OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Bill of Rights and Voting Committee

Prof. Richard Saphire, Chair
Jeff Jacobson, Vice-chair

March 10, 2016

Ohio Statehouse
Room 017

OCMC Bill of Rights and Voting Committee

Chair	Mr. Richard Saphire
Vice-chair	Mr. Jeff Jacobson
	Rep. Ron Amstutz
	Ms. Karla Bell
	Rep. Kathleen Clyde
	Mr. Douglas Cole
	Hon. Patrick Fischer
	Mr. Edward Gilbert
	Sen. Bob Peterson
	Sen. Michael Skindell

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

BILL OF RIGHTS AND VOTING COMMITTEE

THURSDAY, MARCH 10, 2016
9:30 A.M.
OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of November 12, 2015

  [Draft Minutes – attached]

- Meeting of December 10, 2015

  [Draft Minutes – attached]

IV. Reports and Recommendations

- Article V, Section 6 (Mental Capacity to Vote)
  - Third Presentation
  - Public Comment
  - Discussion
  - **Possible Action Item: Consideration and Adoption**

  [Report and Recommendation – attached]

V. Presentations

- "Human Trafficking in Contemporary America"

  Amy O'Grady
  Director, Criminal Justice Initiatives
  Office of Ohio Attorney General

  Veronica Scherbauer
  Criminal Justice Initiatives Coordinator
  Office of Ohio Attorney General

VI. Committee Discussion

- Article I, Section 6 (Slavery and Involuntary Servitude)

  The committee chair will lead discussion regarding the provision in the Bill of Rights prohibiting slavery and involuntary servitude.

  [Draft Report and Recommendation – attached]
  [Excerpt from 1970s Ohio Constitutional Revision Commission's Review of Article I, Section 6 – attached]

VII. Next steps

- The committee chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

  [Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, NOVEMBER 12, 2015

Call to Order:

Chair Richard Saphire called the meeting of the Bill of Rights and Voting Committee to order at 9:38 a.m.

Members Present:

A quorum was present with Chair Saphire, Vice-chair Jacobson, and committee members Amstutz, Bell, Clyde, Cole, Fischer, Peterson, and Skindell in attendance.

Approval of Minutes:

The minutes of the September 10, 2015 meeting of the committee were approved.

Reports and Recommendations

Article I, Section 20 (Powers Reserved to the People)

Chair Saphire recognized Shari L. O'Neill, counsel to the Commission, who provided the first presentation of the report and recommendation for Article I, Section 20 (Powers Reserved to the People). Ms. O'Neill indicated that Article I, Section 20, stating that the powers retained by the people will not be impaired or denied by the enumeration of other rights in the constitution, was adopted as part of the 1851 Ohio Constitution. She described that the section mirrors language from both the Ninth and Tenth Amendments to the United States Constitution, and expresses the view that the powers of the government are derived from the people. She indicated the report and recommendation describes the history of the limited litigation involving the provision, with courts generally citing Article I, Section 20 only in conjunction with other sections of the Bill of Rights. Ms. O'Neill said the report and recommendation concludes that the committee recommends that Article I, Section 20 be retained in its current form.

Senator Michael Skindell moved to recommend no change to Article I, Section 20. This motion was seconded by Judge Patrick Fischer, and a roll call vote was held. By unanimous vote of all present at the time of the vote, the committee voted to issue the report and recommendation for Article I, Section 20.

Article V, Section 4 (Exclusion from Franchise for Felony Conviction)

Ms. O'Neill then provided the first presentation of the report and recommendation for and Article V, Section 4 (Exclusion from Franchise for Felony Conviction). Ms. O'Neill indicated that this section relates to the power of the General Assembly to exclude from the privilege of voting or being eligible to office any person convicted of a felony. She said the provision was adopted as part of the 1851 Ohio Constitution, and was amended in 1976, after a recommendation by the Ohio Constitutional Revision Commission to substitute the word "felony" for the phrase "bribery, perjury, or other infamous crime." Ms. O'Neill described that the section empowers the General Assembly to enact laws that exclude felons from voting or holding office, rather than directly disenfranchising, and that the General Assembly enacted laws on this topic in Ohio Revised Code Chapter 2961. Referring to litigation involving the subject of felon disenfranchisement, Ms. O'Neill noted the report and recommendation discusses case law upholding the disenfranchisement of felons on the basis that the Fourteenth Amendment to the United States Constitution guarantees the right to vote "except for participation in rebellion, or other crime," thus finding an "affirmative sanction" for felony disenfranchisement, and that the section has been cited in Ohio in relation to its restriction on eligibility for public office of persons convicted of a felony. Ms. O'Neill stated the report and recommendation describes the committee's discussion of the issue, documenting its consensus that Ohio's disenfranchisement of felons only during the period of their incarceration is a reasonable approach that appropriately balances the goals and interests of the criminal justice system with those of incarcerated felons.

She said the report and recommendation sets forth the committee's conclusion that the provision should be retained in its current form.

Upon motion by Judge Fischer, with second by Vice-chair Jeff Jacobson, the committee voted unanimously to recommend no change to Article V, Section 4.

As a point of order, Chair Saphire then asked the committee whether it would be in favor of issuing the two reports and recommendations after only one presentation, as is now permitted by the Rules of Procedure and Conduct in circumstances in which the committee is recommending no change. There being no objection, Mr. Jacobson then moved that the initial vote recommending no change to Article I, Section 20 be vacated, which was seconded by Judge Fischer. Without objection, the motion was agreed to. Sen. Skindell then moved to issue the report and recommendation recommending no change to Article I, Section 20, and that it be retained in its current form. This motion was seconded by Judge Fischer, and a roll call vote was held. By unanimous vote of all present at the time of the vote, the committee voted to issue the report and recommendation for Article I, Section 20.

There being no objections to having only one presentation of the report and recommendation for Article V, Section 4 before forwarding it to the Commission, Judge Fischer then moved to issue the report and recommendation for no change to Article V, Section 4, and that it be retained in its current form. This motion was seconded by Mr. Jacobson, and a roll call vote was held. By unanimous vote of all present at the time of the vote, the committee voted to issue the report and recommendation for Article V, Section 4.

Committee Discussion:

Article V, Section 6 (Mental Capacity to Vote)

Chair Saphire then turned the committee's attention to its review of Article V, Section 6, relating to the mental capacity to vote. Noting that he had not attended the committee's previous meeting on September 10, 2015, Chair Saphire said that his review of the meeting minutes caused him to understand that the vote taken at the last meeting was a straw poll rather than a final vote, so that no first presentation of a formal report and recommendation had occurred.

Mr. Jacobson objected to this characterization, saying it was clear in the previous meeting that the presentation of the report and recommendation was the first reading. He cautioned that, if each time the wording of the recommendation is changed another "first presentation" is required, there could be no progress in the work of the Commission. He said the committee took a straw poll because it was trying to finalize the text of its recommendation.

Committee members then expressed different views regarding the effect of the discussion and vote taken at the last meeting. Chair Saphire asked the committee for a motion that would allow the committee to reach a formal conclusion about whether the presentation at the current meeting constitutes a second hearing.

Mr. Jacobson moved that the presentation on November 12, 2015 constitutes a second hearing. Committee member Doug Cole seconded the motion, and discussion on the motion was held.

Committee member Karla Bell expressed that the vote changes at each meeting because a different majority is present.

Mr. Jacobson clarified that the committee is not voting on the recommendation, but is voting about whether this is the second presentation. He said the problem is not that the committee hasn't given it enough consideration, but that it is focusing on side issues, and missing the opportunity to remove language that doesn't belong in the constitution. He said if the committee can't compromise here, it hurts the whole process.

Chair Saphire said he disagrees that these are side political issues, but agreed the committee should vote on whether this is a second hearing.

Mr. Cole said he agrees with the underlying sentiment that these issues have been fully vetted, and he believes the committee is in a position to vote. He said this is not a situation where there is a lack of information.

Representative Kathleen Clyde said she agrees that the committee did take a formal procedural vote at its last meeting. She said there are substantive differences that may delay the committee, but she said she agrees that a first action was taken.

The committee then took a roll call vote of the committee members present. The following committee members were in favor of declaring that the presentation on November 12, 2015 constituted a second hearing:

Richard Saphire
Jeff Jacobson
Rep. Amstutz
Rep. Clyde
Doug Cole
Judge Fischer
Sen. Skindell

The following committee member was opposed to declaring that the presentation on November 12, 2015 is a second hearing:

Karla Bell

Chair Saphire then recognized Wilson R. Huhn, professor emeritus at the University of Akron School of Law, who spoke on behalf of the American Civil Liberties Union of Ohio ("ACLU") regarding the committee's consideration of Article V, Section 6 (Mental Capacity to Vote).

After describing the constitutional due process requirements relating to the right to vote, Professor Huhn advocated for removing Article V, Section 6, saying the General Assembly would still retain the ability to establish procedures for denying the right to vote to persons who are incapable of voting.

Chair Saphire said the presumption is that if someone satisfies the qualifications listed in Article V, Section 1, and no other constitutional provision limits the person's voting rights, the person constitutionally is entitled to vote. He asked, if that is so, where does the General Assembly get its authority to step in and limit the right to vote? Prof. Huhn answered that these provisions speak to the constitutional rights of the individual, rather than being a limitation on the powers of the government. He said the government always retains the ability to limit constitutional rights so long as there is a compelling governmental interest. He said the right to vote similarly could be limited to protect the integrity of the electoral process.

Seeking further clarification, Chair Saphire asked whether the General Assembly has the inherent authority to step in. Prof. Huhn said the government retains its police powers, and that

limiting the right to vote would be necessary to prevent some people from voting who have extreme mental incapacity.

Mr. Jacobson noted that legislative actions can be interpreted in ways that may not have been intended by their drafters, wondering if the same thing could happen when a provision in the constitution is enacted. He asked, if Article V, Section 6 is removed, could a court decide that meant the people of Ohio no longer wish their legislature to exercise that authority?

Prof. Huhn agreed that is a possible interpretation. He said a court could say to enact one is to exclude the other, or could conclude voting is a right and there is no intent to limit the legislature.

Ms. Bell said she agrees removal is the best, but doesn't think that option will win. She noted Prof. Huhn's comment that if Article V, Section 6 can't be abolished, the committee could track the language proposed by the 1970s Constitutional Revision Commission, which stated that the General Assembly has the power to deny the right to vote. She asked why Prof. Huhn would recommend that.

Prof. Huhn said that is his backup, or alternate, phrasing for the section. He said he would recommend requiring an adjudication because every person has a fundamental right to self-govern, noting only a small percent of persons fall into the category of severely impaired. He said, on a theoretical level, he sees all of those people as equals, but because there is a compelling governmental interest they could be adjudicated unable to vote.

Mr. Cole noted that Prof. Huhn seems to believe it would be appropriate to prevent some mentally impaired people from voting, asking what Prof. Huhn finds inappropriate about the language the committee is considering that would accomplish that result.

Prof. Huhn answered that the right to due process is fundamental; it is a due process concern that makes him want to include the word "adjudication" in the provision.

Mr. Cole said the federal constitution imposes restrictions on limitations on the franchise as well as providing substantive and procedural due process. He wondered whether the proposed constitutional language could be interpreted as being consistent with federal restrictions.

Prof. Huhn said the integrity of the electoral process is important, but so is the dignity of the persons involved. He said the notion that a person could be challenged and prevented from voting without a prior adjudication is very troubling to him.

Mr. Cole asked whether there is anything in the proposed language that would prevent the use of an adjudicative process. Prof. Huhn answered there is nothing to prevent it but also nothing to require it.

Judge Fischer noted the procedure whereby someone contesting the ability of another to vote must file a protest with the board of elections 20 days before the election and, if someone doesn't

like the result, a writ of mandamus must be sought. Prof. Huhn said that procedure does not constitute an adjudication by an appropriate body, and that an administrative agency lacks the expertise to determine mental capacity.

Judge Fischer continued, saying that is what the legislature has put into effect; he doesn't like it, it is an unusual process, but it is a process. Prof. Huhn said he does not know much about that procedure, but he doubts it satisfies due process. He said the board of elections is not appropriate for conducting an adjudication in this context, giving an analogy that a person is not determined to be a felon (and so unable to vote) by a board of elections but by a criminal proceeding in a court.

Sen. Skindell remarked that the difference, in part, between the existing provision of the constitution and the provision under consideration is that the version under consideration just has "mental capacity to vote," while the existing provision says "no idiot or insane person." He asked, "is there a difference between 'mental capacity' and 'idiot or insane'?"

Prof. Huhn said he doesn't know what was meant by idiot in 1851, but by 1910 it was someone with an IQ of less than 25. He said "if you take it literally and use the medical definition of the time, that phrase substantively was okay." He said "mental capacity" means far more than that. He said experts use methods to evaluate performance that are far more than a simple IQ test, adding that people have abilities based on living skills, communication skills, and common sense.

Following up, Sen. Skindell said, hypothetically, or practically, using the term "mental capacity" is a lot broader, and would exclude a larger group. Prof. Huhn agreed with this statement.

Prof. Huhn noted that the use of the word "privilege" would be adequate to cover the right to vote. He said "privilege" is an archaic term used to determine this kind of constitutional right. He said, to modern ears, the word privilege sounds like something that can be taken away, and that it would be better to call it the "right to vote."

Mr. Jacobson followed up on this statement by asking whether Prof. Huhn was implying that activities referred to as "privileges" are something other than a right. Prof. Huhn said historically privileges were government-sponsored activities that all male adult citizens had the ability to participate in, for example running for office or serving on a jury. He said "immunities," (as in the "privileges and immunities clause") were freedoms.

Mr. Jacobson said he concedes there must be some kind of procedure before someone goes to the poll and asks for a ballot, but his concern is that the use of the word "adjudicated" implies some sort of process in front of a judge, involving counsel and other formal procedures. He asked whether Prof. Huhn would find it acceptable to require a prior determination, possibly a process set up by the General Assembly.

Prof. Huhn said a constitution will be interpreted according to the intent of the people who wrote it. He said before someone is committed to an institution, there must be notice and a hearing.

He said, for example, in a guardianship setting, the burden of proof is on those seeking to impose the guardianship. He said the constitution places the burden of proof on the government and that it is very important for the constitution to say there should be an adjudication.

Ms. Bell noted that there is a guarantee of the civil rights of patients contained in a Revised Code section relating to persons who are admitted to a hospital or taken into custody. She said in that instance, the General Assembly requires a separate adjudication prior to depriving someone of a right to vote.

Prof. Huhn then concluded his remarks, and Chair Saphire thanked him for his presentation.

Ms. Bell then asked if Michael Kirkman, executive director of Disability Rights Ohio, who was present in the audience, could answer some questions. Chair Saphire then recognized Mr. Kirkman.

Ms. Bell asked Mr. Kirkman about the board of elections procedure for preventing persons from voting. Mr. Kirkman said there is a process for this, but he is not sure what the standard is for disqualifying someone. Ms. Bell asked what kind of notice is given when someone is taken off the voting rolls, and whether notice by publication is sufficient. Mr. Kirkman said notice by publication is sufficient as a last resort, but that notice procedure has to do with disqualifying someone because of a change in residency, which is not this situation.

Chair Saphire inquired about Mr. Kirkman's statement, in his November 10, 2015 letter to the committee, that he sees adjudication as a side issue. Mr. Kirkman answered that, prior to disenfranchisement, some kind of hearing process is going to happen anyway because it is required under federal law. Chair Saphire said he is more concerned with the burden of proof than with the actual process afforded the individual, because the burden on the individual can be severe if voting rights are removed prior to an adjudication and the individual has to initiate litigation to get his rights back.

Mr. Kirkman said there is dispute about what "capacity to vote" is. He said he continues to be bothered that felons have more rights in the constitution than people with disabilities, and that the burden of proof is on the person least likely to be able to challenge the disenfranchisement. He said Article V, Section 4 is a good template because it acknowledges the role of the General Assembly in deciding exactly what circumstances should affect voting rights in this context.

Mr. Jacobson suggested to the committee a revision of the language under consideration, as follows:

> The General Assembly shall have the power to exclude from the rights and privileges of an elector during the time of incapacity any elector who is determined to lack the mental capacity to vote.

Chair Saphire said the language would be improved if it said "determined according to procedures determined by the General Assembly."

Mr. Cole said he appreciates Mr. Jacobson's efforts, but his concern is that on this issue the committee is having difficulty differentiating a statutory process from a constitutional process. He said the fewer words the better, adding "it doesn't serve us to ensconce in the constitution too much nuance and statutory construct. The fundamental notion we are trying to express is that those who lack the capacity to vote shouldn't vote. If we try and create too much statutory construct around that it is hard to understand. Also what we are trying to put there is part of due process protections there already."

Ms. Bell said she agreed with a statement made by Executive Director Steven C. Hollon in a previous memorandum to the committee that the use of the term "adjudication" suggests a decision made by a judicial body and that due process has been met, and also that it puts the burden on the state, rather than on the voter. She said adjudication shifts the burden to the state to be sure it has proven its case.

Chair Saphire suggested the committee adjourn until next time because it was the scheduled time for the meeting to conclude. Mr. Jacobson objected, indicating that the committee should continue to discuss the issue in order to bring the topic to a conclusion. He then made a formal proposal for new language:

> The General Assembly shall have the power to exclude from the rights and privileges of an elector during the time of incapacity any elector who is determined under law to lack the capacity to vote.

Judge Fischer commented that it is important that the committee change the offensive language in Article V, Section 6. He said, "this committee has spent months on this issue; there are a lot of issues important to this committee, and it is time to move on one way or another."

Mr. Cole said he has a procedural concern, indicating if the committee is completely rewriting the language, he would struggle with calling this a second reading. He asked whether the committee could vote on whether to adopt the language that came out of the previous meeting and see if there is a majority in favor of it.

Mr. Cole then moved to adopt the language approved at the last meeting, which was seconded by Judge Fischer. The committee then held a discussion on the motion.[*]

Mr. Jacobson said he thinks there is majority support for language from the last meeting. He said it could be helpful to clarify that there should be some prior determination, but that his concern about adjudication is that it requires a formal court process. Adding that requirement of a prior determination would help reach a broader consensus, he agreed that the committee has considered this a long time. He said the committee could save seeking a broader consensus for the Commission as a whole, if people would prefer.

[*] That language states: "No person who lacks the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity."

Ms. Bell said the committee has been deadlocked on this issue; it is evenly split depending on who shows up. She said she is concerned the committee would be in a position of sending to the Commission a recommendation that is disapproved by a significant portion of the committee. She said she could support Mr. Jacobson's proposal.

Chair Saphire said he agrees with Fischer, Cole, and Ms. Bell. He said, if he had to vote on the current proposal he would move against it, but that he could support Mr. Jacobson's proposed language.

Mr. Jacobson said he wishes the committee could wrap this up today. Mr. Cole said he doesn't believe the committee can rewrite the proposal and call it a second reading.

Chair Saphire reminded the committee there is a motion on the floor. Ms. Bell moved to amend the motion and instead adopt the language suggested by Mr. Jacobson. Chair Saphire then asked for a second, but none was provided at that time.

Rep. Amstutz then suggested another wording of the language that would include the phrase "the General Assembly shall exclude…." Thus, it would read:

> The general assembly shall exclude from the rights and privileges of an elector during the time of incapacity an elector who is determined under law to lack the mental capacity to vote during the period of this incapacity.

Mr. Jacobson said the problem with that phrasing is that it uses the word "elector" twice. Judge Fischer suggested using the language originally proposed, but add at the beginning that "the General Assembly shall provide under law that…."

Mr. Jacobson agreed to this change, and offered the following:

> The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

Chair Saphire asked whether this would constitute a second reading, adding whether or not it is a second reading, there is nothing to preclude a third reading.

Mr. Jacobson then made a substitute motion that the motion regarding his former proposal be stricken. This motion was seconded by Ms. Bell.

Ms. Bell then withdrew her motion to amend.

Mr. Jacobson then moved to amend the original motion, and that the following language be adopted by the committee:

> The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

A roll call vote of the committee members present was taken on the motion to amend. The following committee members were in favor of amending the motion:

Richard Saphire
Jeff Jacobson
Rep. Amstutz
Karla Bell
Doug Cole
Judge Fischer
Sen. Peterson

The following committee members opposed to amending the motion:

Rep. Clyde
Sen. Skindell

Sen. Skindell asked for clarification as to whether the report and recommendation was subject to a final vote to be referred to the Commission, to which Chair Saphire answered no.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:15 a.m.

Approval:

These minutes of the November 12, 2015 meeting of the Bill of Rights and Voting Committee were approved at the March 10, 2016 meeting of the committee.

_____
Richard B. Saphire, Chair

_____
Jeff Jacobson, Vice-chair

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, DECEMBER 10, 2015

Call to Order:

Vice-chair Jeff Jacobson called the meeting to order at 9:41 a.m., indicating that Chair Richard Saphire had been delayed and had instructed him to begin the meeting.

Members Present:

A quorum was present with Vice-chair Jeff Jacobson, and committee members Amstutz, Clyde, Fischer, Gilbert, Peterson, and Skindell in attendance.

Approval of Minutes:

The minutes of the November 12, 2015 meeting of the committee were not reviewed before the meeting was adjourned.

Adjournment:

Vice-chair Jacobson noted that the purpose of the meeting had been to review and possibly vote on a report and recommendation for Article V, Section 6 (Mental Capacity to Vote). He explained that committee members had been working toward a compromise version of recommended new language for the section. He continued that, however, in the absence of committee member Karla Bell, additional questions about the draft language would be unable to be resolved at this meeting. Vice-chair Jacobson then indicated that he had been in telephone contact with Chair Saphire, who had agreed that the committee was not ready for a vote at this time. Vice-chair Jacobson said that Chair Saphire agreed that the committee should not act on the recommendation this month, but by its next meeting the committee should have resolved the last remaining drafting issue.

With no further business to come before the committee, the meeting adjourned at 9:50 a.m.

Approval:

These minutes of the December 10, 2015 meeting of the Bill of Rights and Voting Committee were approved at the March 10, 2016 meeting of the committee.

_____
Richard B. Saphire, Chair

_____
Jeff Jacobson, Vice-chair

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE V, SECTION 6

MENTAL CAPACITY TO VOTE

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article V, Section 6 of the Ohio Constitution concerning the disenfranchisement of mentally incapacitated persons. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

Based on the following and for the reasons stated herein, the committee recommends that Article V, Section 6 in its current form be repealed, and that a new section be adopted as follows:

> *The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.*

Background

Article V of the Ohio Constitution concerns the Elective Franchise.

Article V, Section 6 reads as follows:

> No idiot, or insane person, shall be entitled to the privileges of an elector.

The clear purpose of the provision is to disqualify from voting persons who are mentally incapacitated. The provision modifies the broad enfranchisement of United States citizens over the age of 18 who otherwise meet the qualifications of an elector, as contained in Article V, Section 1.[1]

When this provision was adopted as part of the 1851 Ohio Constitution, words such as "idiot," "lunatic," and "feebleminded," were commonly used to describe persons of diminished mental capacity. In modern times, however, the descriptors "idiot" and "insane person" have taken on a pejorative meaning and are not favored. Throughout the 1800s, an "idiot" was simply a person with diminished mental capacity, what later was termed "mental retardation," and what is now referred to as being "developmentally disabled." Further, the word "idiot" conveyed that it was a permanent state of mental incapacity, possibly congenital, as opposed to "mania" "dementia," or "insanity," which signified potentially transient or temporary conditions.[2] Today, the word "idiot" has become an insult, suggesting someone who is willfully foolish or uninformed.[3]

The use of both the word "idiot" and the phrase "insane person" in Article V, Section 6 suggests that the privileges of an elector were to be denied both to persons with permanently diminished mental capacity, as well as to persons whose condition is or could be temporary.

In one of the few cases discussing the meaning and origin of the words "idiot" and "insane persons" in this provision, the Marion County Common Pleas Court in 1968 observed:

> From my review of legal literature going back to 1800 it seems apparent that the common definition of the word "idiot," as understood in 1851 when our present Constitution was in the main adopted, meant that it refers to a person who has been without understanding from his nativity, and whom the law, therefore, presumes never likely to attain any. I am unable to find anything indicating any real change in this definition to this date. * * *
>
> The words "insane person," however, most commonly then as well as now, refer to a person who has suffered such a deprivation of reason that he is no longer capable of understanding and acting with discretion and judgment in the ordinary affairs of life. It seems quite apparent that some persons who once had normal reason and sense faculties become permanently insane. Others lose their normal perception and reason for relatively short periods of time such as day, a week, or a month or two, and then regain their normal condition for either their entire life or for some lesser indeterminate period. During these lucid intervals such persons commonly exercise every characteristic of normality associated with all those persons who have never, even for a short period, been deprived of their normal reasoning faculties.

Baker v. Keller, 15 Ohio Misc. 215, 229, 237 N.E.2d 629, 638 (Marion CP Ct. 1968).

Amendments, Proposed Amendments, and Other Review

Article V, Section 6 has not been amended since its adoption as part of the 1851 Ohio Constitution.

In the 1970s, the Elections and Suffrage Committee ("E&S Committee") of the Ohio Constitutional Revision Commission ("1970s Commission") discussed whether to amend the

provision in order to remove the "idiot" and "insane person" references. The E&S Committee's discussion centered both on the words themselves, which were recognized as outdated and potentially offensive, as well as the provision's vagueness:

> The present provision concerning mental illness and voting is unsatisfactory for several reasons. First, the constitutional language is simply a direct prohibition. The General Assembly is not expressly given the power to determine which mental conditions are such that a person should not vote, nor to establish procedures for determining who does or who does not fall into the categories. Statutory authority for the courts to deny the vote to involuntarily committed patients is nevertheless provided in [Ohio Revised Code] section 5122.15, dealing with legal incompetency. But this provision carries out neither the letter nor the spirit of the constitutional prohibition. The law now tolerates the voting of some persons who may in fact be mentally incompetent. A voluntary patient who does not request a hearing before the probate court retains his civil rights, among them the right to vote. The loss of the right to vote is based upon the idea that a person in need of indeterminate hospitalization is also legally incompetent. But there are other persons whose right to vote may be challenged on the basis of insanity, either at the polls or in the case of contested election results. In these instances, there are no provisions resolving how hearings must be conducted, by whom, or even the crucial question of whether medical evidence shall be required. The lack of procedure for determining who is "insane" or an "idiot" could allow persons whose opinions are unpopular or whose lifestyles are disapproved to be challenged at the polls, and they may lose their right to vote without the presentation of any medical evidence whatsoever.[4]

The E&S Committee acknowledged that "large scale and possibly arbitrary exclusion from voting are a greater danger to the democratic process than including some who may be mentally incompetent to vote." The E&S Committee concluded that "a person should not be denied the right to vote because he is 'incompetent,' but only if he is incompetent for the purpose of voting," ultimately recommending a revision that would exclude from the franchise persons who are "mentally incompetent for the purpose of voting."[5] The 1970s Commission voted to submit this recommendation to the General Assembly, specifically proposing repeal of the section and replacing it with a new Section 5 that would read:

> The General Assembly shall have power to deny the privileges of an elector to any person adjudicated mentally incompetent for the purpose of voting only during the period of such incompetency.[6]

For reasons that are not clear, the General Assembly did not present this issue to the voters.

Litigation Involving the Provision

Only two Ohio Supreme Court cases refer to this provision. An early case, *Sinks v. Reese,* 19 Ohio St. 306 (1869), cited it to support a holding that some votes by mentally-impaired residents of an asylum could be disqualified; however, the court counted a vote by a resident who was "greatly enfeebled by age," because "the reverence which is due to 'the hoary head' ought to have left his vote uncontested." The court also mentioned the provision in *State ex rel. Melvin v. Sweeney, Secy. of State,* 154 Ohio St. 223, 94 N.E.2d 785 (1950), in which the court held constitutional a statutory provision that required county boards of elections to provide ballot assistance to physically disabled voters, but prohibited them from providing similar assistance to illiterate voters.

The provision also was cited in the context of an election in which a person of diminished mental capacity was alleged to have been improperly allowed to vote. *In re South Charleston Election Contest,* 1905 Ohio Misc. LEXIS 191, 3 Ohio N.P. (n.s.) 373 (Clark County Probate Court, 1905), involved a contested election relating to the sale of liquor in which one voter was deemed by the court to be mentally incompetent for the purpose of voting, with the result that the election was so close as to be declared null and void.

Baker v. Keller, supra, a common pleas case, cited Article V, Section 6 in relation to its conclusion that a litigant could not base a motion for new trial on the allegation that a mentally ill juror should have been disqualified where there had been no adjudication of incompetence.

More recently, a Maine federal court decision has been relied on in other jurisdictions for its holding that imposition of a guardianship for mental health reasons does not equate with mental incapacity for purposes of voting. *Doe v. Rowe*, 156 F. Supp. 2d 35, 59 (D. Me. 2001), concluded that federal equal protection and due process guarantees require a specific finding that an individual is mentally incompetent for the purpose of voting before disqualification can occur. *Doe v. Rowe* was cited in *Bell v. Marinko,* 235 F. Supp.2d 772 (N.D. Ohio 2002), for the proposition that, because voting is a fundamental right, disenfranchisement based on residency requirements must be predicated on notice and an opportunity to be heard.

Presentations and Resources Considered

Michael Kirkman, Disability Rights Ohio

On December 11, 2014, Michael Kirkman, executive director of Disability Rights Ohio, a legal advocacy and rights protection organization, presented to the committee on the topic of voting rights for the disabled. Mr. Kirkman attended the committee meeting again on February 12, 2015, to provide additional assistance as the committee discussed potential changes to Article V, Section 6.

According to Mr. Kirkman, society's perception of mental disability has changed since 1851, when neglect, isolation, and segregation were typical responses. Social reform after the Civil War helped create institutions for housing and treating the mentally ill, but there was little

improvement in societal views of mental illness. Mr. Kirkman noted that, even as medical and psychiatric knowledge expanded, the mentally ill were still living in deplorable conditions and were sometimes sterilized against their will. By the 1950s, there was a growing awareness that the disabled should be afforded greater rights, with the recognition that due process requirements must be met before their personal liberties and fundamental rights could be constrained. Mr. Kirkman observed that Article V, Section 1 gives broad basic eligibility requirements for being an Ohio voter, but Article V, Section 6 constitutes the only categorical exception in that it automatically disenfranchises people with mental disabilities. Mr. Kirkman further noted the difficulty in defining "mental incapacity for the purpose of voting," commenting that mental capacity is not fixed in time or static in relation to every situation, and that even mental health experts have difficulty defining the concept. According to Mr. Kirkman, the better practice is to make an individualized determination of decisional capacity in the specific context in which it is challenged.

Mr. Kirkman emphasized the view of the disability community that full participation in the political process is essential, and for this reason he advocated removal of Article V, Section 6, without replacement. Alternately, if Article V, Section 6 cannot be entirely eliminated, Mr. Kirkman recommended the provision should be phrased as an affirmative statement of non-discrimination, such as "No person otherwise qualified to be an elector shall be denied any of the rights or privileges of an elector because of a disability." He also stated that the self-enabling aspect of the current provision should be changed to reflect that the General Assembly has the authority to enact laws providing due process protection for persons whose capacity to vote is subject to challenge.

In his second appearance before the committee on February 12, 2015, Mr. Kirkman commented that the phrase "mentally incompetent to vote" is not currently favored when drafting legislative enactments. Instead, he said the mental health community favors expressing the concept as a lack of mental "capacity," or as being "mentally incapacitated." Mr. Kirkman noted that the word "incompetent" is a purely legal term used in guardianship and criminal codes, while "mental incapacity" more specifically describes the mental state that would affect whether a person could vote.

Mr. Kirkman again appeared before the committee on November 12, 2015 to answer questions from committee members about proposed changes to the provision. Reiterating that experts dispute what is meant by "capacity to vote," Mr. Kirkman said one way to address that question would be to include language giving the General Assembly an express role in deciding what circumstances should affect voting rights.

Huhn Presentation

On November 12, 2015, the committee heard a presentation by Wilson R. Huhn, professor emeritus at the University of Akron School of Law, who spoke on behalf of the American Civil Liberties Union of Ohio ("ACLU"). After describing the constitutional due process requirements relating to the right to vote, Professor Huhn advocated for removing Article V, Section 6, saying the General Assembly would still retain the ability to establish procedures for

denying the right to vote to persons who are incapable of voting. Prof. Huhn said mental health experts use methods to evaluate performance that are far more than a simple IQ test, and that people have abilities based on living skills, communication skills, and common sense.

Research Materials

The committee benefited from several memoranda that described relevant research, as well as posed questions for consideration and suggested possible changes to the section.

Staff research presented to the committee indicates that voting is a fundamental right that the United States Supreme Court calls the "essence of a democratic society." *Reynolds v. Sims,* 377 U.S. 553, 555 (1964). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In addition, disenfranchisement is considered to be a denial of a fundamental liberty, subject to basic due process protections that ensure fundamental fairness. *Lassiter v. Dept. of Social Servs.,* 452 U.S. 18, 24 (1981). In reviewing provisions affecting the exercise of the elective franchise, courts apply the balancing test in *Mathews v. Eldridge,* 424 U.S. 319 (1976), by which the individual's interest in participating in the democratic process is weighed against the state's interest in ensuring that those who vote understand the act of voting. *Dunn v. Blumstein,* 405 U.S. 330 (1972). Because voting is a fundamental right, the high court has held a state's interest in limiting its exercise must be compelling, and the limitations themselves must be narrowly tailored to meet that compelling interest. *See, e.g.*, *Kramer v. Union Free Sch. Dist.,* 395 U.S. 621 (1969); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008).[7]

The committee also reviewed other state constitutions that address disenfranchisement of the mentally impaired. Although nine states have no constitutional provision relating to a voter's mental status, the remainder contain a limitation on voting rights for persons experiencing mental impairment, with three of those states having a provision that grants discretion to the state legislature to determine whether to disenfranchise. Significantly, only four states, Ohio, Kentucky, Mississippi, and New Mexico, retain the descriptors "idiots" and "insane persons," with other states referring to such persons as being mentally incompetent, mentally incapacitated, or as having a mental disability.

Additional Resources

Research that assisted the Committee's consideration of this issue included Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters,* 38 McGeorge L.Rev. 931 (2007); James T. McHugh, *Idiots and Insane Persons: Electoral Exclusion and Democratic Values Within the Ohio Constitution,* 76 Albany L.Rev. 2189 (2013); Kay Schriner, *The Competence Line in American Suffrage Law: A Political Analysis,* Disability Studies Quarterly, Vol. 22, No. 2, page 61; Kay Schriner & Lisa A. Ochs, *Creating the Disabled Citizen: How Massachusetts Disenfranchised People Under Guardianship,* 62 Ohio St. L.J. 481 (2001).

Discussion and Consideration

In reviewing possible changes to Article V, Section 6, the committee first considered whether to simply replace the offensive references with more appropriate language, leaving the rest of the section intact. However, some members emphasized the importance of additionally stating that any disenfranchisement due to lack of mental capacity must last only during the period of incapacity.

The committee also discussed whether to retain the section's "self-executing" status, or whether to include language that would specifically authorize or require the General Assembly to create laws governing the disenfranchisement of mentally incapacitated persons. On this question, some members asserted that expressly requiring or empowering the General Assembly to act was unnecessary because this legislative authority is inherent. Ultimately, it was the consensus of the committee that expressly requiring or enabling action by the General Assembly is necessary in order to acknowledge an evolving understanding of the concept of "mental capacity for the purpose of voting," and so the committee concluded that the section should include such language.

The committee also addressed what would be the appropriate descriptor for persons whose mental disability would disqualify them from voting. On this question, the committee found persuasive Michael Kirkman's assertion that the preferred modern reference is to an individual's "incapacity," rather than to his or her "incompetence." Members of the committee agreed that "mental incapacity" would be an acceptable phrase to substitute for "idiots" and "insane persons." Combined with the committee's consensus that disenfranchisement should occur only during the time of the individual's incapacity, allowing voting to be restored to persons who recover their mental capacity, the committee concluded that the appropriate phrase should be "mental incapacity to vote."

The committee also considered the significance of the use of the phrase "privileges of an elector" in the section, as opposed to using the phrase "privileges of a voter" or "rights of a voter." One committee member noted that "privileges of an elector" would not indicate merely voting, but would include activities such as running for public office or signing a petition. Further discussion centered on the symbolic or other differences between using the word "privilege" and using the word "right," as well as the inclusion of the word "entitled" in the section. Some committee members expressed a strong preference for having the new section refer to voting as a "right," a word choice they believed would signify the importance of the act of voting, and emphasize the constitution's protection of the individual's voting prerogative. Other committee members were reluctant to change the reference to "privileges of an elector," because of the possibility that the original meaning and application of that phrase would be lost. Several members acknowledged that the "privilege versus right" controversy was larger than could be thoroughly addressed or satisfactorily resolved by the committee, and that, in any case, its resolution was not necessary to revising the section.

As a compromise, the committee agreed to recommend that the phrase read "rights and privileges of an elector," so as to embrace both the concept of voting as a right and the concept, articulated in the original language of the section, of an "elector" having privileges beyond those of simply voting.

Debate arose over whether to include an explicit reference to judicial review, due process, or adjudication, as a prerequisite to disenfranchisement. Some committee members said they were inclined to exclude the reference based on their view that due process must be satisfied regardless of whether the provision expressly mentions the need for it. These committee members indicated that a constitutional provision that expressly requires adjudication could complicate or interfere with current procedures for ascertaining whether an individual is capable of voting. Other committee members said requiring adjudication would emphasize that the burden is on the state to prove that an individual's mental state disqualifies him or her from voting, rather than the burden being on the individual to prove sufficient mental capacity to vote. Some members sought to include language that would emphasize that voting is a right that should not be removed absent adjudication. Those members expressed the view that a constitutional provision that doesn't express this concept is not fair to the citizen.

The committee was divided between those who wanted to include a reference to adjudication, and those who did not. As a way of addressing the issue of adjudication, the committee decided the amendment should require the General Assembly to enact laws governing the legal determination of whether a person lacks the mental capacity to vote. The committee also agreed its recommendation should focus on substituting the references to "idiots" and "insane persons" with the adjective phrase "lacks the mental capacity to vote." The committee further concluded that the provision could recognize both the "rights" and "privileges" of an elector, and that the disenfranchisement would only be during the period of incapacity.

The Bill of Rights and Voting Committee concluded that the considerations and interests supporting the change proposed by the 1970s Commission remain relevant today. Specifically, current knowledge regarding mental illness and cognitive impairment, as well as modern distaste for adjectives like "idiot," continue to provide justification for amending this provision.[8]

Additionally, the current provision does not require that the subject individual be mentally incapacitated for the purposes of voting. The committee concluded that, without this specific element, the current provision lacks proper protection for persons asserted to be incapable of voting due to mental disability.

In addition to these considerations, the committee acknowledged the view that voting is a right, and that an individual possesses the "privileges of an elector," which may include the ability to sign petitions or run for public office. Thus, the committee desired the new provision to signify that it is both of these potentially separate rights or interests that are infringed when a person is determined to lack mental capacity for the purpose of voting.

Conclusion

Based on these considerations, the Bill of Rights and Voting Committee recommends that Article V, Section 6 be repealed and replaced with the following new provision:

> *The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.*

The recommended amendment serves the goal of:

- Requiring the General Assembly to enact laws relating to the disenfranchisement of persons lacking the mental capacity to vote;
- Removing all outdated or pejorative references to mentally incapacitated persons;
- Specifying that the disenfranchisement only applies to the period of incapacity; and
- Requiring that only mental incapacity *for the purposes of voting* would result in disenfranchisement.

Date Issued

After considering this report and recommendation on September 10, 2015 and November 12, 2015, the Bill of Rights and Voting Committee voted to issue this report and recommendation on _____.

Endnotes

[1] Article V, Section 1 provides:

> Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

[2] Although the discipline of psychology was in its infancy in the 1800s, the Ohio Supreme Court's description of insanity in 1843 reflects a surprisingly modern view:

> *** [I]t should be remembered that "insanity is a disease of the mind, which assumes as many and various forms as there are shades of difference in the human character. It exists in all imaginable varieties, and in such a manner as to render futile any attempt to give a classification of its numerous grades and degrees that would be of much service, or, under any circumstances, safe to be relied upon in judicial investigations. It is an undoubted fact, that, in determining a question of lunacy, the common sense of mankind must ultimately be relied on, and, in the decision, much assistance cannot be derived from metaphysical speculations, although a general knowledge of the faculties of the human mind, and their mode of operations, will be of great service in leading to correct conclusions. *Clark v. State,* 12 Ohio 483 (Ohio 1843), quoting Shelford on Lunacy, 38.

A full citation to "Shelford on Lunacy" is Leonard Shelford, *A Practical Treatise on The Law Concerning Lunatics, Idiots, and Persons of Unsound Mind, with an Appendix of The Statutes of England, Ireland, and Scotland, Relating to Such Persons and Precedents and Bills of Costs* (London, Wm. McDowall. 1833).

[3] *See* Merriam Webster Dictionary, http://www.merriam-webster.com/dictionary/idiot (1. *usually offensive:* a person affected with extreme mental retardation; 2. a foolish or stupid person). For further discussion of nineteenth century scientific and political views on the subject of disenfranchisement of the mentally incompetent, see Kay Schriner, *The Competence Line in American Suffrage Law: A Political Analysis,* 22 Disability Stud. Q., no. 2, 2002, at 61; and Kay Schriner and Lisa A. Ochs, *Creating the Disabled Citizen: How Massachusetts Disenfranchised People Under Guardianship,* 62 Ohio St. L.J. 481 (2001).

[4] Ohio Constitutional Revision Commission (1970-77), Proceedings Research, Volume 5, Elections and Suffrage Committee Report, 2502, 2515 (Apr. 22, 1974), http://www.lsc.ohio.gov/ocrc/v5%20pgs%202195-2601%20elections-suffrage%202602-2743%20local%20govt.pdf (last visited Oct. 28, 2015).

[5] *Id.* at 2516.

[6] Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Constitution, Part 7, Elections and Suffrage, 23-25 (Mar. 15, 1975) http://www.lsc.ohio.gov/ocrc/recommendations%20pt7%20elections%20and%20suffrage.pdf (last visited Oct. 28, 2015).

[7] A discussion of Due Process and Equal Protection jurisprudence related to state constitutional provisions that disenfranchise the mentally impaired may be found in Jennifer A. Bindel, *Equal Protection Jurisprudence and the Voting Rights of Persons with Diminished Mental Capacities,* 65 N.Y.U. Ann. Surv. Am. L. 87 (2009).

[8] Since the 1970s, the General Assembly has undertaken efforts to purge the Ohio Revised Code of outdated or pejorative references to persons having diminished mental capacity, and to protect the civil rights of persons subject to guardianships. Thus, Am. Sub. H.B. 53, introduced and passed by the 127th General Assembly, removed all statutory references to "lunatic," "idiot," "imbecile," "drunkard," "deaf and dumb," and "insane," in 29 sections of the Revised Code, replacing them, where necessary, with more modern references.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION
ARTICLE I, SECTION 6

SLAVERY AND INVOLUNTARY SERVITUDE

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 6 of the Ohio Constitution concerning slavery and involuntary servitude. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article I, Section 6 of the Ohio Constitution and the provision be retained in its current form.

Background

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.

Article I, Section 6 reads as follows:

> There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

This provision of the Ohio Constitution was adopted as part of the 1851 constitution, and proceeds from Article VIII, Section 2 of the 1802 constitution, which reads:

> There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person arrived at the age of twenty-one years or female person arrived at the age of eighteen years, be held to serve any person as a servant, under the pretense of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a *bona fide* consideration received, or to be received for their service, except as

> before excepted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the State, or, if made in the State where the term of servitude exceeds one year, be of the least validity, except those given in the case of apprenticeships.

In addition, Article VII, Section 5 of the 1802 Ohio Constitution, providing for amendments to the constitution, mandated that " * * * no alteration of this Constitution shall ever take place so as to introduce slavery or involuntary servitude into this State."

Despite delegates' ultimate rejection of the institution of slavery in Ohio, the proceedings of the 1802 Constitutional Convention reflect varying opinions about why and to what degree involuntary servitude should be outlawed, and a notable division regarding what rights should be afforded African Americans in the new state.[1] As described by one author:

> Few delegates had actually wanted to make Ohio a color-blind society. Ultimately the results were mixed. The convention prohibited slavery but allowed a system of indentured servitude. The constitution reserved suffrage for white males. The constitution mandated the enumeration of the white population to determine representation in the state legislature and for the appropriation of funds, but excluded blacks and mulattoes. The state thus denied African Americans significant political rights. At the same time, rather than specifically excluding black Ohio residents from other basic legal rights, such as militia duty or access to public education, the constitution virtually ignored African Americans.[2]

The prohibition of slavery actually dates from before statehood, when Ohio was governed by the Northwest Ordinance, or, as it was formally known, "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio."[3] Enacted in 1787 by the Confederation Congress, and reaffirmed by the first United States Congress in 1789,[4] Article VI of the Northwest Ordinance stated, "There shall be neither slavery nor involuntary servitude in the said territory (Northwest Territory), otherwise than in punishment of crimes ***."[5] This ordinance, along with Virginia law that, until 1789, governed Kentucky, and subsequent Kentucky law that maintained Virginia's slave state status, established the Ohio River as the boundary between pro- and anti-slavery states.[6]

However, crossing the Ohio River did not necessarily secure freedom or safety.[7] The Fugitive Slave Act of 1793 allowed slaveholders to enter into northern territory to recapture any African American who could not prove his or her status as a freeman, and authorized federal courts to assist in that effort.[8] The Fugitive Slave Act of 1850 went further, requiring both government officials and private citizens to participate in the capture and return of alleged fugitives, and imposing imprisonment and steep fines for violations.[9] This new measure, viewed by scholars as essentially nationalizing slavery, energized the abolitionist movement in the North.[10] To assist escapees traveling to Canada, where slavery was illegal, abolitionists in Ohio and other northern states created a network of safe houses that became known as the Underground Railroad.[11]

In 1852, Harriet Beecher Stowe published *Uncle Tom's Cabin,* a fictional depiction of the human suffering and tragic consequences of slavery that was based, in part, on fugitive slave stories she

heard while living in Cincinnati.[12] A bestseller, the book helped raise public awareness and opposition to slavery.[13] Ohio again played a prominent role in the anti-slavery movement when, in 1858, abolitionists in northern Ohio rescued a fugitive being held by federal marshals who were preparing to transport him to Kentucky.[14] Known as the "Oberlin-Wellington Rescue," the event resulted in criminal prosecutions for the group of black and white rescuers, who maintained they were obeying a "higher law" that recognized slavery as immoral. Among those arrested was black educator and Oberlin College graduate Charles Henry Langston, whose impassioned speech at his sentencing hearing condemned the widely-accepted view, expressed in the *Dred Scott* decision, that African Americans "had no rights which the white man was bound to respect."[15] [16] Despite Ohio's role in the abolitionist movement, some commentators have noted that African Americans in Ohio both before and after the Civil War experienced segregation and discrimination, with conditions often mirroring those found in southern states.[17]

In 1865, Congress proposed the Thirteenth Amendment to the United States Constitution, which was then ratified by the requisite number of states by the end of that year.[18] The Thirteenth Amendment reads: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

In recent years, some have equated the pernicious practice of "human trafficking," with slavery and involuntary servitude.[19] Human trafficking is defined as "all acts involved in the transport, harboring, or sale of persons within national or across international borders through coercion, force, kidnapping, deception or fraud, for purposes of placing persons in situations of forced labor or services, such as forced prostitution, domestic servitude, debt bondage or other slavery-like practices." [20] It is estimated that each year in Ohio some 1,100 children are forced into the sex trade.[21] Nationally, at least 100,000 children are estimated to be victims of child sex trafficking, most of them girls between the ages of 12 and 14.[22] Human trafficking also can involve forced labor through the use of violence, threats, or debt bondage, in industries such as agriculture, construction, domestic work, and manufacturing.[23]

In Ohio, legislative enactments that toughen criminal sanctions for human traffickers, and the creation of both the governor's Ohio Human Trafficking Task Force and the attorney general's Human Trafficking Commission, have assisted in the investigation and prosecution of traffickers as well as helping to identify and obtain assistance for victims.[24]

Amendments, Proposed Amendments, and Other Review

Article I, Section 6 was adopted in 1851 and has never been amended.[25]

In the 1970s, the Ohio Constitutional Revision Commission gave a brief summary of the history of Article I, Section 6 of the Ohio Constitution, as well as the Thirteenth Amendment of the U.S. Constitution.

The 1970s Ohio Constitutional Revision Commission recommended no change in this section.

Litigation Involving the Provision

There are few recent cases citing Article I, Section 6 of the Ohio Constitution.[26]

In *State ex rel. Carriger v. City of Galion*, 53 Ohio St.3d 250, 560 N.E.2d 194 (1990), the Ohio Supreme Court addressed whether a trial court was acting within its authority to require an indigent criminal defendant to work to pay for his appointed counsel. Concluding "there is no inherent judicial authority that validates the practice," the Court found that neither the Thirteenth Amendment to the U.S. Constitution nor Article I, Section 6 of the Ohio Constitution permitted the imposition of what was essentially involuntary servitude for a debt, rather than punishment for crime.

Presentations and Resources Considered

Conclusion

The Bill of Rights and Voting Committee concludes that Article I, Section 6 should be retained in its current form.

Date Issued

After formal consideration by the Bill of Rights and Voting Committee on March 10, 2016 and _____, the committee voted to issue this report and recommendation on _____.

Endnotes

[1] A detailed description of the 1802 convention delegates' positions and votes relating to slavery and the status of African Americans may be found in Helen M. Thurston, *The 1802 Constitutional Convention and Status of the Negro*, 81 Ohio Hist. 15 (1972), http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0081&display[]=15&display[]=37 (last visited Oct. 5, 2015).

[2] Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 40 (2005).

[3] Northwest Ordinance of 1787, Art. VI., as reprinted in Act of Aug. 7, 1789, ch. 8, 1 Stat. 50 et seq. It may be found online at: Journals of the Continental Congress, 1774-1789, 32:334 (Worthington C. Ford, et al., eds., 1904-37); Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787, http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim (last visited May 12, 2015), and

additionally is available at: The Avalon Project, *Northwest Ordinance; July 13, 1787*, Lillian Goldman Law Library, Yale Law School (2008), http://avalon.law.yale.edu/18th_century/nworder.asp (last visited Aug. 31, 2015).

[4] Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50.

[5] *Id*. at 53. For more on early sources for anti-slavery constitutional provisions, *see* William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (1977).

[6] Robert G. Schwemm, *Strader v. Graham: Kentucky's Contribution to National Slavery Litigation and the Dred Scott Decision*, 97 Ky. L.J. 353, 356 (2008-2009).

[7] For a discussion of the significance of the Ohio River as a geographic boundary during the antebellum period, *see* Matthew Salafia, *Slavery's Borderland: Freedom and Bondage Along the Ohio River*, (2013).

[8] Fugitive Slave Act of 1793, ch. 7, 1 Stat. 302 (1793).

[9] James Oliver Horton & Lois E. Horton, "A Federal Assault: African Americans and the Impact of the Fugitive Slave Law of 1850," in *Slavery and the Law*, (Paul Finkelman, ed., 1997).

[10] In his article, *States' Rights, Southern Hypocrisy, and the Crisis of the Union*, 45 Akron L. Rev. 449, 457-59 (2012), Professor Paul Finkelman called the Fugitive Slave Act of 1850 (ch. 60, 9 Stat. 462) "one of the most repressive and unfair federal laws in our history," noting that the law provided for the appointment of federal commissioners in every county who, along with judges, conducted summary trials of persons suspected of being fugitive slaves, prohibited suspects from testifying even to establish a mistaken identity, and suspended habeas corpus for alleged slaves. Further, anyone aiding fugitives was subject to punishment:

> Under the law, anyone aiding a fugitive slave or interfering with the rendition process was subject to a $1,000 fine plus court costs, six months in jail, and civil damages of $1,000 to be paid to the slave owner for each slave who was not recovered. If literally enforced, a northerner could be fined, sued, or jailed for merely giving a black person walking down the road a piece of bread or a cup of water, or allowing the black traveler to sleep in his barn. Hiring a black who turned out to be a fugitive came with enormous potential costs. In an age when there were no meaningful forms of identification, and thus no way to know if a black was free or a fugitive, the law effectively encouraged northerners—even free black northerners—to refuse to hire blacks because they might turn out to be fugitive slaves. The harsh penalties, and the minimal standards of proof, could force northern whites to assume that all blacks they saw were fugitives even though in 1850 there were more than 150,000 free blacks living in the North. From the perspective of blacks and many white northerners, the Act of 1850 had brought the law of slavery into the free states and required northerners to do the bidding of southerners.

Finkelman observed, "[t]he Fugitive Slave Act was an utterly one-sided law that threatened the liberty of every black in the North, while also jeopardizing their white friends, neighbors, and employers."

[11] For more on the Underground Railroad, *see* William H. Siebert, *The Underground Railroad from Slavery to Freedom: A Comprehensive History*, (Mineola, Dover, 2006) (1898). *See also* Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (2015).

[12] Harriet Beecher Stowe, *Uncle Tom's Cabin; or, Life Among the Lowly*, (Elizabeth Ammons, ed. New York: W.W. Norton. 2010) (1852).

[13] *See, e.g.*, David S. Reynolds, *Mightier than the Sword: Uncle Tom's Cabin and the Battle for America* (2011). Famously, Abraham Lincoln is quoted as asking Mrs. Stowe when he met her whether she was "the little woman who made this great war." *See, e.g.*, Schwemm, *supra*, p. 414, citing David Herbert Donald, *Lincoln* 199-209 (1995).

[14] *See, e.g.*, Roland Baumann, *The 1858 Oberlin-Wellington Rescue: A Reappraisal* (2003); Nat Brandt, *The Town that Started the Civil War* (1990).

[15] *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857).

[16] Langston's speech offers a moving description of the injustice of the Fugitive Slave Act:

> The [Fugitive Slave Act] under which I am arraigned is an unjust one, one made to crush the colored man, and one that outrages every feeling of Humanity, as well as every rule of Right. *** I have often heard it said by learned and good men that it was unconstitutional; I remember the excitement that prevailed throughout all the free States when it was passed; and I remember how often it has been said be individuals, conventions, communities, and legislatures, that it never could be, never should be, and never was meant to be enforced. I had always believed, until the contrary appeared in the actual institution of proceedings, that the provisions of this odious statute would never be enforced within the bounds of this State.
>
> ***
> I went to Wellington, knowing that colored men have no rights in the United States which white men are bound to respect; that the courts had so decided; that Congress had so enacted; that the people had so decreed.
>
> There is not a spot in this wide country, not even by the altars of God, nor in the shadow of the shafts that tell the imperishable fame and glory of the heroes of the Revolution; no, nor in the old Philadelphia Hall, where any colored man may dare to ask a mercy of a white man.
>
> Let me stand in that Hall, and tell a United States Marshal that my father was a Revolutionary soldier; that he served under Lafayette, and fought through the whole war; and that he always told me that he fought for *my* freedom as much as for his own; and he would sneer at me, and clutch me with his bloody fingers, and say he had a *right* to make me a slave! And when I appeal to Congress, they say he has a right to make me a slave; when I appeal to the people, they say he has a right to make me a slave, and when I appeal to your Honor, *your Honor* says he has a right to make me a slave, and if any man, white or black, seeks an investigation of that claim, they make themselves amenable to the pains and penalties of the Fugitive Slave Act, for black men have no rights which white men are bound to respect. I, going to Wellington with the full knowledge of all this, knew that if that man was taken to Columbus, he was hopelessly gone, no matter whether he has ever been in slavery before or not. I knew that I was in the same situation myself, and that by the decision of your Honor, if any man whatever were to claim me as a slave and seize me, and my brother, being a lawyer, should seek to get out a writ of *habeas corpus* to expose the falsity of the claim, he would be thrust into prison under one provision of the Fugitive Slave Law, for interfering with the man claiming to be in pursuit of a fugitive, and I, by the perjury of a solitary wretch would, by another of its provisions, be helplessly doomed to life-long bondage, without the possibility of escape.

Jacob R. Shipherd, *History of the Oberlin-Wellington Rescue* (Boston, John P. Jewett & Co. 1859).

May be found online at Electronic Oberlin Group. Oberlin College, "Charles Langston's Speech at the Cuyahoga County Courthouse," http://www.oberlin.edu/external/EOG/Oberlin-Wellington_Rescue/c._langston_speech.htm (last visited Aug. 31, 2015).

[17] *See* Frank U. Quillin, *The Color Line in Ohio: A History of Race Prejudice in a Typical Northern State* (2nd prtg. 1969) (1913); James J. Gigantino II, *The Flexibility of Freedom: Slavery and Servitude in Early Ohio,* 119 Ohio Hist. 89 (2012). *But see* John Craig Hammond, *"The Most Free of the Free States": Politics, Slavery, Race, and*

Regional Identity in Early Ohio, 1790-1820, 121 Ohio Hist. 35 (2014) (arguing that the racial consensus interpretation of early Ohio fails to account for antislavery politics, to explain why so many white Ohioans opposed slavery, why those escaping slavery fled into Ohio, and why so many Ohioans took risks to assist escapees).

[18] An in-depth discussion of the history of the Thirteenth Amendment may be found in Earl M. Maltz, *Civil Rights, The Constitution, and Congress, 1863-1869* (1990); *see also* Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* (2001).

[19] *See, e.g.*, Baher Azmy, *Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda*, 71 Fordham L.Rev. 981 (2002); Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. Tol. L.Rev. 941 (2006-2007); Kevin Bales & Ron Soodalter., *The Slave Next Door: Human Trafficking and Slavery in America Today* (2009).

[20] Francis T. Miko & Grace Park, *Trafficking in Women and Children: The U.S. and International Response* (Washington, D.C.: Congressional Research Serv. 2001), http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1057&context=key_workplace (last visited May 12, 2015). For an in-depth definition of human trafficking and a discussion of its various global manifestations, *see* Louise Shelley, *Human Trafficking: A Global Perspective* (2010).

The United Nations' Convention against Transnational Organized Crime, at Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, defines "Trafficking in Persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, U.N. Doc. A/55/25 (2000), http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf; and http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html (both last visited Oct. 7, 2015).

Human trafficking also is defined as the "use of force, fraud, or coercion to control other people for the purpose of engaging in commercial sex or forcing them to provide labor services against their will." Polaris Project, *Human trafficking overview* (2015) , http://www.polarisproject.org/human-trafficking/overview (last visited Oct. 7, 2015).

See also Shared Hope International. *What is Sex Trafficking?* citing the Trafficking Victims Protection Act, 22 U.S.C. Chapter 78 (2015), http://sharedhope.org/learn/what-is-sex-trafficking (last visited Oct. 7, 2015).

[21] Editorial, "Ohio Makes Gains Against Trafficking," Columbus *Dispatch*, Jan. 14, 2015, http://www.dispatch.com/content/stories/editorials/2015/01/14/1-ohio-makes-gains-against-trafficking.html (last visited Oct. 7, 2015).

[22] Sabrina Eaton, "Sen. Rob Portman Seeks Legislation to Fight Child Sex Trafficking," Cleveland *Plain Dealer*, Jan. 8, 2015, http://www.cleveland.com/open/index.ssf/2015/01/sen_rob_portman_seeks_legislat.html (last visited Oct. 7, 2015).

[23] Polaris Project, *Labor Trafficking in the U.S.*, 2015, http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us (last visited Oct. 7, 2015).

[24] Ohio Human Trafficking Commission, *2014 Annual Report*, http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Human-Trafficking-Reports/2014-Human-Trafficking-Annual-Report.aspx (last visited Oct. 7, 2015).

See also Ohio Human Trafficking Task Force, *Recommendations to Governor John R. Kasich, June 27, 2012*, http://humantrafficking.ohio.gov/OhioHumanTraffickingTaskforce.aspx (last visited Oct. 7, 2015).

[25]Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 93 (2nd prtg. 2011).

[26] *Id*. at 94.

speedy and public trial, by an impartial jury . . .". The Seventh Amendment provides for jury trials in civil cases as follows:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Comment

Section 10 of Article I of the Ohio Constitution contains a guarantee of a jury trial in criminal cases similar to that found in the Sixth Amendment to the Federal Constitution (and in the Constitution itself). Discussion of the various aspects of jury trials as found in those provisions will be found following section 10. The committee concluded that no changes in the Constitution were desirable with respect to the requirements for juries in criminal cases.

A number of issues have been raised in recent years by lawyers, judges, and others expert in the administration of justice concerning civil trial juries. The questions include: under what circumstances is there a right to a jury trial? what are permissible jury sizes? is a unanimous verdict a constitutional requirement? can jury verdicts be reduced in size without violating the Constitution?

After discussion of these issues and the research papers presented to it on these topics, the committee concluded that it did not have sufficient information on which to base any recommendations for change in the Ohio Constitution, but that the questions were important and should be studied further by a special committee, with particular emphasis on the problem of sizes of verdicts.

The Commission has appointed a special committee, and a further report on juries will be issued in the future.

ARTICLE I

Section 6

Present Constitution

Section 6. There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

Commission Recommendation

The Commission recommends no change in this section.

History; Comparison with Federal Constitution

This section had its basis in Article VI of the Ordinance of 1787, the first clause of which said, "There shall be neither slavery nor involuntary servitude in the said territory (Northwest Territory), otherwise than in punishment of crimes . . .". Article VI contained a further provision, though, that allowed for the recapture of slaves and indentured servants notwithstanding the previous guarantee. Article VIII, section 2 of the Constitution of 1802 retained the opening clause and limited indenture to children until the age of 21 years for males and 18 years for females unless an individual entered into indenture in perfect freedom for good consideration received or to be received. Indenture of negroes or mulattoes residing in the state, regardless of the origin of the contract, was limited to one year except in cases of apprenticeships. The Constitutional Convention of 1850-1851 retained only the opening clause after modernizing the language, and the section has not been altered since 1851.

The Thirteenth Amendment to the Federal Constitution provides in section 1:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

The 13th Amendment is one of the post-Civil War amendments to the Federal Constitution and, therefore, postdates the Ohio provision.

Comment

There are no Ohio cases construing section 6, and the history and origins of Ohio might help account for this. Ohio was admitted to the United States as a free state, just as previously it had been part of a free territory, and it became a hotbed of abolitionist sentiment. Harriet Beecher Stowe lived in Cincinnati, Joshua R. Giddings taunted Southern adversaries with stinging invective in Washington, and Oberlin College became an important center for the abolitionist movement. So, slavery was never an issue except in cases of slaves who were escaping through Ohio. Other forms of servitude, as indenture, were dying out by the end of the 18th Century and never became widespread in Ohio. The substitute for indentured whites was enslaved blacks but this, of course, was prohibited throughout the Northwest Territory.

The 13th Amendment forbids all shades and conditions of slavery, including apprenticeships for long periods or any forms of serfdom. The general purpose of the Amendment, when read with the 14th and 15th, was found to be the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made citizens from the oppressions of those who formerly exercised dominion over them (*Slaughter-House Cases*, 83 U.S. 36, 1872). The Court asserted, though, that this protection was not limited to the Negro, saying that while Congress only had Negro slavery in mind when it passed the Amendment, it prohibited other forms of slavery as well, including any type of peonage or coolie system. This opinion was supported by the "Civil Rights" Cases, 109 U.S. 3 (1883). There, the Court said that the 13th Amendment has respect, not to distinctions of race, or class or color, but to slavery; not merely prohibiting state laws establishing or upholding slavery, but absolutely declaring that slavery or involuntary servitude should not exist in any part of the United States. Further, the Enabling Clause gave Congress the power to pass all laws necessary and proper for abolishing all badges and incidents or burden and disabilities of slavery in the United States which includes all restraints on fundamental liberties which are the essence of civil freedom.

The 13th Amendment prohibits any type of forced labor contracts when the employer may use debt or criminal fraud statutes to enforce the contract or punish the employee. This was the issue dealt with in *Pollock v. Williams*, 322 U.S. 4 (1944). Commenting on the Thirteenth Amendment, the Court said that the Thirteenth, as implemented by the Antipeonage Act, was not merely to end slavery, but to maintain a system of completely free and voluntary labor in the United States. While certain forced labor, as a sentence of hard labor for the punishment of crime, may be consistent with the Thirteenth Amendment in special circumstances, generally, it violates the Amendment. The defense against oppressive hours, pay, and working conditions or treatment is to change employers, but when the employer can compel and the employee cannot escape his obligation to work, there is no power below to redress, and no incentive above to relieve harsh or oppressive labor conditions. Whatever

social value there is in enforcing contracts and obligations of debt, Congress has established that no indebtedness warrants a suspension of the right to be free from compulsory service. This meant, the Court held, that no state could make the quitting of work a component of a crime or make criminal sanctions available for holding unwilling persons to labor. In *United States v. Shackney*, 333 F. 2d 475 (2 Cir., 1964), the Court said the 13th Amendment applied to direct subjection, by a state using its power to return the servant to the master, and to indirect subjection, by the state using criminal penalties to punish those who left the employer's service. The Court contended, though, that the term went further. Various combinations of physical violence, of indications that more would be used against an attempt to leave, and of threats of immediate physical confinement, it said, were sufficient to violate the 13th Amendment, although where the employee has a clear choice about leaving even when the alternative is unappealing there is no violation.

ARTICLE I

Section 7

Present Constitution

Section 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Commission Recommendation

The Commission recommends no change in this section.

History; Comparison with Federal Constitution

Article I, section 7 has remained unchanged since it was included in the Constitution of 1851. Largely copied from its predecessor, Article VIII, section 3 of the Constitution of 1802, it was re-written and enlarged in 1851 by the addition of three new clauses. Of those clauses added in 1850-51, the first provides that no person shall be incompetent as a witness because of his religious beliefs. The second states that nothing within the section shall be construed to dispense with oaths or affirmations, and the final one extends the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceful mode of public worship.

The First Amendment to the Federal Constitution provides several guarantees of fundamental liberties: freedom of religion, freedom of speech and press, and freedom of assembly. Section 7 of Article I of the Ohio Constitution deals with freedom of religion. The relevant portion of the First Amendment is "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . .". Obviously, much of section 7 of Article I of the Ohio Constitution is not found in the Federal Constitution nor any of its Amendments.

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Bill of Rights and Voting Committee

Planning Worksheet
(Through February 2016 Meetings)

Preamble

Preamble							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article I – Bill of Rights (Select Provisions)

Sec. 1 – Inalienable Rights (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – Right to alter, reform, or abolish government, and repeal special privileges (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**12.11.14**	**2.12.15**	**2.12.15**	**3.12.15**	**4.9.15**	**6.11.15**	**6.11.15**

Sec. 3 – Right to assemble (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**12.11.14**	**2.12.15**	**2.12.15**	**3.12.15**	**4.9.15**	**6.11.15**	**6.11.15**

Sec. 4 – Bearing arms; standing armies; military powers (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**12.11.14**	**2.12.15**	**2.12.15**	**3.12.15**	**4.9.15**	**6.11.15**	**6.11.15**

Sec. 6 – Slavery and involuntary servitude (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Started							

Sec. 7 – Rights of conscience; education; the necessity of religion and knowledge (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 11 – Freedom of speech; of the press; of libels (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 13 – Quartering troops (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**4.9.15**	**6.11.15**	**6.11.15**	**7.9.15**	**9.10.15**	**10.8.15**	**10.8.15**

Sec. 17 – No hereditary privileges (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**4.9.15**	**6.11.15**	**6.11.15**	**7.9.15**	**9.10.15**	**10.8.15**	**10.8.15**

Sec. 18 – Suspension of laws (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 19 – Eminent domain (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 19b – Protect private property rights in ground water, lakes, and other watercourses (2008)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 20 – Powers reserved to the people (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**11.12.15**	**N/A**	**11.12.15**	**12.10.15**	**12.10.15**	**1.14.16**	**1.14.16**

Sec. 21 – Preservation of the freedom to choose health care and health care coverage (2011)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article V – Elective Franchise

Sec. 1 – Who may vote (1851, am. 1923, 1957, 1970, 1976, 1977)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – By ballot (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2a – Names of candidates on ballot (1949, am. 1975, 1976)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 4 – Exclusion from franchise for felony conviction (1851, am. 1976)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**11.12.15**	**N/A**	**11.12.15**	**12.10.15**	**12.10.15**	**1.14.16**	**1.14.16**

Sec. 6 – Idiots or insane persons (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**9.10.15**						

Sec. 7 – Primary elections (1912, am. 1975)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 8 – Term limits for U.S. senators and representatives (1992)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Transferred to Legislative Branch and Executive Branch Committee							

Sec. 9 – Eligibility of officeholders (1992)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Transferred to Legislative Branch and Executive Branch Committee							

Article XVII – Elections

Sec. 1 – Time for holding elections; terms of office (1905, am. 1954, 1976)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – Filling vacancies in certain elective offices (1905, am. 1947, 1954, 1970, 1976)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8