OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Bill of Rights and Voting Committee

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

May 12, 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, MAY 12, 2016
9:30 A.M.
OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of March 10, 2016

  [Draft Minutes – attached]

IV. Presentations

The committee will receive two presentations on Article V, Section 1, regarding the qualifications of an elector.

- "Qualifications of an Elector"

  Carrie L. Davis, Executive Director
  League of Women Voters of Ohio

- "Voter Bill of Rights"

  Representative Alicia Reece
  Ohio House District 33

  [Excerpt on the "Qualifications of an Elector" from The Ohio State Constitution, by Steven H. Steinglass and Gino J. Scarselli, Oxford University Press]

V. Committee Discussion

- Article V, Section 6 (Mental Capacity to Vote)

  The committee chair will lead discussion should any committee members wish to discuss the report and recommendation pending before the full Commission on the mental capacity to vote.

  [Report and Recommendation – attached]

- Right to Privacy

  The committee chair will lead discussion regarding the issue of privacy and if there should be a provision in Article I of the Ohio Constitution on this topic.

  [Memorandum by Shari L. O'Neill, Joyce Gray, and Lee Matheson titled "The Right to Privacy" dated March 25, 2016 – attached]

VI. 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]

VII. Old Business

VII. New Business

IX. Public Comment

X. Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 10, 2016

Call to Order:

Chair Richard Saphire called the meeting to order at 9:38 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the November 12, 2015 and the December 10, 2015 meeting of the committee were approved.

Presentations:

Chair Saphire began by introducing Veronica Scherbauer and Amy O'Grady from the Office of the Attorney General, who were present for the purpose of introducing the committee to the topic of human trafficking in relation to Article I, Section 6 (Slavery and Involuntary Servitude).

Ms. Scherbauer identified herself as a member of the community outreach team and the coordinator for criminal justice initiatives for the attorney general's office. She said in that role she coordinates the office's community outreach efforts related to human trafficking issues.

Ms. Scherbauer identified human trafficking as "modern day slavery," noting that slavery did not end with the Emancipation Proclamation but continues today. She said it is estimated that 21 million people are victims of forced labor around the world, with 4.5 million of them being victims of forced sexual exploitation. She said these "most vulnerable people in our society" suffer silently as traffickers reap the benefits. She indicated traffickers generate over $150

billion a year in illegal profits in labor sectors that include domestic work, agriculture, construction, manufacturing, and entertainment.

Ms. Scherbauer said Ohio House Bill 262, passed in 2012, requires local law enforcement to collect human trafficking information and forward it to the Ohio Bureau of Criminal Investigation. She said, according to Ohio data from 2015, there were 102 human trafficking investigations resulting in 104 arrests and 33 convictions. She stated that, during that time, local law enforcement identified 203 victims of human trafficking, with many under age 21 and some as young as 12.

Ms. Scherbauer then concluded her remarks, and Chair Saphire thanked her for her presentation.

Chair Saphire asked whether, under Ohio law, trafficking is addressed in the context of kidnapping, or whether there are special criminal statutes for trafficking. Ms. Scherbauer said there are statutes specifically governing trafficking, explaining that these statutes are being used to prosecute human traffickers.

Committee member Ed Gilbert said it is his understanding Ms. Scherbauer is explaining slavery and involuntary servitude, asking how slavery is being defined.

Ms. Scherbauer answered that slavery is forcing people to work for another against their will. She said, essentially the individual being trafficked is being forced either physically or psychologically.

Mr. Gilbert said he would advocate that Article I, Section 6 remain, but asked, if it were removed, how that might affect the work of the attorney general's office in prosecuting trafficking cases. Ms. Scherbauer answered that people believe slavery does not exist today, but that it is essential to communicate that it does exist and that government is serious about the issue. She said the topic needs to remain relevant and in front of everyone today.

Committee member Karla Bell asked whether cases involving prostitution due to drug addiction would also be considered trafficking cases. Ms. Scherbauer said every investigation is different, but that there must be a commercial aspect for a case to be considered trafficking.

Chair Saphire wondered whether there is a way to revise the provision to improve responsiveness to the problem of human trafficking. He asked if Ms. Scherbauer is aware of states that have dealt with trafficking in their state constitutions. Ms. Scherbauer said her office would need to explore these questions more in depth. She explained that human trafficking is a newer issue, with the first federal law not being passed until 2000, suggesting that states may not have altered their constitutions yet.

Mr. Gilbert asked whether Ms. Scherbauer would agree that taking this language out of the constitution would send a wrong signal. Ms. Scherbauer said it is important to bring more attention to the problem.

There being no further questions, Chair Saphire thanked Ms. Scherbauer and asked her to provide the committee with any information she might obtain regarding constitutional activity on this issue in other states.

Executive Director Steven C. Hollon explained to the committee that, although staff provided a draft of a report and recommendation on Article I, Section 6, it was not being submitted for a first presentation because this was the committee's first opportunity to hear presentations or engage in discussion on the matter.

Chair Saphire asked the committee whether it had comments or questions regarding the draft report and recommendation.

Mr. Gilbert asked whether the committee had previously expressed an intention to recommend removal of the provision, to which Chair Saphire replied in the negative.

Mr. Hollon explained that, at next meeting, staff could complete the unfinished portion of the report and recommendation and bring it to the committee as a first presentation.

Chair Saphire then asked whether members of the public wished to provide comments about Article I, Section 6. He recognized Representative Emilia Sykes, a member of the Commission but not a member of the committee, who explained she was appearing on behalf of the Ohio Legislative Black Caucus.

Rep. Sykes urged the committee to take under careful consideration the language in Article I, Section 6. She said the caucus is mindful and sensitive to the issue and wants to be sure Ohio is taking a stand against slavery in all its forms. She said the caucus wants to be sure the committee has thoughtful and reasonable dialog concerning the provision, assuring that there are no injustices and protecting the welfare of all Ohio citizens.

Chair Saphire asked whether there are suggestions or ideas from the caucus.

Rep. Sykes said the caucus will be submitting something in writing, explaining its members have been engaged in town halls across the state. She said a portion of the provision that allows involuntary servitude "for the punishment of crime" was a subject of discussion on their tour. She said the language from the Thirteenth Amendment of the United States Constitution is more detailed, and that the caucus would like the committee to consider making the provision as strong as it can be.[1] Chair Saphire noted that the issue will be on the agenda for the next meeting, and welcomed Rep. Sykes or other interested parties to submit information on the topic.

Mr. Gilbert asked whether Rep. Sykes would be suggesting new language. Rep. Sykes said the caucus is working on that, adding the caucus hopes to work with members of the committee to be sure that any suggested change reflects that Ohio is taking a strong position against slavery.

[1] The Thirteenth Amendment reads, in part: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Mr. Gilbert asked how many presentations of the report and recommendation would occur. Mr. Hollon explained the committee could have its first presentation at its May meeting, which could be the only presentation if no change is recommended. He added that, if there is a desire to explore new language, there could be additional presentations at the direction of the committee.

Mr. Gilbert observed that if Rep. Sykes wished to suggest a modification to the section, it would be helpful to have that language before the May meeting.

Committee Discussion:

Article V, Section 6 (Mental Capacity to Vote)

Chair Saphire then turned the committee's attention to a report and recommendation for Article V, Section 6, relating to the mental capacity to vote. Thanking staff and members of the committee for efforts to improve the proposed language, he said the committee now has a report and recommendation that is being presented for a final consideration and vote. Chair Saphire described that the committee has been dealing with the issue for a year and a half, and called for a motion to issue the report and recommendation.

Committee member Patrick Fischer moved to issue the report and recommendation, with committee member Doug Cole seconding the motion.

Vice-chair Jacobson then read the proposed new section to 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.

Chair Saphire then invited discussion on the motion.

Summarizing the committee's work on the revision, Mr. Jacobson said the issue has been difficult in some ways. He said everyone agreed that the words "idiots and insane persons" do not belong in the constitution. He said the committee also agreed that poll workers or others should not arbitrarily determine mental incapacity as a way of depriving someone of the ability to vote. However, he said the committee has struggled with how best to convey this concept. He said there is a general agreement that the constitution should not require an adjudicatory action, but that it should be left to the General Assembly to determine the right process or procedure. He added some committee members wanted to tell the General Assembly what to adopt while others wanted to leave it open. He said "under law" conveys that it is not an arbitrary act, but that the committee still struggled in reaching a further consensus.

The committee then discussed an alternative draft of proposed language that reads:

> The General Assembly shall provide that no person who, pursuant to the statutes enacted, is determined to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

Commenting on this alternative, Judge Fischer said in November 2015 the committee had a seven-to-two vote on the language in the current report and recommendation, indicating that the phrase "under law" was good. He said the phrase "pursuant to statutes enacted" cuts out court involvement as well as secretary of state directives because it takes out the word "law." He said, "under law" takes into account statutes, directives, and court decisions. The phrase "pursuant to the statutes enacted" is limiting, and could harm people the committee is trying to protect. He said he concluded the language "under law," agreed to in November, is better.

Mr. Cole said he agrees with Judge Fischer, but for slightly different reasons. He said he would be opposed to saying "pursuant to the statutes enacted" for the reason that it seems repetitive of what is already there in the language the committee had agreed to.

Chair Saphire said the committee had hoped to have a representative from the secretary of state's office here to talk about what the secretary of state does in this area. He said his current understanding is that under existing Ohio law, the only way to disenfranchise is through an adjudication by a probate court, and that no secretary of state or public official has the authority to disenfranchise. He said, if he is correct, then by definition there would be due process, and under existing law the only way someone will be disenfranchised would be after an adjudication. He said that understanding affects the way he approaches this issue now.

Ms. Bell said she is not sure she follows the legal analysis, and that the proposal says the General Assembly is charged with determining what factors would result in someone being considered incompetent. She said anyone who meets those standards would be disenfranchised.

Judge Fisher clarified that the phrase "pursuant to statute" would remove authority from two different entities that deal with election law because "you have statutes, you have case law, and you have secretary of state directives. You are cutting out two other parts of the government."

Mr. Jacobson said, in working on a new draft of the language, it was not the intention to do that. He said the consensus was not necessarily to require a prior adjudication. He said the goal was to say this is not an arbitrary or capricious action.

Mr. Gilbert said he agrees with Judge Fischer's analysis, but that is why when the committee started this process he thought it was important to find some related interpretation of the Americans with Disabilities Act (ADA), but that there was nothing out there to provide that information. He said "we are not going to agree on the language," adding that voting "is a basic right we should not be playing around with, and [the provision] should be stricken." He said "the ADA is up in the air on this and we are asking for trouble" to continue to have such a provision in the constitution.

Mr. Cole asked how members who support the phrase "pursuant to statutes" believe it changes or provides a benefit. Ms. Bell said it provides flexibility for the legislature to decide whether to require a hearing. She said there had been so much concern about not requiring an adjudicatory determination that the idea was to hand it to the legislature to determine appropriate procedures.

Mr. Cole acknowledged that point, but said the phrase "the General Assembly shall provide" covers that concern for him. He said because the issue is subject to federal overrides, there are limits to how much Ohio can deviate. He said the language does not change anything about the ultimate path. He noted, regarding Mr. Gilbert's support for removing the provision entirely, he fails to see what that would achieve. He said the federal protections already exist, and that Article V, Section 6 is an independent statement of the view of the citizens of Ohio that mental incapacity should disqualify.

Responding to Mr. Gilbert, Chair Saphire said the committee discussed removing the provision, but most members were not in favor of that. He said one concern is if the provision is eliminated there can be no way to prohibit someone from voting even if they are incompetent. He said, in that instance, anyone would be entitled to vote, but members of the committee had concerns about that idea, believing that there are at least some people who should be precluded from voting.

Mr. Gilbert expressed concern that the inability to define what would constitute "mentally incapacitated for the purpose of voting" should prevent a constitutional provision on the issue.

Judge Fischer suggested that the committee keep the provision as broad as possible for as long as possible. He added that the provision is 150 years old. He said, using the phrase "under law" is broader, and, as time evolves, things may change as more is learned about mental health. He said the draft using the phrase "under law" allows the General Assembly, the courts, or the secretary of state to change the law to reflect changes in thinking about the issue.

Mr. Jacobson said he thinks it is important to get rid of the current language, but at the same time he does not want to preclude what has developed in Ohio because it has not yielded bad results. He said he is heartened to hear there are judicial procedures that are followed. Because of this, he said, the constitution does not have to specify the adjudicatory procedure, adding that it also means the legislature has developed an appropriate approach that is working, as suggested by the absence of court cases. As a result, he said, disenfranchisement cannot be done in an arbitrary way, making him more comfortable with the language approved in November.

Committee member Representative Ron Amstutz said, in his opinion, both versions have redundancy but just of a different kind. He said he could live with either one, and does not agree with Judge Fischer in terms of language. He said the phrase "under law" could be eliminated with the same result. He said he is fine using the phrase "under law."

Ms. Bell said Judge Fischer's remarks persuaded her that there are disadvantages to limiting the language to statute. She said she would like to hear more about procedures that are actually followed by elections officials.

Chair Saphire said his understanding is that that, under current law, the exclusive way to disenfranchise is through adjudication by the probate court. He said it cannot be done formally or informally by election officials or anyone else, because under existing law that is the only mechanism.

Mr. Gilbert observed that when the committee first considered the issue, the main problem was viewed to be the language "idiots and insane persons." He said the committee wondered how the provision was being interpreted, but there was no case precedent. He said that is why he thinks the section should be stricken.

Senior Policy Advisor Steven H. Steinglass said there are not a lot of cases because issues have not risen to the point of generating the cases. He suggested the committee is making the issue more complicated than it needs to be, and complimented the "under law" version of the proposal as a "beautiful compromise."

Chair Saphire commented that the committee does know, based on testimony by Disability Ohio Executive Director Michael Kirkman, that this is not an issue that arises frequently, if at all, in the state. Chair Saphire noted a comment at a previous meeting by Mr. Jacobson that the committee should not feel a need to get something perfect to deal with a problem that largely does not exist.

Mr. Jacobson then called the question.

Chair Saphire noted that Senators Bob Peterson and Michael Skindell had needed to leave the meeting early, but might be able to return if they were needed for the vote. Contact with the senators' offices revealed the senators would be unable to return to the meeting, and so Chair Saphire opted to proceed without them.

The committee then held a roll call vote on the question of whether to issue the report and recommendation for Article V, Section 6 (Mental Capacity to Vote). Specifically, the report and recommendation recommended the following language to substitute for the current provision disenfranchising persons identified as "idiots" and "insane persons":

> 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 roll call vote of the committee members present revealed the following members in favor of issuing the report and recommendation:

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

The following committee member opposed issuing the report and recommendation:

Ed Gilbert

Chair Saphire announced the motion passed by a vote of six to one. He expressed appreciation to committee and staff for their patience and hard work in bringing this issue to a close.

Mr. Hollon described the procedure for advancing the report and recommendation to the Commission. He said the report and recommendation will go to the Coordinating Committee at its next meeting, and could be considered by the full Commission on the same day, if it is approved by the Coordinating Committee prior to the full Commission meeting. He said, if that occurs in April, it might be possible for the report and recommendation to be voted on by the Commission in May.

Next Steps:

Chair Saphire then called the committee's attention to Article V, Section 1, concerning the qualifications of an elector. He said he anticipates that the provision will be subject to in-depth discussion at the next meeting. He identified the section as an important provision that has been subject to a fair amount of litigation. He noted many people feel strongly about the subject, citing as an example a "Voter's Bill of Rights" introduced at a prior meeting in a presentation by Representative Alicia Reece. He said Rep. Reece will be working with staff to identify people and organizations that are interested in addressing the committee on issues related to Article V, Section 1. Chair Saphire encouraged members of the committee to also let him know of organizations or individuals having an interest.

Judge Fischer said he had a comment about the agenda in general. He said he has been urging the committee to focus on electronic privacy and would like to insert it into the agenda. He said it is important to balance the interests of law enforcement and of individual privacy, and that this is an issue that would be important to the constitutional modernization effort. He urged the committee to take up that issue next.

Chair Saphire noted the committee's initial plan for the order in which it would consider its assigned sections. Chair Saphire observed that the issue of privacy was included in the plan but was slated to be considered last. He said the question of privacy in general, and electronic privacy in particular, is a large subject, and is likely to consume a significant part of the committee's time.

Mr. Jacobson said he thinks the committee should focus on electronic privacy first, acknowledging that the voting issues raised by Article V, Section 1 are likely to be controversial and may not be able to be resolved in the amount of time remaining for the committee's work. He said, on the topic of electronic privacy, the committee might be able to make an impact.

Chair Saphire said the committee has authority to set its own agenda. He said the committee appears to have a consensus that it could address Article V, Section 1 and the question of electronic privacy on a dual track. He said he will work with staff to develop material for background.

Mr. Gilbert said the issue of electronic privacy will take a lot of time, and is very important. He said he hopes the committee will set aside adequate time to deal with that issue.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:46 a.m.

Approval:

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

_____
Richard B. Saphire, Chair

_____
Jeff Jacobson, Vice-chair

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Article V

Elective Franchise

Article V concerns voting rights, ballot and election requirements, and term limits. A number of the provisions in this article were adopted to conform to requirements imposed by amendments to the U.S. Constitution and by U.S. Supreme Court decisions. In fact, federal law that has been the driving force for the expansion of voting rights since Ohio's first constitution.

SECTION 1

Who may vote. 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.

Section 1 outlines the qualifications to vote in the state of Ohio It guarantees the right to vote to any U.S. citizen who is eighteen years of age or older, is a resident of the state, and registers to vote at least thirty days before an election. This section has undergone many changes since its adoption in 1851 and differs significantly from its predecessors under the 1802 Constitution and the Northwest Ordinance.

The Northwest Ordinance limited the right to vote to males who owned a "freehold in fifty acres" and resided in the territory for one or two years, depending on whether the man was a citizen of one of the states.[141] Voters did not have to be citizens of one of the states, and therefore, foreign nationals could vote for representatives to the territorial legislature under the 1787 Ordinance. The 1802 Enabling Act, which set the terms for Ohio's admission into the union, dispensed with the fifty-acre requirement for U.S. citizens. Under the Enabling Act, Congress permitted adult male citizens of the United States who paid a territorial or county tax to vote for delegates to the 1802 Constitutional Convention as long as they had resided in the territory for at least a year. Noncitizens who owned a freehold of fifty acres, however, could also vote since the Enabling Act allowed electors who had qualified under the Northwest Ordinance to vote for convention delegates.

As with the Northwest Ordinance and all early state constitutions with the temporary exception of the 1776 New Jersey Constitution,[142] the 1802 Constitution denied women the right to vote. The 1802 Constitution also expressly limited suffrage to white males, and thus, African Americans were denied voting rights even though they had not been expressly disenfranchised under the Northwest Ordinance.[143] The delegates to the 1802 Constitutional Convention had initially approved a proposal granting African Americans the right to vote. On reconsideration, however, the vote ended in a tie, and the convention president, Edward Tiffin, cast the deciding vote against African American suffrage.[144]

The 1802 Constitution also imposed residency and taxation requirements. Article IV, section 1 of the 1802 Constitution required voters to reside in the state for at least a year and to pay, or be charged with paying, a state or county tax. This latter requirement effectively limited the right to vote to property owners since the only state and county taxes in existence at that time were real property taxes.[145] The taxation requirement, however, could be circumvented by work on public roads. Article IV, section 5 of the 1802 Constitution provided that "[n]othing contained in this article shall be so construed as to

[141] 1787 Ordinance, § 9.

[142] *See* Nadine Taub and Elizabeth M. Schneider, "Women's Subordination and the Role of Law," in *The Politics of Law: A Progressive Critique*, 2d ed. David Kairys (New York: Pantheon Books, 1990), 152. *See also* Robert F. Williams, *The New Jersey State Constitution: A Reference Guide* (Westport, CT: Greenwood Press, 1990), 11.

[143] *See* Barbara A. Terzian, "Effusions of Folly and Fanaticism: Race, Gender and Constitution-Making in Ohio, 1802–1923," (Ph.D. dissertation, The Ohio State University, 1999), 54 (hereinafter, *Effusions of Folly*).

[144] Ibid., 104–9.

[145] Thomas R. Swisher, ed., *Ohio Constitution Handbook* (Cleveland: Banks-Baldwin Publishing Co., 1990), 432.

prevent white male persons, above the age of twenty-one years, who are compelled to labor on the roads of their respective townships or counties, and who have resided one year in the State, from having the right of an elector." Thus, non-property owners who met the other voting requirements could still vote if they worked on township or county roads.

Delegates to the 1850–51 Constitutional Convention eliminated the taxation requirement but kept the one-year residency requirement and the requirement that all voters be U.S. citizens. The delegates, however, overwhelmingly rejected proposals to remove the words "white" and "male" from this section.

A proposal to remove "white male" that would have been submitted to the voters as a separate issue was also introduced at the 1873–74 convention.[146] Although the delegates voted 49–41 in favor of the proposed amendment, it failed to receive a sufficient number of votes under the rules of the convention to be submitted to the voters.[147] The 1912 Constitutional Convention succeeded in submitting separate proposals eliminating the word "male" and the word "white" to the voters, but these two proposals were among the eight proposed constitutional amendments (out of forty-two) that the voters rejected. In 1914, the voters also defeated a proposed constitutional amendment that would have extended the vote to women.

The proposed amendments to remove the word "white" from this section in 1874 and 1912 were only symbolic, as African Americans had been guaranteed the right to vote in 1870 with the adoption of the Fifteenth Amendment to the U.S. Constitution.

Like African Americans, women in Ohio secured the right to vote by an amendment to the U.S. Constitution and not by any change to the Ohio Constitution. In 1920, the Nineteenth Amendment to the U.S. Constitution gave women the right to vote in state and national elections. The words "white" and "male" were finally removed from this section of the Ohio Constitution in 1923, three years after women were guaranteed the right to vote and fifty-three years after African Americans had secured the franchise.

In 1957, the voters amended this section to allow recent Ohio residents who did not meet the one-year residency requirement for voting in Ohio elections to still vote for electors for the President and the Vice President of the United States as long as they were not entitled to vote for such electors in any other state. In 1971, the voters amended this section to reduce the residency requirement from one year to six months and retained the special provision for presidential elections. In 1976, after the U.S. Supreme Court held that durational residency requirements imposing a waiting period on new residents beyond the time necessary for the state to verify the person's residence were unconstitutional

[146] *See* Terzian, *Effusions of Folly*, 259–66.

[147] Ibid., 266.

(*Dunn v. Blumstein*, 1972), the voters again amended this provision to eliminate the special provision for presidential elections and to give the General Assembly authority to fix the residency requirement for all elections. Consistent with interpretations of the U.S. Constitution, current Ohio law requires a thirty-day residency period (O.R.C. § 3503.01).

The 1976 amendment also reduced the age requirement from twenty-one to eighteen to conform to the Twenty-sixth Amendment to the U.S. Constitution, which was ratified in 1971. Finally, an amendment in 1977 added the last sentence to this section requiring electors to vote at least once every four years to maintain their registration. Electors who fail to vote at least once in the preceding four-year period must reregister.

SECTION 2

By ballot. All elections shall be by ballot.

Adopted in 1802 as Article IV, section 2, and incorporated verbatim as Article V, section 2, this section has never been amended. The word "ballot" as used in this section does not refer to a small sheet of paper used to cast votes but to a system or "method of conducting elections which will insure secrecy" (*State ex rel. Automatic Registering Machine Co. v. Green*, 1929). Thus, a law authorizing the use of voting machines that ensure secret ballots does not violate this section (ibid.).

While the hallmark of this section is secrecy, this section does not create an absolute right to a secret ballot. In *State v. Jackson* (2004), the Ohio Supreme Court held that this section does not prohibit the use of ballots as evidence in a criminal case charging the defendant with ballot tampering and other election law violations.

The Ohio Supreme Court has also held that Article II, section 1, which vests legislative power in the General Assembly, gives the General Assembly the power to determine ballot requirements within the limits of this section and the equal protection and benefit clause of Article 1, section 2 (*State ex rel. Bateman v. Bode*, 1896). The General Assembly's power is also limited by other provisions of the Ohio Constitution (*see*, e.g., Art. V, section 2a), by the U.S. Constitution, and by laws enacted by Congress, such as the Voting Rights Act of 1965.[148]

SECTION 2a

Names of candidates on ballot. The names of all candidates for an office at any election shall be arranged in a group under the title of that office. The General Assembly shall provide by law the means by which ballots shall give each candidate's name reasonably equal position by rotation or other comparable methods to the extent practical and appropriate to the voting procedure used. At any election in which a candidate's party designation appears on the ballot, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in less prominent type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of president and vice president of the United States, and other than candidates for governor and lieutenant governor) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

[148] Voting Rights Act of 1965, Pub. L. No. 89–110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-l(1994)).

Adopted in 1949 and last amended in 1976, section 2a sought to focus voters on the candidates for office rather than on the candidates' political parties. Before this section's adoption, voters could cast a straight party vote by marking a single "X" on the ballot. Section 2a rejects that manner of voting by requiring an office-type ballot in which votes must be cast for candidates for specific offices.

Section 2a also requires the rotation of candidate names to prevent all or a majority of ballots from listing candidates in the same order and thus favoring candidates who are listed first. Under the original version of this section, each candidate's name was required, as nearly as possible, to appear "substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs." In 1974, the Ohio Supreme Court ruled that this requirement prohibited the use of voting machines and other means of voting that rotated names on a precinct-by-precinct basis (*State ex rel. Roof v. Hardin County Board of Commissioners*, 1974). This section was amended the following year to allow precinct-by-precinct rotation or any other method that gives each candidate's name a "reasonably equal position."

The Ohio Supreme Court has held that voting irregularities such as the failure to properly rotate candidate names and problems with voting machines are grounds for setting aside the results of an election (*In re Election of Nov. 6, 1990, for the Office of Attorney General*, 1991). Such irregularities, however, must be established by "clear and convincing" evidence—that is, evidence greater than a preponderance of the evidence (more likely than not) but not as great as that required by the criminal law's "beyond a reasonable doubt" standard. *In re Election* involved a challenge to the election for attorney general where the challenger lost by 1,234 votes out of over three million cast. The court held that in order to set aside an election, a challenger had to prove by clear and convincing evidence "(1) that one or more election irregularities occurred, and (2) that the irregularity or irregularities affected enough votes to change or make uncertain the result of the election" (*Elections, supra*, 105). Although the challenger in that case proved by clear and convincing evidence that irregularities had occurred, he did not prove by that standard that enough votes were affected to either change the result or call the election into question.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION
ARTICLE V, SECTION 6

MENTAL CAPACITY TO VOTE

The Ohio Constitutional Modernization Commission adopts 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 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission 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 Bill of Rights and Voting 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 indicated 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.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on September 10, 2015, November 12, 2015, and March 10, 2016, the committee voted six to one on March 10, 2016 to

issue a report and recommendation recommending that Article V, Section 6 in its present form 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.*

Presentation to the Commission

On April 14, 2016, on behalf of the Bill of Rights and Voting Committee, committee Chair Richard Saphire presented the committee's report and recommendation, by which it recommended the repeal and replacement of current Article V, Section 6, with a provision that would require the General Assembly to enact laws relating to the disenfranchisement of persons lacking the mental capacity to vote, remove all outdated or pejorative references to mentally incapacitated persons, specify that the disenfranchisement only applies to the period of incapacity, and require that only mental incapacity for the purposes of voting would result in disenfranchisement.

Action by the Commission

At the Commission meeting held _____, 2016, _____ moved to adopt the report and recommendation for Article V, Section 6, a motion that was seconded by _____. The Commission then discussed the report and recommendation.

[Additional information about the discussion.]

A roll call vote was taken, and the motion passed by an affirmative vote of _____ members of the Commission, with _____ opposed.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article V, Section 6 should be repealed and replaced by a new provision 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.*

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on April 14, 2016, and _____, 2016, the Commission voted to adopt this report and recommendation on _____, 2016.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

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 19th 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.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: **Chair Richard Saphire, Vice-chair Jeff Jacobson and Members of the Bill of Rights and Voting Committee**

CC: **Steven C. Hollon, Executive Director**

FROM: **Shari L. O'Neill, Counsel to the Commission and Joyce Gray, Legal Intern Lee Matheson, Legal Intern**

DATE: **March 25, 2016**

RE: **The Right to Privacy**

The Bill of Rights and Voting Committee has asked whether the Ohio Constitution should include an explicit right to privacy, especially as it relates to the use of information technology and the proliferation of social networking. As an introduction to the topic, this memorandum seeks to provide some background on the subject of privacy, as well as raise some questions for the committee to consider.

Introduction

A cell phone may now carry virtually every file, document, or other information an individual has ever accumulated, including e-mails, internet searches, and photos. A recent review of major active social-networking sites, where users store the most personal information that may be kept for years, shows that roughly 73 percent of the U.S. population has a social network profile.[1] In addition, the "internet of things," [2] including wearable technology,[3] has the potential of tracking our movements, both inside and outside of our homes.

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[1] Statista. *Statistics and facts about Social Networks*. Web. Available at: http://www.statista.com/topics/1164/social-networks/ (accessed Aug. 11, 2015). A few of the top sites listed include Facebook, Twitter, Vine, Instagram, Tumblr, Pinterest, Google Plus, and Flikr.

[2] Federal Trade Commission. *FTC Report on Internet of Things Urges Companies to Adopt Best Practices to Address Consumer Privacy and Security Risks*, (Jan. 27, 2015). Available at: https://www.ftc.gov/news-events/press-releases/2015/01/ftc-report-internet-things-urges-companies-adopt-best-practices Web. (accessed Aug. 7, 2015);

This memo will provide a historical context of the individual right to privacy, regarding emerging technologies such as electronic data and social media, summarizing the existing laws on this subject as they relate to law enforcement and consumer protection.

Historical Treatment of Right to Privacy

A highly influential and frequently cited Warren & Brandeis article on the right to privacy was published in 1890,[4] and has been listed as one of the most influential law review articles of all time.[5] The article introduced the concept of the individual "right to be let alone." [6] It was written in response to new technology and social media, which, at that time, meant flash photography and the proliferation of yellow journalism, both of which led to wider and faster distribution of information. Today's concern with new technology also focuses on the modern ability to distribute information more widely and rapidly, now combined with the ability to amass large quantities of stored data. Warren and Brandeis noted that the invention of the "snap camera," a smaller camera that could take candid photographs, opened up the possibility of surreptitious photography, such that "the doctrines of contract and of trust are inadequate to support the required protection." [7]

The Warren & Brandeis article has been cited in case law as recently as 2013, in *Ignat v. Yum! Brands,* 214 Cal. App.4th 808 (2013), wherein the court noted:

> As legal lore has it, the first widely recognized call in American law for a right to privacy based on the common law and enforceable in a tort action sounded in an article by Samuel D. Warren and Louis D. Brandeis in the Harvard Law Review of 1890. * * * In light of these new technologies, the established legal protections for individual privacy no longer functioned adequately. * * * Warren and Brandeis * * * sought to cut privacy loose from the law of property and to make it a right enforceable on its own.

In his influential 1960 law review article, "The Prosser Four Privacy Torts," [8] William Prosser, collecting the case law on the right of privacy, postulated four separate and discrete categories of the tort of invasion of privacy: 1.) Intrusion upon seclusion; 2.) Public disclosure of embarrassing private facts; 3.) [Publicity which places the Plaintiff in a] False light "in the public eye"; and, 4.) Appropriation of another's name or likeness for one's own advantage. As Prosser explained:

Hill, Kashmir. *The Half-Baked Security of our Internet of Things*, Forbes. Print. 27 May 2014. Available at: http://www.forbes.com/sites/kashmirhill/2014/05/27/article-may-scare-you-away-from-internet-of-things/ (accessed Aug. 7, 2015).

[3] Weiss, Debra Cassens. *Liars beware: Fitbit and other technology may expose you*. 8 July 2015. Web. Available at: http://www.abajournal.com/news/article/liars_beware_fitbit_and_other_technology_may_expose_you (accessed Aug. 7, 2015).

[4] Warren, Samuel D. and Louis D. Brandeis. *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

[5] *Howard v. Antilla*, 294 F.3d 244 (1st Cir. 2002), citing Kalven, Jr., Henry. *Privacy in Tort Law—Were Warren and Brandeis Wrong?* 31 Law & Contemp. Probs. 326, 327 (1966).

[6] Warren & Brandeis, *supra,* citing Cooley, Thomas M. *The Law of Torts.* (2d Ed.) 1888. Print.

[7] Solove, Daniel J. *A Taxonomy of Privacy*, 154 U. Pa. L. Rev. 477, 528-29 (2006).

[8] Prosser, William L. *Privacy*, 48 Cal. L. Rev. 383 (1960).

> The law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff, in the phrase coined by Judge Cooley, "to be let alone."[9]

Prosser's four categories of privacy tort are widely accepted. "Almost all courts accept Prosser's four-part division of the privacy tort. Prosser's thesis was that 'privacy' was not a unified concept, but consisted of a cluster of [the] four quite distinct torts." [10]

In 2014, the White House issued a report entitled: "Big Data: Seizing Opportunities, Preserving Values," focusing on how the benefits of big data can be maximized, while minimizing its risks.[11] Among other important concepts, the report outlines some reasons for protecting privacy. According to the report, protecting privacy encourages the public to seek healthcare, thus promoting better health for all of society.[12] In addition, protecting privacy encourages greater use of new technologies and innovations,[13] and encourages free speech and the marketplace of ideas.[14] As noted in the report, one benefit of stronger privacy protections involves international relations, specifically cross-border trade with Europe. For example, the European Union ("EU") has established certain requirements for privacy and the protection of personal data that affect the transfer of personal data outside the EU (the EU "Adequacy" requirement). In order to satisfy this requirement, the United States and the EU agreed upon the US-EU Safe Harbor framework, under which U.S. companies can self-certify their compliance with privacy guidelines and thus legally transfer personal data from the EU countries.[15]

Update on the US-EU Safe Harbor Framework:

On October 6, 2015, the Court of Justice of the European Union struck down the Safe Harbor Framework.[16] United States and European negotiators have reached a tentative deal on the terms

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[9] *Id*. at 389.
[10] McCarthy, J. Thomas. *Rights of Publicity and Privacy*. (2d Ed) § 1:19, Prosser's four torts of privacy.
[11] The White House, *Big Data: Seizing Opportunities, Preserving Values* May 2014. Web. 32. Available at: https://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf (accessed Aug. 11, 2015). ("White House Big Data Report.")
[12] Pritts, Joy L. *The Importance and Value of Protecting the Privacy of Health Information: The Roles of the HIPAA Privacy Rule and the Common Rule in Health Research*. 2008. Web. Available at: http://iom.nationalacademies.org/~/media/Files/Activity%20Files/Research/HIPAAandResearch/PrittsPrivacyFinalDraftweb.ashx (accessed Aug. 7, 2015).
[13] Gellman, Robert. *Privacy, Consumers, and Costs: How The Lack of Privacy Costs Consumers and Why Business Studies of Privacy Costs are Biased and Incomplete*. Privacy Rights Clearinghouse. 2002. Web. Available at: https://www.privacyrights.org/ar/costs-privacy.htm (accessed Aug. 7, 2015).
[14] Kaminsky, Margot E. and Shane Witnow. *The Conforming Effect: First Amendment Implications of Surveillance, Beyond Chilling Speech*, 49 U. Rich. L. Rev. 512 (2014).
[15] Safe Harbor Privacy Principles, issued by the U.S. Dept of Commerce, July 31, 2001. Available at: www.export.gov/safeharbor/eu/eg_main_018475.asp, and http://export.gov/safeharbor/eu/eg_main_018365.asp (accessed both Aug. 11, 2015).
[16] *The EU-US Privacy Shield: What's at Stake*, ITI (Feb. 16, 2016) http://www.itic.org/dotAsset/9/b/9b4cb3ad-6d8b-469d-bd03-b2e52d7a0ecd.pdf

of a replacement agreement, referred to as the EU-US Privacy Shield, but this new agreement has yet to pass the long approval process required by EU stakeholders and member states.[17]

The report also outlined some of the harms possible due to loss of privacy and potential misuse of personal information, including a chilling effect on free speech.[18] One consequence of privacy infringement is known as the "filter bubble." Due to search-filtering by Internet Service Providers ("ISP"), consumers often receive advertisements and information on products and topics selected by the providers. The report commented that "[t]hese filter bubbles effectively prevent [consumers] from encountering information that challenges [their] biases or assumptions."[19] The report also pointed out that "big data" can inadvertently cause discrimination against groups and individuals:[20]

> Just as neighborhoods can serve as a proxy for racial or ethnic identity, there are new worries that big data technologies could be used to "digitally redline" unwanted groups, either as customers, employees, tenants, or recipients of credit. A significant finding of this report is that big data could enable new forms of discrimination and predatory practices.[21]

Privacy Concerns in Various Contexts

Law Enforcement

Federal Court Search and Seizure Cases

The Fourth Amendment guarantees a right to privacy against unreasonable searches and seizures, unless a warrant, supported by probable cause, is issued.[22] It reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Supreme Court cases and other key cases reflect a changing interpretation of what constitutes an unreasonable search and what constitutes an expectation of privacy regarding such searches.

In *Olmstead v. United States* 277 U.S. 438, 457, 464, 466, (1928) (Holmes, J. and Brandeis, J. dissenting), the government conducted warrantless wiretapping of residents' private telephone conversations from outside the residence by inserting wires along telephone lines, without

[17] *Id.*
[18] White House Big Data Report, *supra,* at 32.
[19] White House Big Data Report, *supra,* at 8.
[20] *Id.* at 7, 45, 51, 64.
[21] *Id.* at 53.
[22] Fourth Amendment to the United States Constitution.

resorting to trespass. The issue before the court was whether the use of evidence of private telephone conversations between the defendants and others, intercepted by means of wire-tapping, amounted to a violation of the Fourth and Fifth Amendments. The Court found that there was no search and no seizure, because there was no trespass: "one who installs in his house a telephone instrument with connecting wires intends to project his voice to those quite outside, and * * * the wires beyond his house, and messages while passing over them, are not within the protection of the Fourth Amendment." Both Justices Holmes and Brandeis filed dissents, Brandeis stating: "It is, of course, immaterial where the physical connection with the telephone wires leading into the defendants' premises was made. * * * Experience should teach U.S. to be most on our guard to protect liberty when the government's purposes are beneficent. * * * the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

Olmstead was later overruled in part by *Katz v. United States* 389 U.S. 347 (1967), in which law enforcement, without a warrant, placed a listening device on top of a telephone booth in order to obtain evidence of wagering activity. The issue before the Court was whether the Fourth Amendment protects telephone conversations conducted in a phone booth and secretly recorded from introduction as evidence in a criminal proceeding. The Court found that, even in a public place – the phone booth, where the defendant could be seen by anyone passing by – the defendant had a reasonable expectation of privacy, because "he assumes that the words he utters into the telephone will not be broadcast to the world." Thus, the *Olmstead* test of trespass was replaced by the *Katz* two-prong test for determining if there was a reasonable expectation of privacy. *Id.* 389 U.S. at 360-61.[23] *Katz* established that "the Fourth Amendment protects people, not places." *Id.* at 351.

In *United States v. U.S. Dist. Court of the Eastern Dist. of Michigan,* 407 U.S. 297, 323 (1972), otherwise known as the Keith case, the Court went further to hold that, even when domestic security issues are involved, a warrant is needed before beginning electronic surveillance on a subject when that subject has no connection to a foreign power.

In *Smith v. Maryland,* 442 U.S. 735 (1979), the Court held that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties," a position that has come to be known as the "Third Party Doctrine."[24] The ruling has been used to justify the warrantless search and seizure of data that an individual turns over or shares with, for example, internet service providers and other communications providers.

In *Klayman v. Obama* (*Klayman I*) , 957 F. Supp. 2d 1 (D.D.C.2013), the court addressed whether plaintiffs had a reasonable expectation of privacy that was violated when the United States government indiscriminately collected their telephony metadata, along with the metadata of hundreds of millions of other citizens, without any particularized suspicion of wrongdoing,

[23] The *Katz* two-part test: i) Has the individual has exhibited an actual, subjective expectation of privacy? and, ii) Does society consider that expectation to be reasonable? This second part of the test is objective because it is grounded in more general social norms.

[24] Solove, Daniel J. *A Taxonomy of Privacy*, 154 U. Pa. L. Rev. 477, 528-29 (2006) (describing the third-party doctrine).

retained all of that metadata for five years, and then queried, analyzed, and investigated that data without prior judicial approval of the investigative targets. The court found that if this occurs and constitutes a Fourth Amendment search, it is then necessary to determine whether such a search is "reasonable." *See id.* at 31; *Kyllo v. United States*, 533 U.S. 27 (2011) (whether a search has occurred is an "antecedent question" to whether a search was reasonable). The court in *Klayman* posed the question as: "when do present-day circumstances – the evolutions in the Government's surveillance capabilities, citizens' phone habits, and the relationship between the National Security Agency ("NSA") and telecom companies – become so thoroughly unlike those considered by the Supreme Court [in *Smith v. Maryland, supra*] that a precedent like *Smith* simply does not apply?" The court concluded that that time is now, and issued a preliminary injunction prohibiting the government from collecting the plaintiffs' telephony metadata, which it immediately stayed pending appeal. *Klayman v. Obama*, 957 F. Supp. 2d at 43.

On appeal, the D.C. Circuit determined *per curiam* that the lower court erred when it granted a preliminary injunction barring the United States from collecting the plaintiffs' cell phone records, and thus reversed and remanded the District Court's decision for limited discovery. *Obama v. Klayman* (*Klayman II*), 800 F.3d 559 (D.C. Cir. 2015). The Circuit Court disagreed that the plaintiffs had demonstrated the "substantial likelihood of success on the merits" regarding the unconstitutional nature of the government's conduct necessary to meet the high burden for a preliminary injunction. *Id*. at 563. In separate opinions the Court questioned the lower court's determination that the plaintiffs had standing to bring the suit. One judge found that plaintiffs had "barely fulfilled requirements for standing." *Obama v. Klayman*, 800 F.3d at 564 (Brown, J., concurring). Another determined the plaintiffs had "failed to demonstrate a 'substantial likelihood'" that they would succeed in showing standing on the merits. *Obama v. Klayman*, 800 F.3d at 568 (Williams, J., concurring).

On remand, the District Court allowed the joinder of new parties whose standing to sue was uncontested in light of the Circuit Court's decision, and granted a new preliminary injunction against the government as its activities pertained to those plaintiffs. *Klayman v. Obama* (*Klayman III*), 2015 U.S. Dist. LEXIS 151826, *6-7 (D.D.C 2015).

A similar case prior to *Klayman* was *Clapper v. Amnesty Int'l. USA*, ___U.S.___, 133 S.Ct. 1138, 1143 (2013), but it turned on standing. In *Clapper*, the Court found that the plaintiffs had no standing because the injury was not "certainly impending" and was too speculative. In *Klayman*, the plaintiffs had standing because, as Edward Snowden infamously revealed, this kind of collection and analysis of telephone metadata by the NSA was no longer speculative.

Klayman represents a split from *In re Application of the [FBI] for an Order Requiring the Production of Tangible Things from Verizon Business Network Services, Inc. on Behalf of MCI Communication Services, Inc. d/b/a Verizon Business Services,* No. BR 13-80, 2013 U.S. Dist. LEXIS 147002, 2014 WL 5463097 (Foreign Intel. Surv. Ct., Apr. 25, 2014), a case that arose over whether bulk collection of U.S. personal phone metadata under Section 215 violates the Fourth Amendment.

United States v. Jones, ___U.S.___, 132 S.Ct. 945 (2012), a case involving warrantless GPS tracking, determined that law enforcement's attachment of a GPS device to a vehicle constituted

an unreasonable search or seizure in violation of the Fourth Amendment. In a majority opinion by Justice Scalia, the Court concluded a trespass had occurred, making this a Fourth Amendment search. Justice Alito concurred, but said the analysis should have been done using the *Katz* test. Justice Sotomayor also concurred, but further clarified that the *Katz* test would supplement the trespassory test, and that most GPS monitoring would violate an individual's reasonable expectation of privacy. These opinions resulted in what is now termed "the *Jones* test," which requires application of the trespassory test and then, if no trespass is found to have occurred, application of the *Katz* test to determine if the search was unreasonable.

In *Riley v. California* , ____U.S.___, 134 S.Ct. 2473, 2495 (2014), the Court determined that cell phones cannot be searched incident to arrest without a search warrant, regardless of whether it is a smartphone or a flip phone. According to one commentator, *Riley* suggests the Court recognizes the difference between carrying a few items around in one's wallet, and being able to carry every scrap of information about one's entire life in a phone,[25] and demonstrates an understanding of the effects of the aggregation of large amounts of data and the "mosaic effect."[26] Thus, in decisions such as *Riley*, the Court may be indicating a change is coming with regard to application of the Third Party Doctrine in instances involving a mass aggregation of large amounts of data.

Ohio Search and Seizure Cases

Article I, Section 14 of the Ohio Constitution protects against unreasonable search and seizure by the government, but does not explicitly reference privacy, data, or communications. As Steinglass and Scarselli have noted:

> In *State v. Brown,* [99 Ohio St.3d 323, 2003–Ohio–3931, ¶ 18–19], the Ohio Supreme Court explicitly rejected the U.S. Supreme Court's decision in *Atwater v. Lago Vista* (2001). * * * Recognizing the "independent force" of the Ohio Constitution and relying on its own precedent, the court in *Brown* held that Section 14 required a balancing of governmental interests and personal liberty, *and that a balance favoring personal liberty was a "persuasive reason" for departing from the U.S. Supreme Court's Fourth Amendment Analysis*." (Emphasis added.)[27]

[25] Solove, Daniel J. *Does the Supreme Court's Decision on the 4th Amendment and Cell Phones Signal Future Changes to the Third Party Doctrine?* 2014. Web. Available at: https://www.linkedin.com/pulse/20140625172659-2259773-does-the-u-s-supreme-court-s-decision-on-the-4th-amendment-and-cell-phones-signal-future-changes-to-the-third-party-doctrine (accessed Aug. 11, 2015).

[26] Kerr, Orin. *Courts grapple with the mosaic theory of the Fourth Amendment*. 28 Apr. 28 2014. Web. Available at: http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/04/28/courts-grapple-with-the-mosaic-theory-of-the-fourth-amendment/ (accessed Aug. 11, 2015). The mosaic theory is suggested by the concurring opinions in *United States v. Jones, supra,* by which an aggregation of non-searches and subsequent analysis of the collected data at some point becomes a Fourth Amendment search.

[27] Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 115. Print.

In *State v. Milligan*, 40 Ohio St.3d 341 (1988), the defendant, on being indicted for complicity to commit vandalism, intimidation, tampering with evidence, and perjury, moved to dismiss his indictment on the basis that the law enforcement officer recorded a telephone conversation between defendant and his attorney. The court held that: 1.) evidence obtained through unauthorized interception of telephone conversations was subject to suppression pursuant to a state constitutional right to counsel; and 2.) the trial court could take appropriate action, including dismissal of the indictment, if interception of the conversation resulted in substantial prejudice to defendant in preparation of his defense.

In *State v. Posey*, 40 Ohio St.3d 420, 427 (1988), the court stated the baseline rule that "a search conducted without a warrant issued upon probable cause is 'per se unreasonable' * * * subject only to a few specifically established and well-delineated exceptions."

In *State v. Brown, supra,* the court held that the Ohio Constitution provides greater protection than the Fourth Amendment against warrantless arrests for minor misdemeanors.

In *State v. Smith,* 124 Ohio St.3d 163, 2009-Ohio-6426, the court held that the Fourth Amendment prohibits the warrantless search of data within a cell phone when the phone is lawfully seized incident to an arrest.

In the recent case of *State v. Castagnola,* ___Ohio St.3d ___, 2015-Ohio-1565, ___ N.E.3d ___, ¶ 35, the court held that there was no probable cause to believe that a computer in defendant's residence was used in furtherance of the alleged crimes; therefore, the search warrant was not supported by probable cause and did not meet the particularity requirement of Fourth Amendment. Thus, the good-faith exception to the exclusionary rule did not apply.

Consumer Privacy Protection

In 1973, the Department of Health, Education and Welfare conducted a study regarding individual personal privacy in the computer age. This report established the Code of Fair Information Practices (FIPPs), consisting of eight principles covering areas such as use limitation, individual participation, and security, which serve as the basis for the Privacy Act of 1974.[28] The report is an internationally-recognized framework for protecting individual information.[29]

The current U.S. statutory privacy framework is segmented, with a focus on various segments of protections, as opposed to the European Union framework, which is top-down in nature. The U.S. framework includes primarily the FTC, FCC, HIPPA, FCRA, FRPA, COPRA, the Graham-Leach-Bliley Act, VPPA, and the Digital Millennium Copyright Act, among others. These are primarily enforced by the responsible agencies via settlement agreements and consent decrees. [30]

[28] Privacy Act of 1974, 1975-1 C.B. 434 (I.R.S.), H.R. Rep. No. 93-1416, 1974 WL 18691.
[29] *See generally*, Gellman, Robert. *Fair Information Practices: A Basic History*, (Ver. 2.13, 2011). Web. Available at: http://bobgellman.com/rg-docs/rg-FIPShistory.pdf (accessed Aug. 13, 2015).
[30] *See, for example, AT&T Consent Decree with the FCC.* 8 Apr. 2015. Web. Available at: http://transition.fcc.gov/Daily_Releases/Daily_BUSiness/2015/db0408/DA-15-399A1.pdf (accessed Aug. 13, 2015).

In contrast, the European Union Directive 95/46 is not segmented. It provides protection to the individual's personal data, ensuring that it benefits from a high standard of protection everywhere in the European Union, as well as when transferred to non-EU countries, such as the United States.[31]

State of Ohio

Ohio's statutory framework for notifying consumers of a data breach is found primarily in Revised Code Chapter 1349.19, which provides, at division (B)(1):

> Any person that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system, following its discovery or notification of the breach of the security of the system, to any resident of this state whose personal information was, or reasonably is believed to have been, accessed and acquired by an unauthorized person if the access and acquisition by the unauthorized person causes or reasonably is believed will cause a material risk of identity theft or other fraud to the resident. The disclosure described in this division may be made pursuant to any provision of a contract entered into by the person with another person prior to the date the breach of the security of the system occurred if that contract does not conflict with any provision of this section and does not waive any provision of this section. For purposes of this section, a resident of this state is an individual whose principal mailing address as reflected in the records of the person is in this state.

To date, no court has had the opportunity to interpret this statute, which was enacted in 2006.

In *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St.3d 605, 640 N.E.2d 164, 165-66 (1994), a newspaper challenged the city's refusal to disclose social security numbers of city employees. The court held that employees' social security numbers were "records" for purposes of the Public Records Act, but that disclosure of the numbers would violate the federal constitutional right to privacy.

Privacy Rights in State Constitutions

Language regarding technology or an explicit right to privacy is found in eleven states' constitutions. For the full list and corresponding text of each provision, please see Attachment A.[32] Several current examples are described below.

Most Recent – Missouri

Missouri is the most recent state to propose to voters that the search and seizure provision include that the people shall be secure in their electronic communications and data.[33] The

[31] Eur-Lex, EU Law and Publications, "Access to European Union Law." Web. Available at: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31995L0046 (accessed Aug. 13, 2015).
[32] *See* Attachment A, Fifty-State Survey of State Constitutional Privacy Rights.

measure, passed on August 5, 2014, is now part of the Missouri Constitution.[34] In supporting the change, Missouri Senator Rob Schaaf asserted the new Missouri amendment went further than the U.S. Supreme Court's ruling regarding the Fourth Amendment in *Riley*: "Amendment 9 would cover things other than cellphones, laptops and communications. It (the high court ruling) only covers cellphones."[35]

On the Ballot – Minnesota

In January 2015, Minnesota introduced language similar to Missouri's, and Minnesota voters will decide in 2016 whether to expand search and seizure protections to include "electronic communications and data." [36] [37] Minnesota Senator Branden Petersen, chief proponent, gave the following reasons for introducing this bill:

> In today's world, every intimate detail of our lives exists in a digital format. Electronic data like emails and photos is a big part of what Minnesotans consider their private information. * * * This constitutional amendment would make sure Minnesotans' data is fully protected without having to rely on the court system's interpretation of privacy. * * * Your data is too valuable to leave up to the court's interpretation of privacy. This constitutional amendment would clarify and strengthen protections for all forms of electronic data. [38]

In the Legislature – Iowa

In February 2016, the Iowa House also approved an amendment with similar language to the Missouri provision by a 96-0 vote.[39] The Iowa amendment awaits approval by the Senate, and if adopted by the state legislature will go to the ballot for voter approval in 2018. State Representative Ken Rizer, the bill sponsor, characterized the need for the bill as follows:

> When the founders of our country and state included search and seizure protections in their 18th and 19th century constitutions they intended to protect citizens from government reading personal mail or going through personal files

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[33] *Id*.
[34] Missouri Constitution, V.A.M.S. Const. Art. 1, § 15, (Amendment adopted at primary election, Aug. 5, 2014).
[35] Yokley, Eli. *Sen. Rob Schaaf says SCOTUS ruling reaffirms need for state measure*. 26 Jun. 2014. Web. Available at: http://politicmo.com/2014/06/26/sen-rob-schaaf-says-scotUS-ruling-reaffirms-need-for-state-measure/ (accessed Aug. 11, 2015).
[36] State of Minnesota, Eighty-Ninth Session S.F. No. 32.
[37] Article I, Section 10, introduced Jan. 8, 2015, Minnesota Senate File No. 32, Minnesota First Regular Session of the Eighty-Ninth Legislative Session.
[38] Sen. Branden Petersen, *Minnesotans deserve a vote to protect electronic data privacy*. Civil Liberties Homepage, MSNRC. 16 Feb. 2015. Web. Available at: http://www.mnsenaterepublicans.com/minnesotans-deserve-vote-protect-electronic-data-privacy/ (accessed Aug. 13, 2015).
[39] James Q. Lynch, *Iowa House Backs Amendment to Protect Digital Privacy*, THE GAZETTE, (February 25, 2016) http://www.thegazette.com/subject/news/government/iowa-house-backs-amendment-to-protect-digital-privacy-20160225.

> without a warrant," he said. "In the 21st century, Iowans shouldn't be forced to choose between using new technologies and protecting their privacy.[40]

Other Pending Activities

As noted above, in 2012, the White House released its report on consumer data privacy.[41] The forward by President Obama referred to a proposed Consumer Privacy Bill of Rights ("Bill of Rights"), which was later updated in 2015:

> [E]ven though we live in a world in which we share personal information more freely than in the past, we must reject the conclusion that privacy is an outmoded value. * * * We have also introduced a discussion draft of legislation for a new Consumer Privacy Bill of Rights to safeguard basic principles that both defend personal privacy and allow industry to keep innovating.[42] [43]

In relation to commercial use of consumers' personal data electronic data, the Report recommended that consumers should be granted rights including control, transparency, respect for context, security, access and accuracy, focused collection, and accountability.[44] The Bill of Rights was introduced to Congress May 9, 2013, in House Bill 1913.[45]

Potential Areas for Ohio Constitutional Amendment

Privacy and Search and Seizure

Ohio could follow the model of the Missouri amendment, and the pending Minnesota and Iowa amendments, enacting an amendment providing constitutional protection for electronic data in the context of law enforcement search and seizure. Such a provision could be broad enough to cover items other than cellphones, laptops, and communications, and could clarify and strengthen protections for all forms of electronic data.

General Right to Privacy

A broadly-worded amendment could be used to provide a general right to privacy. One example is Alaska Const. Art. I, Sec. 22: "The right of the people to privacy is recognized and shall not be infringed."

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[40] *Id.*
[41] The White House, *Consumer Data Privacy in a Networked World*. 23 Feb. 2012. Web. Available at: https://www.whitehouse.gov/sites/default/files/privacy-final.pdf (accessed Jul. 16, 2015).
[42] *Id.*
[43] The White House, *Administrative Discussion Draft, Consumer Privacy Bill of Rights Act 0f 2015*. 2015. Web. Available at: https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/cpbr-act-of-2015-discussion-draft.pdf (accessed Aug. 11, 2015).
[44] The White House, *Consumer Data Privacy in a Networked World*. 23 Feb. 2012. Web. Available at: https://www.whitehouse.gov/sites/default/files/privacy-final.pdf (accessed Jul. 16, 2015).
[45] 113th Congress, 1st Session, United States Library of Congress, 2013 CONG U.S. HR 1913.

Consumer Protection

The Obama Administration's Consumer Protection Bill of Rights is a new piece of proposed legislation that may serve as a guide for an Ohio constitutional amendment.

Conclusion

This memorandum is intended to foster further discussion by the committee. One area of further inquiry might involve how a constitutional right to privacy might affect national security interests, free speech rights, and the need to avoid overly burdening the development of new technology and commercial interests. Staff is pleased to provide additional research on this topic as needed.

ATTACHMENT A

FIFTY-STATE SURVEY OF STATE CONSTITUTIONAL PRIVACY RIGHTS

Eleven states explicitly articulate a privacy right, with a twelfth state considering a similar amendment pending voter approval. All provisions are located in either the Declaration of Rights or Bill of Rights articles. Most provisions have a specific "Right to Privacy" section. Several states have "privacy" mentioned in other provisions, for example, California mentions a privacy right in its "inherent rights" section, while South Carolina and Illinois recognize a privacy expectation in their search and seizure sections. Louisiana includes a search and seizure provision in its Right to Privacy section. Missouri has most recently amended its constitution to include "electronic communications and data." Minnesota has a similar amendment pending, expected to be presented to the voters at the 2016 general election, while the Iowa legislature is currently considering a proposal that would place a similar amendment on the 2018 ballot. Most of these privacy provisions were adopted relatively recently, with Washington being the exception.

States with Current Constitutional Privacy Protections

ALASKA Article I, Section 22

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

[Amended 1972.]

ARIZONA Article II, Section 8

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

[Adopted in the Arizona Constitutional Convention, which took place in Phoenix from October 10, 2010 to December 9, 2010.]

CALIFORNIA Article I, Section 1

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

[Amendments of November 7, 1972 replaced the term "men" with "people" and added "privacy." The former provision was repealed on November 5, 1974.]

FLORIDA Article I, Section 12

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the

nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

[H.J.R. No. 31-H proposed an amendment to this section of the constitution, adopted by the electorate at the November 1982 general election which provides that the right to be free from unreasonable searches and seizures shall be construed in conformity with the Fourth Amendment to the United States Constitution and to provide that illegally seized articles or information are inadmissible if decisions of the United States Supreme Court make such evidence inadmissible.]

Section 23

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

[Privacy provision added in November 4, 1980 General Election.]

HAWAII Article I, Section 6

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

[Added at Constitutional Convention of 1978, and ratified in election of November 7, 1978.]

ILLINOIS Article I, Section 6

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

[Invasions of Privacy language added December 15, 1970 and effective July 1, 1971.]

LOUSIANA Article I, Section 5

Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

[Invasions of Privacy language added with Constitutional Amendments effective December 30, 1974.]

MISSOURI Article I, Section 10

That the people shall be secure in their persons, papers, homes, effects, and electronic communications and data, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, or access electronic data or communication, shall issue without describing the place to be searched, or the person or thing to be seized, or the data or communication to be accessed, as nearly as may be; nor without probable cause, supported by written oath or affirmation.

[Amendment adopted at (2014 S.J.R. No. 27), primary election, Aug. 5, 2014. This version added 'electronic data and/or communications'.][1]

MONTANA Article II, Section 10

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

[Adopted in Constitutional Convention on March 22, 1972 and ratified by the people June 6, 1972.]

SOUTH CAROLINA Article I, Section 10

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

[Adopted in 1971.]

WASHINGTON Article I, Section 7

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

[Adopted in 1889.]

[1] Eli Yokley, POLITICMO, "Sen. Rob Schaaf says SCOTUS ruling reaffirms need for state measure", Jun. 26, 2014, http://politicmo.com/2014/06/26/sen-rob-schaaf-says-scotus-ruling-reaffirms-need-for-state-measure/. "The U.S. Supreme Court ruled Wednesday that cellphones are to be protected from warrantless police searches in the same way an American's home might be." Per Schaaf, "[The ruling in *Riley v. California*] doesn't go as far as Amendment 9," Schaaf said. "Amendment 9 would cover things other than cellphones, laptops and communications. It [the high court ruling] only covers cellphones."

States with Pending or Defeated State Constitutional Privacy Measures

MINNESOTA (Pending) Article 1, Section 10

The right of the people to be secure in their persons, houses, papers, and effects, and in their electronic communications and data, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and, the person or things to be seized, and the electronic communications or data to be accessed.[2]

[Pending voter approval at the 2016 general election.]

IOWA (pending) Article 1, Section 8

Personal security—searches and seizures. SEC. 8. The right of the people to be secure in their persons, houses, papers, effects, and electronic communications and data, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized, and the electronic communications and data to be accessed.

[Passed Iowa House 96-0, under consideration in Iowa Senate—if adopted, the proposed amendment would be placed on the 2018 ballot for voter approval][3]

[2] Minnesota Senate Republican Caucus, "Minnesotans deserve a vote to protect electronic data privacy" (Feb. 16, 2015). Available at: http://www.mnsenaterepublicans.com/minnesotans-deserve-vote-protect-electronic-data-privacy/ (accessed Aug. 24, 2015). Excerpts from the blogpost:

> "In today's world, every intimate detail of our lives exists in a digital format. Electronic data like emails and photos is a big part of what Minnesotans consider their private information," said Senator Branden Petersen (R-Andover), the bill's chief author in the Senate. "This constitutional amendment would make sure Minnesotans' data is fully protected without having to rely on the court system's interpretation of privacy. The public response for this bill has been overwhelmingly positive, so I'm looking forward to giving citizens the opportunity to vote in favor of protecting their electronic data."
>
> "Law enforcement currently uses a standard of 'reasonable suspicion' when accessing our data. This low standard gives them wide latitude to access and retain your personal information. Until last year, for example, government is able to track you without a warrant via your cell phone. Legislative action ended that practice, but we can go further. Your data is too valuable to leave up to the court's interpretation of privacy. This constitutional amendment would clarify and strengthen protections for all forms of electronic data."
>
> "It's important to remember adopting this amendment would not negatively impact law enforcement's ability to apprehend criminals. It's not an effort to ban the police from using electronic data in emergency situations; but they must have a good reason first."

[3] James Q. Lynch, *Iowa House Backs Amendment to Protect Digital Privacy*, THE GAZETTE, (February 25, 2016) http://www.thegazette.com/subject/news/government/iowa-house-backs-amendment-to-protect-digital-privacy-20160225.

WYOMING (defeated in Wyoming Senate 13-17) Article 1, Section 40

The right of individual privacy is essential to the well- being of a free society and shall not be infringed without the showing of a compelling state interest.

[The Wyoming Senate defeated a proposal to place the forgoing on the 2016 ballot in January 2015.][4]

[4] James Chilton, *Wyoming Senate kills right-to-privacy amendment*, CASPER STAR TRIBUNE, (January 29, 2015), http://trib.com/news/state-and-regional/govt-and-politics/wyoming-senate-kills-right-to-privacy-amendment/article_0c6be0bd-2c4e-5fc8-96ab-c38cc69d3649.html

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Bill of Rights and Voting Committee

Planning Worksheet
(Through April 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 – Qualifications of an Elector (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**	**11.12.15**	**3.11.16**	**4.14.16**	**4.14.16**		

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

June 9

July 14

August 11

September 8

October 13

November 10

December 8