



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 14, 2016

Call to Order:

Chair Richard Saphire called the meeting to order at 9:44 a.m.

Members Present:

A quorum was present with Chair Richard Saphire, Vice-chair Jeff Jacobson, and committee members Amstutz, Clyde, Cole, and Fischer in attendance.

Approval of Minutes:

The minutes of the May 12, 2016 meeting of the committee were approved.

Discussion:

Article V, Section 1
"Qualifications of an Elector"

Chair Saphire announced the committee would be beginning its review of Article V, Section 1, which sets the requirements for a person to be an elector in Ohio, including age, registration, and residency. He noted that, in the 1970s, the last clause of the provision, requiring a voter to vote at least once within a four-year period in order to keep registration current, was added.

Mr. Jacobson asked exactly when that requirement was added. Executive Director Steven C. Hollon indicated the date was 1977. Senior Policy Advisor, Steven H. Steinglass confirmed that there was a commission proposal submitted to voters in the late 1970s, with an initiated effort to impose the 30-day registration period also occurring at that time. He said there was an "instant voter referendum," consisting of a proposal to bar instant voting from the constitution.

Peg Rosenfield, elections specialist with the League of Women Voters of Ohio (LWVO), speaking from the audience, said that Senate Bill 125 in the 112th General Assembly was an omnibus bill that, in part, provided for Election Day registration. She said the Republican Party, particularly Secretary of State Ted Brown, was against same-day registration, and supported an initiative petition to amend the constitution to amend Article V, Section 1 to require 30-day registration. She said same-day registration occurred for one election, in November 1977, and that was the same election that had on the ballot the initiated constitutional amendment that required a voter to have been registered for 30 days. Ms. Rosenfield said that many people registered the day of the November 1977 election and then, that same day, voted to rescind same-day registration. She said the way the ballot measure was worded, some voters were confused and said they voted the opposite of what they had intended.¹ Ms. Rosenfield noted that the four-year voting requirement may conflict with the National Voter Registration Act (NVRA). She said the previous voting frequency requirement had been two years, and that the four-year requirement was meant to allow voters who only wished to vote in presidential years to do so without having to re-register.

Mr. Jacobson said he would like more research on these questions. He said he favors having a voter identification requirement in the constitution. He added that in 2005 the General Assembly approved absentee voting despite objections by many legislators. He said his concern with absentee voting is that not everyone votes at the same time, raising the cost of elections and campaigns because campaign spending has to be extended for the entire period of time during which there is absentee voting. He said this puts a premium on being the incumbent, and has made it more crucial to get big donors. He said he does not believe it is in the best interest of those who vote early because they do not have the benefit of information about the candidates that is provided right up until Election Day. He said this topic may be difficult, but suggested there may be a better way to accommodate voters who cannot vote on Election Day.

Chair Sapphire noted he provided a memorandum to the committee outlining potential issues.

Representative Kathleen Clyde said she would like additional information regarding the source of the “purging” language, requiring voters to vote within a four-year period or be stricken from the rolls. She said she thinks that requirement is in direct conflict with the NVRA. Chair Sapphire noted the history of that provision has been described in the litigation briefs in the case that has now been appealed to the Sixth Circuit, offering to circulate the briefs.²

Rep. Clyde said the most problematic part of this language, besides the four-year voting requirement, is the 30-day voter registration requirement. She said there may be some space to make adjustments under the current constitution, but she would like more information on that from LWVO. She said the 30-day deadline is a single item under Ohio law that impacts voter

¹ The ballot language read: Proposed Constitutional Amendment to Amend Section 1 of Article V of the Constitution of Ohio. To provide that a person is entitled to vote at all elections if he has been registered to vote for 30 days and has the other qualifications of an elector and to provide that a person who is registered and fails to vote in at least one election during any period of four consecutive years must register again before being entitled to vote.” Source: [https://ballotpedia.org/Ohio_30-Day_Voter_Eligibility_Amendment_1_\(1977\)](https://ballotpedia.org/Ohio_30-Day_Voter_Eligibility_Amendment_1_(1977)) (last visited July 15, 2016).

² *Ohio A. Philip Randolph Inst. v. Husted*, Case No. 16-3746 (6th Cir. 2016), on appeal from *Ohio A. Phillip Randolph Inst. v. Husted*, Case No. 2:16-cv-303, 2016 U.S. Dist. LEXIS 84519 (S.D. Ohio June 29, 2016).

turnout and is the longest deadline allowed under federal law. She said the provision requires voters to complete something well in advance of an election. Similar to Mr. Jacobson's points about 30 days of voting, Rep. Clyde said the 30-day registration requirement also has the problem of people thinking about what they want to do but are not energized because the major focus of campaigns is right before Election Day. She said those would-be voters are excluded because they did not do the paper work 30 days in advance. She said there is no evidence that states that have same-day registration have problems. She said "We can look to those states for best practices; states that have same-day registration have ten percent higher voter turnout than we have here in Ohio. That is the problem we should be considering, why do we lag other states in the number of people who are turning out to vote in our elections." She suggested that the 30-day requirement is onerous and she would be open to discussions about changing that language. Alternately, she said she favors doing something like same-day registration, or opening up the possibility for automatic registration. She said the election process would benefit from new constitutional language that would allow the General Assembly to provide statutory law on these options.

Mr. Steinglass, answering Mr. Jacobson's question about the history of the four-year voting requirement, said the language on purging and the 30-day registration requirement were both proposed by initiative and approved in November 1977. He said, prior to that time, there was no explicit provision in Article V, Section 1 on either registration or on purging. He said there may have been statutory requirements on either. He suggested it would be helpful to look at the secretary of state's website for data comparing voter turnout with eligibility and registration requirements.

Mr. Jacobson asked about the registration requirements in other states. Rep. Clyde said about ten states have 30-day registration requirements.

Chair Sapphire described that the absentee voting provision arose in 2005 in reaction to events occurring in the 2004 presidential election, when the voting system broke down. He said there are some provisions of the Help America Vote Act (HAVA) that affect provisional and absentee voting. He said it would be useful to consider whether the HAVA provisions affect the committee's ability to change Article V, Section 1. He continued that further research regarding the four-year voter purge requirements in Article V, Section 1 would be useful, noting that issue is subject to litigation in the *Randolph* case, noted above, in which he is co-counsel for plaintiff, as well as litigation in a Georgia federal district court. He said it has not been authoritatively resolved as to whether NVRA or other federal provision prohibits voter purging.

Mr. Jacobson referenced his interest in constitutionalizing a voter identification provision. Chair Sapphire said such provisions, where they exist, are being challenged around the country. Mr. Jacobson noted that at least one such requirement, in Indiana law, has been approved by the United States Supreme Court.³

Chair Sapphire requested that the committee receive more historical background on how the registration clause was placed in Article V, Section 1, and that it would be useful to know more about the residency requirement of Article V, Section 1.

³ *Crawford v. Marion Cty. Election Bd.*, 553 US. 181 (2008).

Chair Sapphire continued that the committee may wish to address whether the constitution should include reference to allowing 17-year-olds to vote in the primary if they will be 18 by the time of the general election.

Judge Patrick Fischer said he would like research regarding voter turnout percentages, asking if the secretary of state's office might have information about whether changes in the law have increased voter turnout. He said turnout percentages for presidential elections have stayed the same since the 30-day provision. If the committee is to propose changes, he said he would like to know those changes would increase voter turnout. He requested research on this from Ohio or from other states.

Mr. Jacobson suggested there are very few nonpartisan election experts in election law. Chair Sapphire noted the committee is fortunate to have professors at the Ohio State University who specialize in election law, but Mr. Jacobson said they are advisors to only one side of the issues. Chair Sapphire said he knows there is a lot of research on Judge Fischer's question.

With regard to the question regarding absentee voting, Mr. Jacobson said he concedes that it is good for democracy for people to participate, but that early absentee voters may be making choices that they might not make if they had up to Election Day to decide.

Judge Fischer asked whether the committee would be considering making Article V, Section 1 gender neutral, pointing out that the last part of the provision uses the pronoun "he."

Chair Sapphire asked Mr. Steinglass whether there was a group within the Commission that was considering the question of gender neutralizing the entire constitution. Mr. Steinglass said there is a working group that logically would include that task, but that group has not really convened. He said he has provided draft research and there is a placeholder for addressing that issue. Asked whether other committees have included a gender neutral discussion, Mr. Hollon said other committees have only considered gender neutral language where other changes were being contemplated, and have not considered it as a stand-alone topic.

Mr. Steinglass noted, "we clearly have a 19th century constitution; there are many references that are outdated, and one could do a grammatical update, but that has not been a high priority." He observed that other states have done that in different ways than simply presenting it to the electorate. For instance, he said, there can be a delegation to a group to come up with an amendment, and one state allowed the state supreme court to handle it. He said the Constitutional Revision and Updating Committee presumably will be looking at other ways to address those issues.

Chair Sapphire said, if the committee were to decide to retain the existing provision, it would not recommend gender neutralizing the language. Mr. Hollon said he has had conversations with the Coordinating Committee on this question, and his conclusion was that asking each individual committee to perform the gender neutralizing function does not necessarily make sense. He said, for consistency, it would be important to have one committee working on this, and he thinks it should be the Coordinating Committee, upon the suggestion of the subject matter committee.

Judge Fischer then withdrew his suggestion.

Chair Saphire said the committee had requested extensive research and would be in a better position at its next meeting in October to further discuss these questions.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:39 a.m.

Approval:

These minutes of the July 14, 2016 meeting of the Bill of Rights and Voting Committee were approved at the December 15, 2016 meeting of the committee.

/s/ Richard B. Saphire
Richard B. Saphire, Chair

/s/ Jeff Jacobson
Jeff Jacobson, Vice-chair