



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deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.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

At the Commission meeting held June 11, 2015, Sen. Larry Obhof moved to adopt the report and recommendation for Article I, Section 2, a motion that was seconded by Dennis Mulvihill. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of 22 members of 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 June 11, 2015, the Commission voted to adopt this report and recommendation on June 11, 2015.

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

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

Endnotes

¹ Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 85. Print.

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, at 85.

⁴ *Id.* at 88.

⁵ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, pp. 16-18. Print. 15 Apr. 1976. Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf> (accessed Sept. 15, 2015).

See also Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix K, pp. 444-46. Print. 30 June 1977. Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (accessed Sept. 15, 2015).

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).