



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE IV, SECTION 19

COURTS OF CONCILIATION

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article IV, Section 19 of the Ohio Constitution concerning courts of conciliation. 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The Commission finds that Article IV, Section 19 is obsolete and therefore recommends its repeal.

Background

Article IV, Section 19 reads as follows:

The General Assembly may establish courts of conciliation, and prescribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

Article IV governs the judicial branch, specifically vesting judicial power in the state supreme court, courts of appeals, courts of common pleas, and other courts as may be established by law.¹

Section 19, which is original to the 1851 constitution, was proposed at the 1850-51 Constitutional Convention to allow the resolution of disputes without resorting to the traditional legal process.²

George B. Holt, a delegate from Montgomery County whose long career in the law included serving terms as a state representative, state senator, and common pleas court judge, was the leading proponent of the proposal to permit the General Assembly to create courts of conciliation. Holt's comments during the discussion of courts of conciliation suggest that the

adoption of Section 19 was motivated by concern over the adversarial and formal nature of litigation under the established court system:

The plan of a court of conciliation has many advocates, who desire to see it established. It has been tried in other countries, with excellent effect—greatly diminishing litigation, and subduing a litigious spirit—a spirit which is the bane of a community. It sets neighbor against neighbor, brother against brother and even father against son, and son against father. Such litigation have I often witnessed, and in some cases seen it prosecuted with an embittered spirit, little short of devilish. Every means which promises only a mitigation of the evil should be employed. The expense and time wasted in such controversies, employing judges, jurors, witnesses, lawyers and suitors, is but a little of the mischief. The monstrous evil consists in the engendering and perpetuating of strife and contention among neighbors, begetting and nursing discord and hatred in families, and in disturbing the harmony and peace of society. A judicious peace loving and peace making officer of this kind may be more useful, far more useful than the first judge of your State, whom you propose to dignify with title of Chief Justice of Ohio.³

Despite the authority provided by Section 19, the General Assembly has never established courts of conciliation; rather it has created arbitration proceedings and other methods for litigants wishing to avoid using the courts.⁴

Amendments, Proposed Amendments, and Other Review

Article IV, Section 19 has not been amended since its adoption as part of the 1851 Ohio Constitution.

In the 1970s, the Ohio Constitutional Revision Commission recommended the repeal of Section 19, based upon its conclusion that the General Assembly had never exercised its constitutional authorization to establish courts of conciliation. In making this recommendation, the commission noted that its repeal would not affect current or future alternative dispute resolution provisions under Ohio law.⁵ Despite this recommendation, the General Assembly did not submit the proposed repeal of Section 19 to the voters.

In 2011, the 129th General Assembly adopted Amended House Joint Resolution Number 1, intended, in part, to repeal Section 19.⁶ The question was presented to voters as “Issue 1” on the November 8, 2011 ballot, which also included a proposal to repeal Article IV, Section 22 (authorizing the creation of supreme court commissions), as well as a proposal to amend Article IV, Section 6 to increase the maximum age for assuming elected or appointed judicial office from 70 to 75. This last proposal, involving age eligibility requirements for judicial office, was the principal focus of the opposition to Issue 1 and perhaps was the reason for its sound defeat at the polls.⁷



Litigation Involving the Provision

There has been no litigation involving this provision, and no court of conciliation has ever been established by the General Assembly.

Presentations and Resources Considered

On September 11, 2014, Jo Ellen Cline, Government Relations Counsel for the Ohio Supreme Court, presented to the Judicial Branch and Administration of Justice Committee on Article IV, Section 19. Ms. Cline noted that it is unlikely under the current structure of the judicial branch that courts of conciliation would be necessary.

Also on September 11, 2014, William K. Weisenberg, Senior Policy Advisor to the Ohio State Bar Association, presented his perspective on Section 19. He observed that the judicial and legislative branches have collaborated to enact laws and encourage alternative dispute resolution measures such as arbitration, mediation, and private judging. Mr. Weisenberg stated that he does not believe Section 19 is necessary to allow for alternative dispute resolution but, instead, the section is a remnant of history and properly should be repealed.

Action by the Judicial Branch and Administration of Justice Committee

After formal consideration by the Judicial Branch and Administration of Justice Committee on November 13, 2014, and January 15, 2015, the committee voted unanimously to adopt this report and recommendation on January 15, 2015.

Presentation to the Commission

On February 12, 2015, Senator Larry Obhof, acting in his capacity as member of the Judicial Branch and Administration of Justice Committee, appeared before the Commission to present the committee's report and recommendation, by which it recommended repeal of Article IV, Section 19. Senator Obhof explained that Article IV, Section 19 has never been used to create courts of conciliation, and that alternative forms of dispute resolution have been promulgated without applying Article IV, Section 19.

Action by the Commission

On behalf of the Judicial Branch and Administration of Justice Committee, Sen. Larry Obhof moved to adopt the committee's recommendation to repeal Article IV, Section 19. Mark Wagoner seconded the motion, upon which a roll call vote was taken. The motion passed by an affirmative vote of 23 to one.

Conclusion

The Ohio Constitutional Modernization Commission finds that Article IV, Section 19 has not been used since its adoption in 1851, and determines it is not necessary to authorize any existing

or future alternative dispute resolution mechanisms. Therefore, the Commission concludes that the provision is obsolete and recommends that Article IV, Section 19 be repealed.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on February 12, 2015, and April 9, 2015, the Commission voted to adopt this report and recommendation on April 9, 2015.

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

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

Endnotes

¹ Ohio Constitution, Article IV, Section 1.

² Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 207. Print.

³ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio 1850-51*. Columbus: S. Medary, 1851. 391. Print.

⁴ Steinglass & Scarselli, *supra*, at 208, citing R.C. Chapter 2711, and R.C. 2701.10.

⁵ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 10, The Judiciary, p. 65. Print. 15 March 1976. Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt10%20judiciary.pdf> (accessed September 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 J, p. 420. 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 As it appeared on the ballot, Issue 1 read as follows:

Proposed Constitutional Amendment

TO INCREASE THE MAXIMUM AGE AT WHICH A PERSON MAY BE ELECTED OR APPOINTED JUDGE, TO ELIMINATE THE AUTHORITY OF THE GENERAL ASSEMBLY TO ESTABLISH COURTS OF CONCILIATION, AND TO ELIMINATE THE AUTHORITY OF THE GOVERNOR TO APPOINT A SUPREME COURT COMMISSION.

Proposed by Joint Resolution of the General Assembly:

To amend Section 6 of Article IV and to repeal Sections 19 and 22 of Article IV of the Constitution of the State of Ohio. A majority yes vote is required for the amendment to Section 6 and the repeal of Sections 19 and 22 to pass.

This proposed amendment would:

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1. Increase the maximum age for assuming elected or appointed judicial office from seventy to seventy-five.
 2. Eliminate the General Assembly's authority to establish courts of conciliation.
 3. Eliminate the Governor's authority to appoint members to a Supreme Court Commission.

If approved, the amendment shall take effect immediately.

A "YES" vote means approval of the amendment to Section 6 and the repeal of Sections 19 and 22.

A "NO" vote means disapproval of the amendment to Section 6 and the repeal of Sections 19 and 22.

⁷ The voters rejected Issue 1 by a vote of 2,080,207 to 1,273,536, a margin of 62.03 percent to 37.97 percent. Source: Secretary of State's website; State Issue 1: November 8, 2011 (Official Results); <https://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2011results/20111108Issue1.aspx> (accessed Oct. 27, 2014).