



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

THURSDAY, JUNE 11, 2015

1:30 PM

**SOUTH MEETING ROOMS B & C, 31ST FLOOR
RIFFE CENTER FOR GOVERNMENT AND THE ARTS**

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of April 9, 2015
- IV. Standing Committee Reports
 - Coordinating Committee (Trafford)
 - Public Education and Information Committee (Beckett) and Liaisons with Public Offices Committee (Asher)
 - Organization and Administration Committee (Wagoner)
- V. Subject Matter Committee Reports
 - Education, Public Institutions, and Local Government Committee (Readler)
 - Finance, Taxation, and Economic Development Committee (Cole)
 - Judicial Branch and the Administration of Justice Committee (Abaray)
 - Bill of Rights and Voting Committee (Saphire)
 - Constitutional Revisions and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Mills)

VI. Reports and Recommendations

- Article I, Section 2 (Right to Alter, Reform, or Abolish Government)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

- Article I, Section 3 (Right to Assemble)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

- Article I, Section 4 (Bearing Arms; Standing Armies; Military Power)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

VII. Executive Director's Report (Hollon)

VIII. Old Business

IX. New Business

X. Adjourn

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



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, APRIL 9, 2015

Call to Order:

Senator Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:40 p.m.

Members Present:

A quorum was present with Commission members Tavares, Amstutz, Abaray, Asher, Brooks, Clyde, Coley, Cupp, Curtin, Davidson, Fischer, Kurfess, Macon, Mills, Mulvihill, Obhof, Peterson, Readler, Sapphire, Skindell, Sykes, Taft, Trafford, and Wagoner in attendance.

Approval of Minutes:

Minutes of the February 12, 2015 meeting were reviewed and approved.

Announcement of New Co-Chair:

Senator Tavares, as co-chair, announced that earlier in the morning the legislative members of the Commission met to select a new co-chair to join her in that role. By a unanimous vote, Representative Ron Amstutz was selected.

Newly-elected Co-Chair Representative Amstutz expressed how deeply humbled he is to be elected to the position of co-chair. He stated that he is looking forward to overseeing the future work of the Commission, as the Commission seems to be gaining momentum. He expressed that he sees his role of co-chair as advisory. Therefore, he made himself available to all members who have an interest in seeking his assistance.

Senator Tavares explained that the two co-chairs plan to take turns running the meetings. She expressed that she is looking forward to having a co-chair, especially one with such vast institutional knowledge.

Standing Committee Reports:

Coordinating Committee

Senator Tavares recognized Kathleen Trafford, chair of the Coordinating Committee, for a report of the activities of the committee. Ms. Trafford reported that the committee met in both February and March but had no action items for the Commission at this time.

Public Education and Information Committee
Liaisons with Public Offices Committee

Senator Tavares recognized Herb Asher, chair of the Liaisons with Public Offices Committee. Roger Beckett, chair of the Public Education and Information Committee, was excused from this month's meeting. As a result, Mr. Asher reported on the status of both committees, as the two committees meet jointly during the months when they convene. Mr. Asher reported that neither committee had action items for the Commission at this time.

Organization and Administration Committee

Senator Tavares recognized Mark Wagoner, chair of the Organization and Administration Committee. Mr. Wagoner reported that the Commission remains on budget and fully staffed. In addition, a budget request has been made to the General Assembly to ensure the Commission's continued funding in the upcoming state budget.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Senator Tavares recognized Chad Readler, chair of the Education, Public Institutions, and Local Government Committee. Mr. Readler reported that the committee has been examining Article VI, Section 1 (Funds for Religious and Educational Purposes) and Article VI, Section 2 (School Funds). He stated that the committee plans to leave the two provisions in place. Next, the committee will move on to the rest of Article VI (Education).

Finance, Taxation, and Economic Development Committee

In the absence of Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, and Karla Bell, vice-chair of the committee, there was no report for this committee.

Judicial Branch and Administration of Justice Committee

Senator Tavares recognized Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee. Ms. Abaray reported that the committee primarily has been discussing Justice Paul Pfeifer's comments suggesting a possible expansion of the original jurisdiction of the Ohio Supreme Court. The committee has not come to a final recommendation regarding that topic.

Bill of Rights and Voting Committee

Senator Tavares recognized Richard Saphire, chair of the Bill of Rights and Voting Committee. Mr. Saphire reported that the committee is continuing the discussion of Article V, Section 6, regarding disenfranchisement of the mentally impaired. He stated that the committee is making progress on crafting an appropriate revision of that section, and hopes to make a recommendation soon. In addition, the committee had a first reading of a report and recommendation for Article I, Section 13 (Quartering of Troops), as well as a first reading of a report and recommendation for Article I, Section 17 (No Hereditary Privileges).

Constitutional Revision and Updating Committee

Senator Tavares recognized Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee. Mr. Mulvihill reported that the committee would be meeting later that afternoon, after the Commission meeting. The committee members will be looking at what subject matters are or should be allowed in citizen's initiatives.

Legislative Branch and Executive Branch Committee

Senator Tavares recognized Fred Mills, chair of the Legislative Branch and Executive Branch Committee. Mr. Mills reported that the committee has continued to meet each month to address its agenda. At the meeting earlier that morning, the committee had a second reading of two reports and recommendations outlining two different options relating to Article II, Section 2 (Legislative Term Limits). The committee voted to approve both reports and recommendations. The committee also heard presentations by Representatives Kathleen Clyde and Michael F. Curtin regarding their congressional redistricting proposal. Senate Joint Resolution 1 (Public Office Compensation Commission) was also on the agenda, but due to time constraints was not discussed. Both the congressional redistricting proposal and SJR 1 will be on the agenda for subsequent committee meetings.

Reports and Recommendations:

Senator Obhof then presented the reports and recommendations for Article IV, Sections 19 and 22.

Article IV, Section 19 (Courts of Conciliation)

Following a second reading of this proposal regarding Article IV, Section 19 (Courts of Conciliation). Senator Tavares called for questions and comments from Commission members.

Committee member Janet Abaray asked for clarification as to whether the General Assembly could still establish an alternative court system if this section is repealed. Senator Obhof recalled comments by both Dean Steven H. Steinglass, Senior Policy Advisor to the Commission, and Jo Ellen Cline, Government Relations Council for the Ohio Supreme Court, who had indicated that repealing this provision would not affect the General Assembly's ability to create arbitration or other alternative dispute resolution systems.

Committee member Abaray then asked whether these alternate dispute resolution mechanisms are currently a forum funded by the General Assembly, making that option free for individuals to pursue. She asked whether, if the constitutional provision allowing for Courts of Conciliation were to disappear, litigants would have to pay for these alternative services. Senator Obhof responded that this repeal would not affect current forums at all.

There were no public comments on this report and recommendation. Senator Obhof motioned that the report and recommendation be adopted. Committee member Mark Wagoner seconded the motion. Senator Tavares called for a roll call vote:

Yea – 23

Nay – 1

Absent – 8

Senator Tavares – yea
Representative Amstutz – yea
Janet Abaray – nay
Herb Asher – yea
Roger Beckett – absent
Karla Bell – absent
Commissioner Brooks – yea
Representative Clyde – yea
Douglas Cole - absent
Senator Coley – yea
Representative Cupp – yea
Representative Curtin – yea
Speaker Davidson – yea
Judge Fischer – yea
Edward Gilbert – absent
Jeff Jacobson – absent
Speaker Kurfess – yea
Dr. Macon – yea
Representative Manning – absent
Fred Mills – yea
Dennis Mulvihill – yea
Senator Obhof – yea
Senator Peterson – yea
Chad Readler – yea
Richard Sapphire – yea
Senator Sawyer – absent
Senator Skindell – yea
Representative Sykes – yea
Petee Talley – absent
Governor Taft – yea
Kathleen Trafford – yea
Mark Wagoner – yea

Article IV, Section 22 (Supreme Court Commission)

Following a second reading of a proposal regarding Article IV, Section 22 (Supreme Court Commission), there were no questions or comments. Senator Obhof motioned that the report and recommendation be adopted. Judge Patrick Fischer seconded the motion. Senator Tavares called for a roll call vote:

Yea – 24
Nay – 0
Absent – 8

Senator Tavares – yea
Representative Amstutz – yea
Janet Abaray – yea

Herb Asher – yea
Roger Beckett – absent
Karla Bell – absent
Commissioner Brooks – yea
Representative Clyde – yea
Douglas Cole - absent
Senator Coley – yea
Representative Cupp – yea
Representative Curtin – yea
Speaker Davidson – yea
Judge Fischer – yea
Edward Gilbert – absent
Jeff Jacobson – absent
Speaker Kurfess – yea
Dr. Macon – yea
Representative Manning – absent
Fred Mills – yea
Dennis Mulvihill – yea
Senator Obhof – yea
Senator Peterson – yea
Chad Readler – yea
Richard Sapphire – yea
Senator Sawyer – absent
Senator Skindell – yea
Representative Sykes – yea
Petee Talley – absent
Governor Taft – yea
Kathleen Trafford – yea
Mark Wagoner – yea

The reports and recommendations for Article IV, Sections 19 and 22, having been approved by at least twenty-two members of the Commission, are now ready for presentation to the General Assembly.

The Commission then proceeded to consider, for the first time, three reports and recommendations from the Bill of Rights and Voting Committee.

Committee chair Richard Sapphire presented the reports and recommendations for Article I, Sections 2, 3, and 4. Chair Sapphire explained that the committee recommended no change to these three provisions.

Article I, Section 2 (Right to Alter, Reform, or Abolish Government)

Upon a first reading of this report and recommendation regarding the right to alter, reform, or abolish government, there were no comments.

Article I, Section 3 (Right to Assemble)

Upon a first reading of this report and recommendation regarding the right to assemble, there were no comments.

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

Upon a first reading of this report and recommendation regarding the right to bear arms; standing armies; and military power, there were no comments.

Chair Sapphire concluded by saying that these three reports and recommendations will be brought back for a second reading at the next meeting of the Commission.

Executive Director's Report

Executive Director Steven C. Hollon reported that Commission staff continues to research the question raised at the last Commission meeting relating to Commission member involvement in furthering ballot issues that had been subject to Commission review.

Adjournment:

With no further business, the Commission adjourned at 2:20 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

The minutes of the April 9, 2015 meeting of the Commission were approved at the June 11, 2015 meeting of the Commission.

Co-Chair
Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair
Rep. Ron Amstutz
Speaker Pro Tempore



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE I, SECTION 2

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

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 2 of the Ohio Constitution concerning the right of the people to alter, reform, or abolish government, the right of government to repeal special privileges, and equal protection. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

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

Background

Article I, Section 2 reads as follows:

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

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution.

Although original to the 1851 Ohio Constitution, a portion of Article I, Section 2 derives from Article VIII, Section 1 of the 1802 constitution, which stated, in part that: "every free republican government, being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence; to effect these ends, they have at all times a complete power to alter, reform or abolish their government, whenever they deem it necessary."¹

Article I, Section 2 contains provisions that address different, but related, topics: inherent political power of the people and their right to alter government; equal protection; and special privileges or immunities. Most of Section 2 has no direct corollary in the U.S. Constitution, but the section contains political principles that reflect the influence of the Declaration of Independence.

Inherent political power and the right to alter government

The recognition that “[a]ll political power is inherent in the people” and the further statement that the people “have the right to alter, reform, or abolish *** [government] whenever they may deem it necessary” are derived from the Article VIII, Section 1 of the 1802 constitution. These statements reflect the Jeffersonian principle contained in the Declaration of Independence that all political power is derived from the people.²

Equal protection and benefits

Adopted as part of the 1851 Constitution, the “Equal Protection Clause” in Article I, Section 2 provides that “government is instituted for [the people’s] equal protection and benefit.” That phrase predates, yet corresponds to, the Fourteenth Amendment of the U.S. Constitution with its prohibition against states denying any person the “equal protection of the laws.” Although federal equal protection analysis has focused on issues of race, gender, or other immutable characteristics, “there is no indication from the little discussion of the equal protection clause at the 1850-51 convention that it was understood to end or ameliorate racial or gender discrimination ***.”³

Special privileges and immunities

Adopted as part of the 1851 constitution, this section’s requirement that special privileges and immunities, where granted, are subject to General Assembly alteration has no counterpart in the Declaration of Independence, the Ohio Constitution of 1802, or the U.S. Constitution.

Allowing the General Assembly control over the granting of special privileges or immunities was the part of this section that was heavily debated during the Constitutional Convention of 1850-51. The debate concerned the General Assembly’s practice of granting corporate charters containing special privileges and immunities, such as exemptions from future taxation and monopolies on toll roads and canal companies.⁴ Ultimately, the provision barred the alteration, revocation, or repeal of previously granted charters (as was required under the Contracts Clause of Article I, Section 10 of the U.S. Constitution), but permitted changes by the General Assembly in future charters. Thus, this clause ultimately was seen as subjecting corporate charters to the will of the General Assembly.

Amendments, Proposed Amendments, and Other Review

Article I, Section 2 has not been amended since its adoption as part of the 1851 Ohio Constitution. The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.⁵

Litigation Involving the Provision

Those portions of Article I, Section 2 addressing the inherent political power of the people and their right to alter government have not been the subject of significant litigation, and the provision concerning “special privileges or immunities” has been the subject of little modern litigation.

Addressing the equal protection guarantee in this section, the Ohio Supreme Court has taken the position that the equal protection guarantee in Article I, Section 2 is “functionally equivalent” to the federal equal protection guarantee⁶ and “is to be construed and analyzed identically” to its federal counterpart.⁷

Presentations and Resources Considered

There were no presentations to the Bill of Rights and Voting Committee on this provision, but the committee did rely on the Report of the 1970s Ohio Constitutional Revision Commission and on Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), pp.84-88.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on December 11, 2014, and February 12, 2015, the committee voted unanimously to adopt a report and recommendation recommending that Article I, Section 2 be retained in its current form on February 12, 2015.

Presentation to the Commission

On April 9, 2015, on behalf of the Bill of Rights and Voting Committee, committee Chair Richard Saphire appeared before the Commission to present the committee’s report and recommendation, by which it recommended retention of Article I, Section 2. Chair Saphire explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 2 in its current form.

Action by the Commission

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article I, Section 2 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on April 9, 2015, and _____, 2015, the Commission voted to adopt this report and recommendation on _____, 2015.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), p. 85.

² The Declaration of Independence states as follows:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

³ Steinglass & Scarselli, p. 85.

⁴ *Id.*, p. 88.

⁵ Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Part 11, *The Bill of Rights*, April 15, 1976, pp. 16-18, and pp. 444-46 of Appendix K of the Final Report.

⁶ *See, e.g., Pickaway Cty. Skilled Gaming, LLC v. Cordray*, 127 Ohio St.3d 104, 109, 2010-Ohio-4908, 936 N.E.2d 944, 951.

⁷ *American Assn. of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55, 59, 1999-Ohio-254, 717 N.E.2d 286, 291 (on remand from U.S. Supreme Court).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE I, SECTION 3

RIGHT TO ASSEMBLE

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 3 of the Ohio Constitution concerning the right to assemble and petition. The Commission issues this report pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article I, Section 3 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 3 reads as follows:

The people have the right to assemble together, in a peaceable manner, to consult for the common good; to instruct their representatives; and to petition the General Assembly for the redress of grievances.

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.

This provision of the Ohio Constitution is original to the 1851 constitution.

Section 3 corresponds to the First Amendment of the United States Constitution, which, in addition to providing for freedom of religion, freedom of speech, and freedom of the press, protects the right of the people peaceably to assemble, and the right to petition the government for a redress of grievances.¹ While the Ohio Constitution also provides for freedom of religion and freedom of speech and the press, it does so in separate provisions, Article I, Sections 7 and 11.

The section directly traces its origins to similar language in Article VIII, Section 19 of the 1802 constitution, which followed the 1776 Pennsylvania Declaration of Rights.² Article VIII, Section 19 of the 1802 constitution provides: “That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their Representatives, and to apply to the Legislature for redress of grievances.” Other state constitutions predating Ohio’s contain similar protections for the rights of assembly and petition, and all stem from similar declarations of rights in much earlier British documents, including the Bill of Rights of 1689, and, most notably, the Magna Carta in 1215.³

Ohio’s provision, unlike its First Amendment counterpart, is not phrased as a limitation on the power of government but as an affirmative recognition of the rights of the people. The First Amendment also does not contain a right of the people to “instruct their representatives.”⁴

Amendments, Proposed Amendments, and Other Review

Article I, Section 3 has not been amended since its adoption as part of the 1851 Ohio Constitution.

In the 1970s, the Ohio Constitutional Revision Commission recognized the right to associate and to petition the government for redress of grievances to be fundamental to the concept of ordered liberty, and that it is circumscribed only by the legitimate exercise of police powers in order to protect the health and safety of the citizenry.⁵ Thus, the 1970s Commission recommended that no change be made to the provision.⁶

Litigation Involving the Provision

The Ohio Supreme Court recognizes the fundamental nature of the right of the people to assemble. See *State v. Schwing*, 42 Ohio St. 2d 295, 302, 328 N.E.2d 379, 384 (1975) (“Both the federal (Amendment I) and the state (Section 3, Article I) constitutions recognize the inherent right of the people to assemble together in meetings.”). Nonetheless, there are no significant Ohio cases construing the “right to assemble” clause of Article I, Section 3, and the court has rarely cited it. In the 1970s, the Ohio Constitutional Revision Commission noted that when the Ohio courts have failed to interpret this provision consistently with the First Amendment of the United States Constitution, they have been reversed. See *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) (holding a city ordinance making it “unlawful for three or more persons to assemble *** on *** sidewalks and there conduct themselves in a manner annoying to persons passing by” as unconstitutionally vague), *rev’g* 21 Ohio St.2d 66 (1970).

There are no reported Ohio cases construing the instructions clause.

Presentations and Resources Considered

There were no presentations to the Bill of Rights and Voting Committee on this provision.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on December 11, 2014, and February 12, 2015, the committee voted unanimously to adopt a report and recommendation recommending that Article I, Section 3 be retained in its current form on February 12, 2015.

Presentation to the Commission

On April 9, 2015, on behalf of the Bill of Rights and Voting Committee, committee Chair Richard Saphire appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article I, Section 3. Chair Saphire explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 3 in its current form.

Action by the Commission

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article I, Section 3 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on April 9, 2015, and _____, 2015, the Commission voted to adopt this report and recommendation on _____, 2015.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ The First Amendment provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

² Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), p. 89.

³ Howard, A. E. Dick. *Magna Carta: Text and Commentary*. Revised ed. Charlottesville: Published for the Magna Carta Commission of Virginia, The UP of Virginia, (Revised Ed. 1964), p. 27.

⁴ Steinglass & Scarselli, *supra*.

⁵ Recommendations of the Education and Bill of Rights Committee, November 19, 1975, p. 4726.

⁶ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, April 15, 1976, p. 18, and p. 446 of Appendix K of the Final Report.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE I, SECTION 4

BEARING ARMS; STANDING ARMIES; MILITARY POWER

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 4 of the Ohio Constitution concerning the right to bear arms, the prohibition against maintaining standing armies during peacetime, and the subordination of the military to the civil power. The Commission issues this report pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission’s Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article I, Section 4 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 4 reads as follows:

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

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.

This provision of the Ohio Constitution is original to the 1851 constitution, although Article VIII, Section 20 of the 1802 constitution contained a prior version providing “[t]hat the people have a right to bear arms for the defense of themselves and the State; and as standing armies in time of peace are dangerous to liberty, they shall not be kept up: and that the military shall be kept under strict subordination to the civil power.”¹

The Ohio Supreme Court analyzed this provision as follows:

The language of Section 4, Article I of the Ohio Constitution is clear. This provision is divided by two semicolons, coordinating three independent clauses. Rather than focusing merely on the preservation of a militia, as provided by the Second Amendment, the people of Ohio chose to go even further. Section 4, Article I not only suggests a preference for a militia over a standing army, and the deterrence of governmental oppression, it adds a third protection and secures to every person a fundamental *individual* right to bear arms for “their *defense and security* ***.” (Emphasis added.) This clause was obviously implemented to allow a person to possess certain firearms for defense of self and property. Accord *State v. Hogan* (1900), 63 Ohio St. 202, 218-19, 58 N.E. 572, 575.

Arnold v. City of Cleveland, 67 Ohio St.3d 35, 43, 616 N.E.2d 163, 169 (1993).

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court construed the Second Amendment to the United States Constitution as providing an individual right to bear arms.

During the pre-*Heller* period, the Ohio Supreme Court interpreted the Ohio provision as conferring a greater right in the individual to possess firearms for self-protection than that afforded by the U.S. Constitution.² Significantly, the Court in *Arnold* clarified at paragraph one of its syllabus that the Ohio Constitution was a document of independent force that could provide greater protections than its federal counterpart:

The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.

Amendments, Proposed Amendments, and Other Review

Article I, Section 4 has not been amended since its adoption as part of the 1851 Ohio Constitution.

In the 1970s, the Ohio Constitutional Revision Commission noted the differences between the 1802 provision, which granted the right to bear arms to individuals both for self-protection and for protection of the state, and the 1851 provision, which only indicated the right to bear arms for self-defense and security. The 1970s Commission attributed the difference to the notion of the “citizen-soldier” that was prevalent in the early days of Ohio statehood. The 1970s Commission observed, however, that it was impossible to know if this change was significant because there was no record of a debate on the issue.³

The Ohio Constitutional Revision Commission recommended no change in this section.

Litigation Involving the Provision

Article I, Section 4 has been the subject of litigation involving the regulation of the sale and ownership of assault weapons, *see Arnold, supra*, and the individual's ability to carry a firearm in a public place. *See Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633. The Ohio Supreme Court has ruled that, while fundamental, the right to bear arms is not absolute, and reasonably may be restricted in the interests of the health, safety, morals, or general welfare of the public.⁴

Issues concerning the right to bear arms under Article I, Section 4 also have arisen in the context of disputes concerning the scope of the home rule power under Article XVIII, Section 3, and the Ohio Supreme Court generally has deferred to state legislation. *See City of Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370 (R.C. 9.68 is a general law that displaces municipal firearm ordinances, is part of a comprehensive statewide legislative enactment and applies uniformly across the state; therefore it does not unconstitutionally infringe municipal home rule authority); *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967 (addressing the relationship between Ohio's concealed carry statutes, R.C. 2923.126 and R.C. 9.68, and Article XVIII, Section 3, and concluding that a city ordinance prohibiting firearms in municipal parks conflicted with a statewide comprehensive legislative enactment and thus was not enforceable). *But see City of Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514 (upholding city ordinance that prohibited the possession of semi-automatic rifles with a capacity of more than ten rounds, finding no conflict with state statutes that prohibited possession of semi-automatic firearm capable of firing more than thirty-one cartridges without reloading).

Presentations and Resources Considered

There were no presentations to the Bill of Rights and Voting Committee on this provision. However, in considering Article I, Section 4, the committee reviewed a fifty-state survey of similar provisions that indicated nearly every state constitution protects the individual's right to bear arms, with some, like Ohio's, recognizing that the military is subordinate to the civil power.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on December 11, 2014, and February 12, 2015, the committee voted unanimously to adopt a report and recommendation recommending that Article I, Section 4 be retained in its current form on February 12, 2015.

Presentation to the Commission

On April 9, 2015, on behalf of the Bill of Rights and Voting Committee, committee Chair Richard Saphire appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article I, Section 4. Chair Saphire

explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 4 in its current form.

Action by the Commission

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article I, Section 4 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on April 9, 2015, and _____, 2015, the Commission voted to adopt this report and recommendation on _____, 2015.

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011), p. 90.

² *Id.*

³ Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Part 11, *The Bill of Rights*, April 15, 1976, p. 19, and p. 447 of Appendix K of the Final Report.

⁴ *See, e.g., Arnold, supra;* *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633.