



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

At the Commission meeting held June 11, 2015, Sen. Larry Obhof moved to adopt the report and recommendation for Article I, Section 3, 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 3 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 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 Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 89. Print.

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. 27. Print.

⁴ Steinglass & Scarselli, *supra*.

⁵ Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Vol. 9, *Recommendations of the Education and Bill of Rights Committee*, p. 4726. Print. 19 Nov. 1975. Available at: <http://www.lsc.ohio.gov/ocrc/v9%20pgs%204395-4813%20education-bill%20of%20rights%204814-4955%20whats%20left.pdf> (accessed Sept. 15, 2015).

⁶ Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Part 11, *The Bill of Rights*, p. 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. 446. Print. 30 June 1977. Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (accessed Sept. 15, 2015).