



# OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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## REPORT AND RECOMMENDATION

### OHIO CONSTITUTION ARTICLE I, SECTION 13

### QUARTERING OF TROOPS

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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 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 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.

## **Action by the Bill of Rights and Voting Committee**

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and June 11, 2015, the committee voted unanimously to issue a report and recommendation recommending that Article I, Section 13 be retained in its current form on June 11, 2015.

## **Presentation to the Commission**

On September 10, 2015, on behalf of the Bill of Rights and Voting Committee, committee Vice-chair Jeff Jacobson appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article I, Section 13. Vice-chair Jacobson explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 13 in its current form.

## **Action by the Commission**

At the Commission meeting held October 8, 2015, Doug Cole moved to adopt the report and recommendation for Article I, Section 13, a motion that was seconded by Sen. Larry Obhof. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of 23 members of the Commission.

## **Conclusion**

The Ohio Constitutional Modernization Commission concludes that Article I, Section 13 should be retained in its current form.

## Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on September 10, 2015, and October 8, 2015, the Commission voted to adopt this report and recommendation on October 8, 2015.

/s/ Charleta B. Tavares  
Senator Charleta B. Tavares, Co-Chair

/s/ Ron Amstutz  
Representative Ron Amstutz, Co-Chair

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## Endnotes

<sup>1</sup> William S. Fields & 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*, 76 (1974).

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

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

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

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

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

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

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

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

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

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

<sup>13</sup> J.L. Bell, "Intolerable Acts," J. of the Amer. Revolution (June 25, 2013), <http://allthingsliberty.com/2013/06/intolerable-acts/> (last visited 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, 126-27 (2012).

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

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<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.”

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.”

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.”

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. 2012). A similar discussion regarding the Tennessee Constitution may be found at Lewis L. Laska, *The Tennessee State Constitution*, 64 (2011).

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

<sup>18</sup> Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, 36-37 (Apr. 15, 1976), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf> (last visited Sept. 15, 2015).

*See also* Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix K, 464-65 (June 30, 1977), <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Sept. 15, 2015).