



**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

**BILL OF RIGHTS AND VOTING COMMITTEE**

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**THURSDAY, APRIL 9, 2015**

**11:00 AM**

**OHIO STATEHOUSE ROOM 017**

**AGENDA**

I. Call to Order

II. Roll Call

III. Approval of Minutes – Meeting of February 12, 2015

*[Draft minutes attached]*

IV. Reports and Recommendations

A. Article I, Section 13 (Quartering of Troops)

- First Presentation
- Discussion
- Public Comment

*[Report and recommendation attached]*

B. Article I, Section 17 (No Hereditary Privileges)

- First Presentation
- Discussion
- Public Comment

*[Report and recommendation attached]*

C. Status Report on Previously Approved Reports and Recommendations

V. Presentation

“Review of Proposals Regarding Article V, Section 6 (Idiots and Insane Persons)”

Steven C. Hollon  
Executive Director

*[Memorandum by Shari L. O’Neill titled “Review of Proposals Regarding Article V, Section 6 (Idiots and Insane Persons)”, dated April 2, 2012, attached]*

*[Doe v. Rowe, 156 F. Supp.2d 35 (D. Maine 2001) attached]*

*[IMO Absentee Ballots v. Trenton Psych. Hospital, 331 N.J. Super. 31, 750 A.2 790 (Sup.Ct. N.J. 2000 attached)]*

*[Ballotpedia article titled “Kansas Voting Disqualification Amendment, Constitutional Amendment Question 2 (2010) attached]*

VI. Committee Discussion

A. Article V, Section 6 (Idiots and Insane Persons)

B. Article V, Section 4 (Felon Disenfranchisement)

*[Memorandum by Hailey C. Akah titled “Summary of Written Material and Previous Presentations on Article V, Section 4 (Felon Disenfranchisement)”, dated March 26, 2015, attached]*

VII. Old Business

VIII. New Business

IX. Public Comment

X. Adjourn



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

#### OHIO CONSTITUTION ARTICLE I, SECTION 13

#### QUARTERING OF TROOPS

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The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 13 of the Ohio Constitution concerning the quartering of troops. 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 I, Section 13 of the Ohio Constitution and that the provision be retained in its current form.*

#### **Background**

Article I, Section 13, reads as follows:

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. The Third Amendment to the U.S. Constitution reads: "No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Adopted as part of the 1851 Ohio Constitution, Article I, Section 13 is virtually identical to its predecessor, Article VIII, Section 22 of the 1802 Constitution, which reads:

That no soldier, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law.

The concept of quartering troops in private homes arose out of English law and custom, and was the byproduct of a military system that had transitioned from reliance upon local citizen militias to standing armies comprised of professional soldiers.<sup>1</sup> Eventually, Parliament's Mutiny Act protected private British citizens in England from being forced to house and feed British soldiers, requiring compensation to innkeepers and others who supplied traveling armies with food and shelter.<sup>2</sup> But the anti-quartering section of the Mutiny Act was not extended across the Atlantic, and the forced quartering of troops during the French and Indian War (1754-1763) angered colonists who felt they were being denied protections they understood to be their birthright as Englishmen.<sup>3</sup> Attempting to defuse colonial anger, Parliament amended the Mutiny Act to include The Quartering Act of 1765, authorizing British troops to shelter in public houses or vacant structures where barracks were unavailable and clarifying that quartering in private homes was to be avoided.<sup>4</sup>

From the Crown's point of view, standing armies were necessary even after the war to protect British supremacy in North America, including the securing of territorial and trading interests.<sup>5</sup> From the colonists' point of view, the end of the French and Indian War should have seen a reduction, rather than an increase, in troop numbers.<sup>6</sup> Eventually, the role of colonial standing armies evolved to that of containing the civil unrest that ensued as the British government imposed unpopular taxes and other restrictions.<sup>7</sup> Throughout this period, colonial governments were unwilling to concede the need for standing armies, the British control they symbolized, and the expense they represented.<sup>8</sup>

As the situation escalated, Parliament enacted a second Quartering Act in 1774 to require the quartering of troops in private homes.<sup>9</sup> Citizen outrage followed, based, in part, on the growing conviction that the real purpose of the military presence was to suppress colonists' resistance to British control.<sup>10</sup>

Thus, the quartering of troops issue became a symbol of British oppression, and helped to provide justification for the independence movement.<sup>11</sup> In fact, "Quartering large bodies of armed troops among us" was one of the rights violations cited in the Declaration of Independence.<sup>12</sup> In the 1800s, some historians characterized the Quartering Acts, along with other parliamentary decrees limiting and controlling economic and personal liberties during colonial times, as "Intolerable Acts," a historiographical term which continues to be used to describe the despotic actions of the British government in the years leading up to the Revolutionary War.<sup>13</sup>

This history inspired several former colonies to include anti-quartering provisions in their state constitutions, and led to adoption of the U.S. Constitution's Third Amendment.<sup>14</sup> It also influenced the drafters of the constitutions of Pennsylvania, Kentucky, and Tennessee, all three of which are recognized as primary sources for much of Ohio's 1802 Constitution.<sup>15 16</sup>

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

Article I, Section 13 has not been amended since its adoption as part of the 1851 Ohio Constitution.<sup>17</sup> The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.<sup>18</sup>

## **Litigation Involving the Provision**

Article I, Section 13 has not been the subject of significant litigation.

The Third Amendment to the United States Constitution has been cited in some litigation, not because it references the quartering of troops *per se*, but for its support of the concept that citizens have a constitutional right to privacy that must be protected from governmental intrusion. *See e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967).

## **Presentations and Resources Considered**

There were no presentations to the committee on this provision.

## **Conclusion**

The Bill of Rights and Voting Committee concludes that Article I, Section 13 should be retained in its current form.

## **Date Adopted**

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and \_\_\_\_\_, the committee voted to adopt this report and recommendation on \_\_\_\_\_.

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## **Endnotes**

<sup>1</sup> William S. Fields and David T. Hardy, *The Third Amendment and the Issue of the Maintenance of Standing Armies: A Legal History*, 35 *Am. J. Legal Hist.* 393 (1991).

<sup>2</sup> Alan Rogers, *Empire and Liberty: American Resistance to British Authority 1755-1763*, Berkeley and Los Angeles: UP of California (1974), p. 76.

<sup>3</sup> *Id.*, p. 83-84.

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<sup>4</sup> *Id.*, p. 88.

<sup>5</sup> Fields & Hardy, *supra*, pp. 414-415.

<sup>6</sup> *Id.*, p. 416.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, p. 415.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, p. 416.

<sup>11</sup> Rogers, *supra*, p. 89.

<sup>12</sup> Fields & Hardy, pp. 417-18.

<sup>13</sup> J.L. Bell, "Intolerable Acts," *Journal of the American Revolution*, June 25, 2013.  
<http://allthingsliberty.com/2013/06/intolerable-acts/> (accessed April 24, 2015).

<sup>14</sup> Note, Does Five Equal Three? Reading the Takings Clause in Light of the Third Amendment's Protection of Houses, 112 *Columbia L.Rev.* 112, Thomas G. Sprankling, 2012, pp. 126-27.

<sup>15</sup> Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), pp. 21-22.

<sup>16</sup> The 1796 Constitution of Tennessee includes Article 11, Section 27, which reads: "That no Soldier shall in time of peace be quartered in any House without consent of the owner, nor in time of war but in a manner prescribed by Law." [http://www.tn.gov/tsla/founding\\_docs/33633\\_Transcript.pdf](http://www.tn.gov/tsla/founding_docs/33633_Transcript.pdf) (accessed April 24, 2015).

Article IX, Section 23 of the Pennsylvania Constitution of 1790 states: "That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." <http://www.duq.edu/academics/gumberg-library/pa-constitution/texts-of-the-constitution/1790> (accessed April 24, 2015).

Article XII, Section 25 of the 1792 Kentucky Constitution provides: "That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." <http://www.kyhistory.com/cdm/ref/collection/MS/id/9926> MSS145\_1\_20 (accessed April 24, 2015).

Only minor differences in punctuation distinguish these three provisions from Article VIII, Section 22 of Ohio's 1802 Constitution.

For a discussion of the quartering provisions in the Kentucky Constitution, see Robert M. Ireland, *The Kentucky State Constitution*, 2<sup>nd</sup> Ed. (Oxford UP, 2012). A similar discussion regarding the Tennessee Constitution may be found at Lewis L. Laska, *The Tennessee State Constitution* (Oxford UP, 2011), p. 64.

<sup>17</sup> Steinglass & Scarselli, *supra*, p. 112.

<sup>18</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Part 11, *The Bill of Rights*, April 15, 1976, pp. 36-37, and pp. 464-65 of Appendix K of the Final Report.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

#### OHIO CONSTITUTION ARTICLE I, SECTION 17

#### NO HEREDITARY PRIVILEGES

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The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 17 of the Ohio Constitution concerning the granting or conferring of hereditary privileges. 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 I, Section 17 of the Ohio Constitution and that the provision be retained in its current form.*

#### **Background**

Article I, Section 17, reads as follows:

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. Article I, Sections 9 and 10 of the U.S. Constitution similarly prohibit the granting of titles of nobility.<sup>1</sup>

That hereditary titles and privileges had no place in the emerging egalitarian ideals of the American colonies is a concept reflected in the writings of prominent statesmen, political theorists, and constitutional framers of the time. As observed by Alexander Hamilton, "Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people."<sup>2</sup>

The prohibition of such titles and distinctions also was seen as necessary to the survival of the young republic, when the hard-won gains of the Revolutionary War were threatened by both British and French trade interference and other acts of aggression in the period leading up to the War of 1812. Out of the fear that foreign influence, bought with hereditary titles and aristocratic privileges, could weaken nationalistic resolve, constitutional framers both at the federal and state levels included prohibitions against such “titles of nobility” in their constitutions.<sup>3</sup> Hereditary titles were seen as the antithesis of a societal aspiration that rejected Old World notions of birthright and a fixed social status in favor of liberty, equality, and economic opportunity. As Thomas Jefferson wrote on the occasion of the fiftieth anniversary of the signing of the Declaration of Independence, and near the end of his life:

That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.<sup>4</sup>

Article I, Section 17, adopted as part of the 1851 Ohio Constitution, is virtually identical to Section 24 of Article VIII of the 1802 Constitution, which reads: “That no hereditary emoluments, privileges, or honors shall ever be granted or conferred by this state.”<sup>5</sup> The record of the 1802 Constitutional Convention does not reflect the provision’s source, but it is identical to the analogous provision in Article II, Section 30 of the Tennessee Constitution of 1796.

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

Article I, Section 17 has not been amended since its adoption as part of the 1851 Ohio Constitution.<sup>6</sup> The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.<sup>7</sup>

### **Litigation Involving the Provision**

Article I, Section 17 has not been the subject of significant litigation.

### **Presentations and Resources Considered**

There were no presentations to the committee on this provision.

### **Conclusion**

The Bill of Rights and Voting Committee concludes that Article I, Section 17 should be retained in its current form.

## Date Adopted

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and \_\_\_\_\_, the committee voted to adopt this report and recommendation on \_\_\_\_\_.

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## Endnotes

<sup>1</sup> U.S. Const. Art. I, Section 9 reads, in part: “No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.” Section 10 reads, in part: “No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.” [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html) (accessed April 24, 2015).

<sup>2</sup> The Federalist No. 84 (A. Hamilton). [http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H\\_4\\_0084](http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0084) (accessed April 24, 2015).

<sup>3</sup> See e.g., Gideon M. Hart, The “Original” Thirteenth Amendment: the Misunderstood Titles of Nobility Amendment, 94 Marq. L. Rev. 311 (2010-2011), pp. 335-47.

<sup>4</sup> Letter to Roger C. Weightman, June 24, 1826 (Thomas Jefferson), as reprinted in 50 Core American Documents, Christopher Burkett, Ed., (Ashland Univ., Ashbrook Press, 2013), pp. 136-37.

<sup>5</sup> Steven H. Steinglass & Gino J. Scarselli, The Ohio State Constitution (2nd prtg. 2011), p.123.

<sup>6</sup> *Id.*

<sup>7</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, April 15, 1976, pp. 42-43, and pp. 470-71 of Appendix K of the Final Report.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MEMORANDUM

**TO:** Chair Richard Saphire, Vice Chair Jeff Jacobson, and  
Members of the Bill of Rights and Voting Committee

**CC:** Steven C. Hollon, Executive Director

**FROM:** Shari L. O'Neill, Counsel to the Commission

**DATE:** April 2, 2015

**RE:** Review of Proposals Regarding  
Ohio Constitution Article V, Section 6 (Idiots and Insane Persons)

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The committee has requested a supplemental memorandum briefly outlining the status of the committee's progress as it addresses Article V, Section 6, "Idiots and Insane Persons," and undertaking an analysis of proposed changes under federal constitutional law.

Article V, Section 6 currently reads:

No idiot, or insane person, shall be entitled to the privileges of an elector.

#### **Current Status of the Committee's Work**

In February, 2015, Commission staff proposed the following option for replacing the section:

The General Assembly shall have the power to exclude an otherwise qualified elector from voting while lacking the mental capacity to vote, as determined by judicial process.<sup>1</sup>

As described in the February 5, 2015, memorandum provided by Executive Director Steven C. Hollon, the staff proposal accomplishes goals expressed by at least some members of the committee in that it:

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<sup>1</sup> Note: At that time, staff provided a second option; however, because the second option accomplished the same goals but lacked the succinctness of the first option, it will not be repeated here. The use of the phrase "mentally incompetent" in the original staff proposal now has been changed to "lacking mental capacity," in order to reflect the currently preferred terminology, as described to the committee by Disability Rights Ohio presenter Michael Kirkman.

- Removes the objectionable references to mentally incapacitated persons;
- Expressly authorizes the General Assembly to enact statutes relating to the disenfranchisement of mentally incapacitated persons;
- Expressly provides that disenfranchisement only occur as a result of an adjudication;
- Removes reference to voting as a “privilege”;
- Requires that the incapacity specifically relate to voting in order to justify disenfranchisement;
- Stipulates that the disenfranchisement is only effective during the period of incapacity.

At the February meeting of the committee, Doug Cole moved to adopt the following language:

No person who lacks the mental capacity to vote shall be entitled to the privileges of an elector during the time of such incapacity.

A variation of this proposal was suggested by Karla Bell:

No person who lacks the mental capacity to understand the act of voting shall be entitled to the privileges of an elector during the time of such incapacity.

The primary difference between the Cole and Bell proposals is the use of the phrase “understand the act of voting” in the Bell version.

The Cole and Bell proposals meet three of the six goals noted above by:

- Removing the objectionable references;
- Requiring that the incapacity relate to the act of voting; and
- Limiting the disenfranchisement to the period during which the person is incapacitated.

However, the Cole and Bell proposals do not address the other three goals because:

- They do not mention the General Assembly or its ability to enact relevant law;
- They do not require an adjudication;
- They refer to voting as a “privilege”.

### **Due Process and Equal Protection Analysis of Proposals**

The committee has asked staff to analyze these proposals pursuant to the Due Process and Equal Protection Clauses of the United States Constitution.

The primary source for this analysis is *Doe v. Rowe*, 156 F. Supp.2d 35 (D. Maine, 2001), a key case in jurisdictions that have had occasion to address federal constitutional questions relating to the disenfranchisement of persons of diminished mental capacity.



As discussed in *Rowe*, under federal law, voting is considered to be a fundamental right, and individuals are deemed to have a liberty interest in maintaining that right. Thus, voting is entitled to due process and the equal protection of the laws pursuant to the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

To pass federal constitutional muster, an Ohio provision that operates to disenfranchise persons who are mentally impaired must satisfy both the requirements of due process and equal protection.

#### *Due Process*

Under due process, the person to be disenfranchised must be given notice and an opportunity to be heard before losing the right to vote.

The current provision obviously supplies neither notice nor an opportunity to be heard. It is simply a policy statement; essentially, that mentally impaired persons are not entitled to vote. There is no required procedure expressed in the provision.

The Cole and Bell proposals remove the objectionable references, require that the incapacity relate to the act of voting, and limit the disenfranchisement to the period during which the person is incapacitated, but they retain the aspect of the current provision in lacking an express procedure by which a person could be disenfranchised.

A statement expressly authorizing or requiring the General Assembly to adopt adjudicatory procedures for disenfranchising a person who lacks the mental capacity to vote could enhance these proposals. An additional way to satisfy due process could be to expressly require that disenfranchisement be the result of a judicial determination.

In addition to removing the objectionable references, requiring the mental incapacity to be limited to voting, and disenfranchising a person only during the period of incapacity, the staff proposal allows for the enactment of related statutory procedures, and requires an adjudication. These additions likely would improve the chances that the constitutional provision would survive a challenge on the grounds of facial validity under due process analysis.



## *Equal Protection*

Because voting is considered a fundamental right, a court reviewing a constitutional provision that denies the right to vote likely would apply the “strict scrutiny” test, which requires a determination of whether the provision’s exclusion of some persons from the voting franchise is necessary to promote a compelling state interest. Once a compelling state interest is identified, a court would consider whether the provision is narrowly tailored to accomplish the state’s goals.

There are different views about what constitutes a compelling state interest as it relates to voting for the mentally impaired. One view holds that the state has a compelling interest in ensuring that only persons who understand the nature and act of voting are allowed to vote. Another perspective is that the state has a compelling interest in allowing access to the ballot, so that the potential harm from disenfranchising able voters should prevent the disenfranchisement of any voters. Both of these views might fall under a broader philosophy, which holds that the state has a compelling interest in ensuring the integrity of the voting process, or, possibly, a compelling interest in ensuring public confidence in the voting process.

The current provision, as a simple policy statement, does little to support any of these interests. It also does not appear to be narrowly tailored. While suggesting that there is an interest in preventing persons of diminished mental capacity from voting, the current provision does not define what would constitute sufficient incapacity to prevent voting. Further, it does not acknowledge that the General Assembly could define what it means to lack the capacity to vote, nor does it provide for a judicial process to allow a court to decide it. The current provision is both so vague as to never be applied, and so broad as potentially to be enforced by anyone, at any time, against anyone. Thus, it is not narrowly tailored to promote a compelling state interest.

The Cole and Bell proposals appropriately require the incapacity to relate to the act of voting, but also retain the current provision’s “policy statement” aspect in that there is no acknowledgement of either a role for the legislature in creating, or a role for the judiciary in applying, a procedure that would protect individual rights. As such, the Cole and Bell proposals, like the current provision, may be vulnerable to a facial validity challenge under equal protection analysis.

The staff proposal seeks to avoid this result by adding that the General Assembly can formulate procedures for disenfranchising mentally incapacitated individuals, as well as requiring that disenfranchisement be the result of a judicial determination. These additional aspects of the staff proposal would bring Ohio’s provision in line with similar provisions in many other states, and could avoid equal protection concerns.

## **Burden of Proof**

The committee has discussed existing procedures for disqualifying mentally impaired voters. Some committee members have pointed out that disenfranchised individuals may challenge an allegation that they are not capable of voting, and may initiate an original action to restore their voting rights. This discussion arose in the context of whether a new provision would need to specifically require adjudication or judicial process as a precursor to disenfranchisement.



At least one court has addressed this issue. *I/M/O Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 331 N.J. Super. 31, 750 A.2d 790 (Sup. Ct. N.J. 2000), arose prior to New Jersey's revision of its mental disability disenfranchisement provision—when the New Jersey Constitution, like Ohio's, summarily disqualified voters who were “idiots” or “insane.”<sup>2</sup> In that case, a political party challenged absentee ballots cast by residents of a psychiatric hospital, alleging that the residents' involuntary commitment automatically disqualified them from voting. After the state attorney general advised the county board of elections that, absent an adjudication of incompetency, the ballots should be counted, the board sought a judicial ruling. The court followed precedent holding that a separate adjudication of incompetence as it relates to voting is required, and that no presumption of incompetence arises from the mere fact of being treated at a mental institution. *Id.*, following *Carroll v. Cobb*, 139 N.J. Super. 439, 354 A.2d 355 (App. Div. N.J. 1976). The court expressly stated that it is the challenger, and not the mentally impaired voter, who carries the burden of proof, and that voting rights cannot be eliminated without clear and convincing proof, presented by the party seeking to disenfranchise, that the individual lacks the capacity to vote:

Voting is a fundamental right. *Reynolds v. Sims*, 377 U.S. 533, 560, 84 S. Ct. 1362, 1380 (1964); *Gangemi v. Rosengard*, 44 N.J. 166, 170, 207 A.2d 665 (1965). As with all fundamental rights, there can be no interference with an individual's right to vote, “unless a compelling state interest to justify the restriction is shown.” *Worden v. Mercer County Bd. of Elections*, 61 N.J. 325, 346, 294 A.2d 233 (1972). Similarly, the burden of demonstrating that an individual is incompetent requires proof that is clear and convincing. *See In Re Grady*, 85 N.J. 235, 265, 426 A.2d 467 (1981). Therefore, those who seek to deprive an individual of a fundamental right must meet a clear and convincing burden of proof.

*I/M/O Absentee Ballots, supra*, 331 N.J. Super. at 37-38, 750 A.2d at 794.

### **Other State Constitutions**

Of the 38 states with constitutional provisions relating to voting for persons of diminished mental capacity, the majority (25 states) reference judicial process as necessarily preceding disenfranchisement. Included within the group of 25 are states that generally reference an adjudication, states that reference guardianship or involuntary commitment (both of which arise out of a judicial proceeding), and states that additionally specify that the incapacity must relate to the act of voting. Thus, although some may consider that federal due process requirements apply regardless of whether judicial process is acknowledged in a constitutional provision, the majority of states that allow for the disenfranchisement of persons based upon their mental state expressly require an adjudication.

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<sup>2</sup> New Jersey's constitutional provision, Article II, Section I, Paragraph 6, formerly stated “No idiot or insane person shall enjoy the right of suffrage.” After voters in 2007 adopted a legislative proposal to change the provision, the paragraph now reads: “No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.”



The states that allow for disenfranchisement but do not expressly mention judicial process include Ohio, Kentucky, Mississippi, and New Mexico, all of which provide that “idiots” and “insane persons” cannot vote, and seven other states that, although they refrain from the objectionable descriptors, similarly express the prohibition as a policy that persons of diminished mental capacity are not permitted to vote. Several of those states, Alabama, California, and Nebraska, stipulate that the disenfranchisement only lasts so long as the person is incapacitated.

With 38 states addressing voting in relation to mental impairment, there remain twelve states that either have no constitutional provision regarding disenfranchisement of the mentally impaired (nine states) or have a provision granting discretion to the state legislature to determine whether to disenfranchise (three states).

To assist the committee in reviewing this issue, the attached three documents provide more specific information about other state constitutions. Attachment A categorizes state constitutions according to the elements contained in their disenfranchising sections, while Attachment B indicates the semantic terms utilized by different states in describing the mental status of the subject voters. Attachment C provides the contents of all 50 state constitutional provisions related to this topic.

### **Summary of the Arguments For and Against Including Various Elements in the Proposals**

Here are some of the key elements of the proposals under consideration, and an outline of the pro/con positions that could be taken with regard to each.

- *Should the provision explicitly authorize or require the General Assembly to enact laws relating to the disenfranchisement of those whose mental incapacity is alleged to prevent them from voting?*
  - Yes, because other provisions (notably Article V, Section 4) expressly authorize action by the General Assembly. Also, the General Assembly should provide definitions and procedures to prevent arbitrary disenfranchisement; and express authorization compels them to act.
  - No, the legislature implicitly can act unless the constitution expressly prohibits it from doing so. Also, current Article V, Section 6 is self-executing.
- *Should the provision specify a need for judicial determination?*
  - Yes, to avoid arbitrary disenfranchisement, and to raise the presumption of voting capacity unless proven otherwise. Expressly requiring judicial determination places the burden of proof of disqualification on the party seeking to disenfranchise, rather than upon the incapacitated individual.



- No, the concept of judicial determination is implicit because, under federal constitutional law and case precedent, due process must precede disenfranchisement. Judicial determination should not be required in every case. However, if the individual wants to contest disenfranchisement, he/she can seek an adjudication.
- *Should the provision reference the “privileges of an elector”?*
  - Yes, Article V, Section 4 references “the privilege of voting,” so keeping the word “privilege” would maintain consistency within the article.
  - No, voting generally is recognized as a fundamental right. The section either should refer to voting as a right or stay silent on the issue.
- *Should the provision specify that mental incapacity must be for the purpose of voting?*
  - Yes. To avoid confusion, and to support statutory enactments, it is important to specify what it means to be mentally incapacitated for voting purposes.
  - No. This is a difficult term to define and should be addressed by statute, decided by the courts, and/or determined by mental health professionals.

## **Conclusion**

The committee has made substantial progress toward reaching a conclusion on amending this provision. Staff believes that by addressing the questions raised in the preceding section, the committee will be close to reaching a decision on how to amend Article V, Section 6.



## REVIEW OF STATE CONSTITUTIONAL PROVISIONS

### 1. States with No Constitutional Provision Regarding Disenfranchisement of the Mentally Impaired (9 States)

Nine states have no constitutional disenfranchisement provision for the mentally incapacitated: Colorado, Idaho, Illinois, Indiana, Kansas, New Hampshire, North Carolina, Pennsylvania, Tennessee.

### 2. States with Constitutional Provisions that Disenfranchise the Mentally Impaired without Further Requirements (8 States)

Eight states (including Ohio) simply disenfranchise without further requirements. These provisions usually consist of a policy statement disfavoring voting rights for the mentally incapacitated.

State	Constitutional Provision
Hawaii	No person who is non compos mentis shall be qualified to vote. No person convicted of a felony shall be qualified to vote except upon the person's final discharge or earlier as provided by law.
Kentucky	*** [T]he following persons are excepted and shall not have the right to vote. *** Idiots and insane persons.
Mississippi	Every inhabitant of this state, except idiots and insane persons, *** is declared to be a qualified elector ***.
New Mexico	Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers.
Ohio	No idiot, or insane persons, shall be entitled to the privileges of an elector.
South Dakota	Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to insure the integrity of the vote.
Utah	Any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise, may not be permitted to vote at any election or be eligible to hold office in this State until the right to vote or hold elective office is restored as provided by statute.
Vermont	Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state ***.

**3. States with Constitutional Provisions that Disenfranchise the Mentally Impaired while Incapacitated (3 States)**

Three states specifically indicate that the disenfranchisement only lasts so long as the person is incapacitated.

<b>State</b>	<b>Constitutional Provision</b>
Alabama	No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.
California	The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.
Nebraska	No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights.

**4. States with Constitutional Provisions that Disenfranchise Mentally Impaired by Judicial Determination (25 States)**

Twenty-five states mandate that disenfranchisement only occur based upon an adjudication, with 16 of those states generally so providing, 5 states referencing guardianships or involuntary commitment, and 4 states specifying that the mental incapacity be related to the act of voting.

**A. Generally (15 States)**

<b>State</b>	<b>Constitutional Provision</b>
Alaska	No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.
Arizona	No person who is adjudicated an incapacitated person shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.
Arkansas	It shall be the duty of the permanent registrar to cancel the registration of voters: *** Who have been adjudged mentally incompetent by a court of competent jurisdiction.
Delaware	*** [N]o person adjudged mentally incompetent or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector[.]
Florida	No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.
Georgia	No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

Louisiana	Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.
Montana	Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.
Nevada	*** [N]o person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector.
North Dakota	No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.
Rhode Island	Every citizen of the United States of the age of eighteen years or over who has had residence and home in this state for thirty days next preceding the time of voting, who has resided thirty days in the town or city from which such citizen desires to vote, and whose name shall be registered at least thirty days next preceding the time of voting as provided by law, shall have the right to vote for all offices to be elected and on all questions submitted to the electors, except that no person who has been lawfully adjudicated to be non compos mentis shall be permitted to vote.
Texas	The following classes of persons shall not be allowed to vote in this State: *** [P]ersons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may make ***.
Virginia	As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.
Washington	All persons convicted of infamous crime unless restored to their civil rights and all persons while they are judicially declared mentally incompetent are excluded from the elective franchise.
West Virginia	The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.
Wyoming	All persons adjudicated to be mentally incompetent or persons convicted of felonies, unless restored to civil rights, are excluded from the elective franchise.

**B. Through Guardianship or Involuntary Commitment (5 States)**

Because these provisions disenfranchise solely on the existence of a guardianship or commitment order, and do not require an additional finding that the person is incapable of voting, these provisions either have been declared or likely would be unenforceable under the U.S. Constitution, as held in case precedent.

<b>State</b>	<b>Constitutional Provision</b>
Maine	Every citizen of the United States of the age of 18 years and upwards, excepting persons under guardianship for reasons of mental illness, having his or her residence established in this State, shall be an elector ***.
Maryland	The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability.
Massachusetts	Every [male] citizen of [twenty-one] years of age and upwards, excepting [paupers and] persons under guardianship *** shall have a right to vote in such election of governor, lieutenant governor, senators and representatives; and no other person shall be entitled to vote in such election.
Minnesota	*** The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.
Missouri	*** [N]o person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.

**C. As to the Act of Voting (4 States)**

<b>State</b>	<b>Constitutional Provision</b>
Iowa	A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector.
New Jersey	No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.
Oregon	A person suffering from a mental handicap is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law.
Wisconsin	Laws may be enacted: *** [e]xcluding from the right of suffrage persons *** [a]djudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.

**5. States with Constitutional Provisions that Give Power to State Legislatures to Legislate How Mentally Impaired are Disenfranchised (5 States)**

Five states specifically authorize the legislature to determine whether and how to disenfranchise mentally incapacitated persons.

<b>State</b>	<b>Constitutional Provision</b>
Connecticut	The qualifications of electors as set forth in Section 1 of this article shall be decided at such times and in such manner as may be prescribed by law.
Michigan	The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.
New York	Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law.
Oklahoma	Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state.
South Carolina	The General Assembly shall establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications.

**LANGUAGE USED BY STATES THAT LIMIT THE RIGHT TO VOTE BASED ON  
LACK OF COMPETENCE OR STATE OF MIND**

There are 38 state constitutions that refer to limiting a person's ability to vote because of a lack of competence, state of mind, or other mental incapacity. Twelve states either do not limit a person's ability to vote because of these factors or leave it to the discretion of the state legislature as to the term it will use in this regard.

**No Reference – (12)**

- Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, and Tennessee.

**Reference to Some Form of Competence (21)**

- “*Mentally Incompetent*” (16) – Alabama, Arkansas, California, Delaware, Florida, Georgia, Iowa, Louisiana, Nevada, North Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming
- “*Mental Incompetence*” (3) – Michigan, South Carolina, and South Dakota
- “*Incompetent or Partially Incompetent*” (1) – Wisconsin
- “*Incompetent to Vote*” (1) – Oregon

**Reference to State of Mind (5)**

- “*Non Compos Mentis*” (3) – Hawaii, Nebraska, and Rhode Island
- “*Unsound Mind*” (2) – Alaska and Montana

**Reference to Idiots and Insane (4)**

- “*Idiots and Insane*” (4) – Kentucky, Mississippi, New Mexico, and Ohio

**Reference to Guardianship (3)**

- “*Guardianship for Reasons of Mental Illness*” (1) – Maine
- “*Guardianship for Mental Disability*” (1) – Maryland
- “*Persons Under Guardianship*” (1) – Massachusetts

### **Reference to Guardianship Plus Other Factors (2)**

- *“Person under guardianship or a person who is insane or not mentally competent”* (1) – Minnesota
- *“Person who has a guardian of estate or person by reason of mental incapacity and a person who is involuntarily confined in a mental institution”* (1) – Missouri

### **Reference to Capacity (2)**

- *“Incapacitated Person”* (1) – Arizona
- *“Lack the capacity to understand the act of voting”* (1) – New Jersey

### **Other (1)**

- *“Every person . . . who is of a quiet and peaceable behavior . . . shall be entitled to all the privileges of a voter . . . .”* (1) – Vermont

**CONSTITUTIONAL PROVISIONS RELATING TO  
VOTING FOR THE MENTALLY IMPAIRED**

**ALABAMA**

Article VIII, Section 182(b) (Amendment 579)

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

**ALASKA**

Article 5, Section 2

No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

**ARIZONA**

Art. 7, Section 2(C)

No person who is adjudicated an incapacitated person shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

**ARKANSAS**

Amendment 51, Section 11(a)(6)

It shall be the duty of the permanent registrar to cancel the registration of voters: \*\*\*

Who have been adjudged mentally incompetent by a court of competent jurisdiction.

**CALIFORNIA**

Article 2, Section 4

The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

**COLORADO** (No constitutional disqualification provision.)

## **CONNECTICUT**

### Article 6, Section 2

The qualifications of electors as set forth in Section 1 of this article shall be decided at such times and in such manner as may be prescribed by law.

## **DELAWARE**

### Article 5, Section 2

\*\*\* [N]o person adjudged mentally incompetent or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector[.]

## **FLORIDA**

### Article 6, Section 4(a)

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

## **GEORGIA**

### Article II, Section I, Paragraph 3(b)

No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

## **HAWAII**

### Article II, Section 2

No person who is non compos mentis shall be qualified to vote. No person convicted of a felony shall be qualified to vote except upon the person's final discharge or earlier as provided by law.

## **IDAHO**

**(No constitutional disqualification provision.)**

**ILLINOIS** (No constitutional disqualification provision.)

**INDIANA** (No constitutional disqualification provision.)

**IOWA**

Article II, Section 5

A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector.

**KANSAS** (No constitutional disqualification provision.)

**KENTUCKY**

Section 145, Paragraph 3

\*\*\* [T]he following persons are excepted and shall not have the right to vote. \*\*\*

Idiots and insane persons.

**LOUISIANA**

Article I, Section 10(A)

Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.

**MAINE**

Article II, Section 1

Every citizen of the United States of the age of 18 years and upwards, excepting persons under guardianship for reasons of mental illness, having his or her residence established in this State, shall be an elector \*\*\*.

## **MARYLAND**

### Article I, Section 4

The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability.

## **MASSACHUSETTS**

### Article III

Every [male] citizen of [twenty-one] years of age and upwards, excepting [paupers and] persons under guardianship \*\*\* shall have a right to vote in such election of governor, lieutenant governor, senators and representatives; and no other person shall be entitled to vote in such election.

*(Note: there is a Secretary of State opinion interpreting this provision to require a specific finding of incompetence to vote before disenfranchisement may occur.)*

## **MICHIGAN**

### Article 2, Section 2

The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.

## **MINNESOTA**

### Article VII, Section 1

\*\*\* The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

## **MISSISSIPPI**

### Article 12, Section 241

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, is declared to be a qualified elector \*\*\*.

## **MISSOURI**

### Article VIII, Section 2

\*\*\* [N]o person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.

## **MONTANA**

### Article 4, Section 2

Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

## **NEBRASKA**

### Article VI, Section 2

No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights.

## **NEVADA**

### Article 2, Section 1

\*\*\* [N]o person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector.

## **NEW HAMPSHIRE**

**(No constitutional disqualification provision.)**

## **NEW JERSEY**

### Article II, Section I, Paragraph 6

No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.

## **NEW MEXICO**

### Article VII, Section 1

Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers.

## **NEW YORK**

### Article II, Section 5

Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law.

## **NORTH CAROLINA**      **(No constitutional disqualification provision.)**

## **NORTH DAKOTA**

### Article II, Section 2

No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.

## **OHIO**

### Article V, Section 6

No idiot, or insane person, shall be entitled to the privileges of an elector.

## **OKLAHOMA**

### Article III, Section 1

Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state.

## **OREGON**

### Article 2, Section 3

A person suffering from a mental handicap is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law.

## **PENNSYLVANIA**                   **(No constitutional disqualification provision.)**

## **RHODE ISLAND**

### Article II, Section 1

Every citizen of the United States of the age of eighteen years or over who has had residence and home in this state for thirty days next preceding the time of voting, who has resided thirty days in the town or city from which such citizen desires to vote, and whose name shall be registered at least thirty days next preceding the time of voting as provided by law, shall have the right to vote for all offices to be elected and on all questions submitted to the electors, except that no person who has been lawfully adjudicated to be non compos mentis shall be permitted to vote.

## **SOUTH CAROLINA**

### Article II, Section 7

The General Assembly shall establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications.

## **SOUTH DAKOTA**

### Article 7, Section 2

Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to insure the integrity of the vote.

**TENNESSEE** (No constitutional disqualification provision.)

**TEXAS**

Article 6, Section 1(a)(2)

The following classes of persons shall not be allowed to vote in this State:

\*\*\* [P]ersons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may make \*\*\*.

**UTAH**

Article IV, Section 6

Any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise, may not be permitted to vote at any election or be eligible to hold office in this State until the right to vote or hold elective office is restored as provided by statute.

**VERMONT**

Chapter II, Section 42

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state \*\*\*.

**VIRGINIA**

Article II, Section 1

As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

**WASHINGTON**

Article 6, Section 3

All persons convicted of infamous crime unless restored to their civil rights and all persons while they are judicially declared mentally incompetent are excluded from the elective franchise.

## **WEST VIRGINIA**

### Article IV, Section 4-1

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.

## **WISCONSIN**

### Article III, Section 2(4)(a)

Laws may be enacted: \*\*\*

Excluding from the right of suffrage persons \*\*\*

Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.

## **WYOMING**

### Article 6, Section 6

All persons adjudicated to be mentally incompetent or persons convicted of felonies, unless restored to civil rights, are excluded from the elective franchise.

## Kansas Voting Disqualification Amendment, Constitutional Amendment Question 2 (2010)

The **Kansas Voting Disqualification Amendment**, also known as **Constitutional Amendment Question 2**, was on the November 2, 2010 ballot as a legislatively-referred constitutional amendment in the state of Kansas, where it was **approved**.♥ The measure would eliminate mental illness as a voting disqualification. According to supporters of the amendment, a "mental illness" category was too general and affected as much as 25 percent of Kansas residents.<sup>[1]</sup>

Proponents also argued that disqualifying those with mental illnesses violated the United States Constitution and other laws that prohibited discriminating the disabled. The Senate Judiciary Committee introduced the measure.<sup>[2][3]</sup>

### Election results

*See also: 2010 ballot measure election results*

Official election results for the measure follow:

Constitutional Amendment Question 2 (Voting Disqualification)		
Result	Votes	Percentage
♥ Yes	<b>503,143</b>	<b>62.4%</b>
No	302,966	37.5%

Results via the Kansas Secretary of State Official Vote Totals ([http://www.kssos.org/elections/10elec/2010\\_General\\_Election\\_Results.pdf](http://www.kssos.org/elections/10elec/2010_General_Election_Results.pdf)).

### Text of measure

#### Ballot title

The ballot title that voters saw on their ballot read:<sup>[1]</sup>

Explanatory statement. This amendment would repeal the authority of the legislature to exclude persons with mental illness from voting.

A vote for this amendment would ensure that the right to vote for persons with mental illness cannot be taken away by the legislature.

A vote against this amendment would continue the current authority of the legislature to take away the right to vote for persons with mental illness.

#### Summary

The summary of the measure read:

A proposition to amend section 2 of article 5 of the constitution of the state of Kansas, relating to qualification of voters.<sup>[4]</sup>

#### Contents

- 1 Election results
- 2 Text of measure
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#### Kansas Constitution



#### Articles

- Ordinance •
- Preamble • Bill of Rights
- 1 • 2 • 3 • 4 • 5 • 6 •
- 7 • 8 • 9 • 10 • 11 •
- 12 • 13 • 14 • 15

## Constitutional changes

The measure was proposed to amend Section 2 of Article 5 of the Kansas Constitution to read as follows:

*§ 2. Disqualification to vote. The legislature may, by law, exclude persons from voting because of commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.*<sup>[4]</sup>

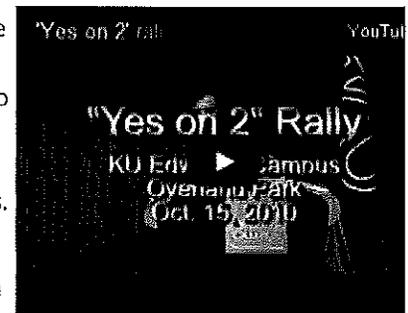
The previous text read as follows:

*The legislature may, by law, exclude persons from voting because of mental illness or commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.*

## Support

### Supporters

- The "Yes On 2" (<http://www.protectvotingrights.com>) campaign was the main campaign in support of the measure. The campaign was started by the Kansas Mental Health Coalition (KMHC). Dr. Roy Menninger, chair of the KMHC, stated, "Voting 'yes' on Constitutional Amendment 2 in the November 2nd general election will protect the voting rights of our friends, family members and neighbors with mental health issues once and for all."<sup>[5]</sup> See video from 'Yes on 2' rally in Overland Park (<http://kansas.watchdog.org/5417/yes-on-2-rally-in-overland-park/>).
- Andrew Gray of the Libertarian Party of Kansas candidate for Kansas Governor announced his endorsement of the measure, stating "I encourage Kansas voters to affirm our state's commitment to the right to keep and bear arms, and to acknowledge the responsibility of Kansans to treat each other as capable adults and respect the liberty of others by voting in support of this amendment."<sup>[6]</sup>
- The Unified Government endorsed the measure on September 30, 2010 when the commissioners of the group voted unanimously to support the proposal. According to Mark Wiebe, of Wyandot Center, when speaking to commissioners to back the measure, 25 percent of Kansas residents had a variety of mental illness problems. Wiebe stated, "(The constitution's) language serves as threat to a very large group of Kansans. These people are our friends. They are everyday Kansans. They have jobs, pay taxes and vote."<sup>[7]</sup>
- According to Amy Campbell, executive director of KHMC, "A big part of the 'Yes on 2' campaign is battling the misperceptions about mental illness. This is really about educating the public to understand that people with mental illness are everyday people — they pay taxes, work jobs, and raise families. The Kansas Legislature should not be able to take away their or your right to vote."<sup>[8]</sup>
- Gerry Lichti, head of the Wichita chapter of the National Alliance on Mental Illness, stated about mentally ill voters, "These folks are members of our community, they're raising families, they are employed, they are working hard in community organizations. They're like the rest of us. There's no difference."<sup>[8]</sup>
- Mark Wiebe, Director of Public Affairs at Wyandot Center for Community Behavioral Healthcare, argued for the measure stating, "We need to blow the cobwebs off the Constitution and remove this threat that exists to the voting rights of every law-abiding Kansan. One in five Kansans can be expected to have a mental disorder some time in a given year."<sup>[9]</sup>



### Arguments

- The "Yes on 2" campaign stated that if the measure passed, it would protect over 500,000 of the state's residents' right to vote. The group cited that the U.S. Surgeon General found that 1 in 5 of all Americans have some sort of mental health issue, thus their calculation of 500,000.<sup>[5]</sup>
- The National Institutes of Mental Health (NIMH) stated that many Kansans had mental issues, including soldiers returning home from military conflict with PTSD and victims of sexual assault who experienced mental health issues.

According to Rick Cagan, executive director of NAMI Kansas ([http://www.nami.org/MSTemplate.cfm?Site=NAMI\\_Kansas](http://www.nami.org/MSTemplate.cfm?Site=NAMI_Kansas)) stated, "Mental illness is a natural part of the human condition that impacts so many lives. A 'Yes' vote on Amendment 7 protects YOUR right to vote and the right to vote of all Kansans — your friends, family, neighbors and coworkers."<sup>[5]</sup>

## Opposition

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There was no known opposing campaign for Question 2.

## Media editorial positions

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*See also: Endorsements of Kansas ballot measures, 2010*

## Support

- **The Wichita Eagle** called for the passage of the measure in an editorial, claiming, "Kansas doesn't ban people with mental illnesses from voting. But believe it or not, the state's Constitution allows the Legislature to do that, which is discriminatory and offensive. Voters should approve a constitutional amendment on the November ballot that would eliminate mental illness as a possible voting disqualification and protect the right to vote."<sup>[10]</sup>
- **The Kansas City Star** recommended a 'yes' vote on the measure.<sup>[11]</sup>

## Path to the ballot

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The measure was approved by the Kansas State Senate on February 16, 2010 by a vote of 38-1. The next step for the measure is an approval of two-thirds of the Kansas House of Representatives. The only Senator who voted against the amendment was Karin Brownlee who stated there is no need to fix a problem that doesn't exist. The House planned to vote on the measure on April 29, 2010 to decide whether or not to send it to the ballot. On April 30, 2010, the measure was passed to the ballot by the House with a unanimous vote of 122-0.<sup>[12][13][3]</sup>

A 2/3rds vote in both chambers of the Kansas State Legislature is required to refer a constitutional amendment to the ballot. Kansas is one of 17 states that requires this process.

## Similar measures

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Voters in Maine and Washington have voted on similar measures in past years:

- Maine Repeal Mental Illness Provision, Question 5 (1997)
- Maine Repeal of Mental Illness Voting Restrictions Amendment, Question 5 (2000)
- Washington Deleting References to "Idiots," HJR 4231 (1988)
- Arkansas Voting and Elections, Proposed Constitutional Amendment 1 (2008)
- Iowa Voting Exemptions, Constitutional Amendment Question (2008)

## See also

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- Kansas 2010 ballot measures
- Kansas Senate approves voting amendment, House next

## External links

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- Guide to the Kansas 2010 proposed constitutional amendments ([http://www.kssos.org/other/constitutional\\_question\\_english.html](http://www.kssos.org/other/constitutional_question_english.html)) prepared by the Kansas Secretary of State's office
- Kansas Legislature official site (<http://www.kslegislature.org/legsrv-legisportal/index.do>) (*dead link*)
- Elections and Legislative page on Kansas Secretary of State website (<http://www.kssos.org/elections/elections.html>)
- "Yes on 2" campaign website (<https://web.archive.org/web/2/http://protectvotingrights.com/>)



- Amendment 2 vote ought to change ballot bias  
(<https://web.archive.org/web/2/http://www.kansascity.com/2010/10/21/2341437/mike-hendricks-vote-ought-to-change.html>)
- National group touts Kansas ballot issue ([http://www.ktka.com/news/2010/oct/28/national-group-touts-kansas-ballot-issue/?topeka\\_news](http://www.ktka.com/news/2010/oct/28/national-group-touts-kansas-ballot-issue/?topeka_news))
- Amendment 2 Could Change Eligibility Of Voters  
(<https://web.archive.org/web/2/http://www.kctv5.com/news/25570310/detail.html>)

## References

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3. ↑ <sup>3.0 3.1</sup> *The Topeka Capital Journal*, "Mentally ill voter rights on ballot," May 1, 2010 ([http://cjonline.com/news/local/2010-05-01/mentally\\_ill\\_voter\\_rights\\_on\\_ballot](http://cjonline.com/news/local/2010-05-01/mentally_ill_voter_rights_on_ballot))
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5. ↑ <sup>5.0 5.1 5.2 5.3</sup> *Dodge Globe*, "Amendment protects Kansans' voting rights," October 7, 2010 (<https://web.archive.org/web/2/http://www.dodgeglobe.com/protects-Kansans-voting-rights>)
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7. ↑ *Kansas City Kansan*, "UG endorses Kansas Voting Disqualification Amendment election question," September 30, 2010 (<https://web.archive.org/web/2/http://www.kansascitykanssloan/ug-endorses-kansas-voting-disqualification-amendment-election-question/8628>)
8. ↑ *KSN.com*, "Voting rights for mentally ill in hands of voters November," October 11, 2010 (<https://web.archive.org/web/2/http://www.ksn.com/news/rights-for-mentally-ill-in-hands-of-voters/NNqYDrc4Ee7ex-6tKeQYg.csp>)
9. ↑ *Kansas Watchdog*, "Yes on 2' rally in Overland Park support voting rights for mentally ill," October 15, 2010 (<http://kansas.watchdog.org/5417/yes-on-2-rally-in-overland-park/>)
10. ↑ *The Wichita Eagle*, "Vote 'yes' on amendment," October 12, 2010 (<http://www.kansas.com/2010/10/12/1538225/vote-yes-on-amendment.html>)
11. ↑ *Kansas City Star*, "Top election picks for Missouri, Kansas," October 30, 2010 (<https://web.archive.org/web/2/http://www.kansascity.com/election-picks-for-missouri.html>)
12. ↑ *CNBC.com*, "Kan. panel reviews plan to tax utility bills," February 16, 2010 (<http://www.cnb.com/id/35430699>) (*dec link*)
13. ↑ *Fox4KC*, "Proposal would preserve Kansas voting rights fo residents with mental illness," April 29, 2010 (<https://web.archive.org/web/2/http://www.fox4kc.com/news-ap-ks-xgr--voting-mentalillness,0,3012771.story>)

Categories: Approved, 2010 | Kansas 2010 ballot measures, certified | Elections and campaigns, Kansas | Certified, elections and campaigns, 2010 | Constitutional language, Kansas | Certified, constitutional language, 2010 | Referred amendment certified for the 2010 ballot