaning that any statute that eliminates the franchise for a mentally incompetent person would be unconstitutional under Section 1 if there were no Section 6 prohibition.

Bell noted a Maine case, *Doe v. Rowe*, 156 F.Supp.2d 35 (D.Me. 2001), which O'Neill explained is frequently cited for the notion that a guardianship, standing alone and without an adjudication that the ward is incompetent for the purposes of voting, does not comply with due process principles and therefore is constitutionally infirm.

The committee discussed whether a revised provision should include a right to counsel, and whether the lack of such language caused due process issues. The committee also discussed whether the burden of proof should be by the preponderance of the evidence or whether it should be by clear and convincing evidence. Some committee members expressed that the inclusion of these items may create problems if included.

The committee wondered whether or how often the issue of mentally incompetent voters is raised with the board of elections. Peg Rosenfield, elections specialist with the League of Women Voters, a member of the audience, said that when she was with the board of elections they had very few requests for voters to be removed from the rolls for mental incompetence, and that the issue came up in dementia situations in which family members reluctantly tried to prevent a loved one from voting.

A committee member expressed concern that a constitutional provision relating to disenfranchising mentally incompetent persons could be used to disenfranchise those who are not actually incompetent but whose votes a group may want to exclude.

Chair Sapphire requested that Bell and O'Neill work together to come up with additional options for revising the section to be presented and discussed at the next committee meeting.

**Adjournment:**

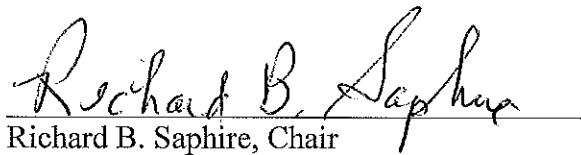
With no further business, the committee adjourned at 3:47 PM.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- O'Neill memorandum re: Article V, Section 6
- Survey on Right to Bear Arms constitutional provisions in other states

**Approval:**

These minutes of the September 11, 2014 meeting of the Bill of Rights and Voting Committee were approved at the December 11, 2014 meeting of the committee.

  
Richard B. Sapphire, Chair

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Jeff Jacobson, Vice Chair