OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Bill of Rights and Voting Committee

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

Part I

November 12, 2015

Ohio Statehouse
Room 017

OCMC Bill of Rights and Voting Committee

Chair	Mr. Richard Saphire
Vice-chai	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

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

BILL OF RIGHTS AND VOTING COMMITTEE

THURSDAY, NOVEMBER 12, 2015
9:30 A.M.
OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of September 10, 2015

  [Draft Minutes – attached]

IV. Reports and Recommendations

- Article I, Section 20 (Powers Reserved to the People)
  - First Presentation
  - Public Comment
  - Discussion
  - **Possible Action Item: Consideration and Adoption**

  [Report and Recommendation – attached]

- Article V, Section 4 (Exclusion from Franchise for Felony Conviction)
  - First Presentation
  - Public Comment
  - Discussion
  - **Possible Action Item: Consideration and Adoption**

  [Report and Recommendation – attached]

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

  [Report and Recommendation – attached]

V. Presentations

- None scheduled

VI. Committee Discussion

- Article V, Section 1 (Qualifications of an Elector)

  The committee chair will lead discussion on what steps the committee wishes to take regarding preparation of a report and recommendation on Article V, Section 1 which deals with the qualifications of an elector.

  [Memorandum by Shari L. O'Neill and E. Erin Oehler titled "Article V, Section 1 (Qualifications of an Elector) Introduction to and Comparison of State Voter Registration Laws" dated October 27, 2015 – attached]

VII. Next steps

- Committee discussion regarding the next steps it wishes to take in preparation for upcoming meetings.

  [Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Vice-chair Jeff Jacobson called the meeting of the Bill of Rights and Voting Committee to order at 9:37 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Committee member Karla Bell asked for a correction to her remarks as recorded on page four of the minutes, saying that one sentence did not indicate what she had actually said. She agreed that the sentence could be removed from the minutes. The committee then approved the minutes as corrected.

Reports and Recommendations

Article V, Section 6 (Idiots and Insane Persons)

Steven C. Hollon
Executive Direcctor

Executive Director Steven C. Hollon presented a draft report and recommendation regarding Article V, Section 6, relating to the disenfranchisement of mentally incapacitated persons.

Mr. Hollon said staff was presenting it for the committee's consideration. He said that the committee may want to change the title to avoid use of the phrase "idiots and insane persons,"

perhaps instead using the phrase "mental capacity to vote" or something of that nature. He said the staff thinks it has captured the sense of the committee, having narrowed down the different issues and factors related to this topic.

Vice-chair Jacobson then asked for discussion on the report and recommendation.

Vice-chair Jacobson said he sees there being two questions: first, does there need to be an expressed acknowledgement of an adjudication or can there just be a statement without mentioning an adjudication?

He said the second question is: what is it that a person in such a mental state loses, acknowledging that the committee has considered several formulations, and that the language provided in the report and recommendation is an additional formulation. He said it seems to him that the first choice in the report and recommendation, that the amendment needs to express a need for an adjudication, is a matter of conviction. He said the committee was trying to get at something that addressed people's concerns rather than retreat to armed camps.

Ms. Bell said that the second issue involves two things, how you phrase it: "mental capacity to vote" was agreed on, and that was one issue. She added, the second issue is whether there is a right or privilege to vote.

Vice-chair Jacobson said he meant to identify mental capacity to vote as a part of the second issue. He said his argument is that the concept of "privileges of an elector" involves doing more than voting. He said only electors can do certain things, adding that the problem he has with saying "rights" is that "we could be seen as deliberately excluding privileges," which was a word used in the original section. He said he is worried the committee would be saying the only right affected is the right to vote. He said he thinks it is safer and less problematic to refer to the individual's rights and privileges, whatever they may be, and that it is preferable to be "vague and all-encompassing in our vagueness, because rights and privileges would seem to run the gamut." He said this phrasing wouldn't leave anything out. He remarked that this statement differs from what he has suggested before.

Senator Michael Skindell commented that the privileges of an elector are very broad. He said, "for a director to be a director he has to be an elector. If you have a stroke as a director, do you automatically lose your position and your health care benefits?" He continued, asking whether this means that when a stroke victim would gain back his abilities, the governor could reappoint. He said his question is whether the committee has a grasp of what all of the privileges of an elector are. Vice-chair Jacobson said he assumes if that situation has arisen no one has ever enforced this section to permanently remove someone from office.

Ms. Bell said that is one of the things that was addressed by the 1970s Commission, including whether medical testimony would be required to determine whether capacity was present. She said presumably the committee would want the determination to be made by someone who was qualified and could provide medical or psychiatric evaluation. Sen. Skindell said Ms. Bell's comment touches on the issue of an adjudication, or lack of it. He said he believes there is a

constitutional provision that says a state director has to be an elector. So if someone is not an elector because of a mental incapacity, he cannot serve as a director.

Vice-chair Jacobson said he is concerned that if the committee is worrying about whether someone can't keep their job, the committee is letting the very specific circumstance defeat the general purpose the committee is trying to accomplish.

Sen. Skindell said he has brought this issue up in the past, asking whether the committee has a handle on what the privileges of an elector are. He said the privileges do include signing an initiative or referendum petition, as well as other acts, with other ramifications.

Committee member Doug Cole said he has a more mundane concern: the way it is written in the report and recommendation, the committee has instituted an ambiguity: no person who is X shall have either A or B. Vice-chair Jacobson agreed that the "ands and ors" are not as one might think when it comes to statutory construction.

Representative Ron Amstutz said the committee could say "as well" and it would have the same effect as "and". Vice-chair Jacobson said the Legislative Service Commission would have an opinion on this, and may not agree that is the solution.

Ms. Bell said the committee could change the recommendation as to the rights and privileges concept. She said they could modify the proposed recommendation to read that "No person who [has been adjudicated to lack][lacks] the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity."

Vice-chair Jacobson agreed that the new language proposed by Ms. Bell is meant to be all encompassing, saying everything is either a right or a privilege, or both.

Ms. Bell then moved to change the report and recommendation to read "rights and privileges of an elector." Mr. Cole seconded the motion. Vice-chair Jacobson then asked for discussion. Sen. Skindell asked for clarification of whether the section would read "rights and privileges of an elector," and this was confirmed.

A vote was taken, with all voting in favor except for Sen. Skindell. Vice-chair Jacobson reported that the motion had carried.

The committee then turned to the question of mental capacity as it should be referenced in the recommendation. Vice-chair Jacobson and Ms. Bell agreed that the proposed new section appropriately referenced "mental capacity to vote."

Vice-chair Jacobson then turned to the question of whether the committee needs to put into the constitution the requirement of an adjudication.

Judge Patrick Fischer said he goes back to the minutes the committee just passed, referencing his comments on page four. He said the legislature has not provided for an adjudication of mental capacity, and that, basically, the board of elections in each county handles it. He said the person

whose voting ability is challenged then has to bring a writ of mandamus. He described a writ of mandamus as "a bizarre and unusual writ," and that the proceedings for a writ are different than for a usual court proceeding. He asked, as a practical matter, when would the adjudication occur, every two or four years when the electoral rolls are cleared? He said the requirement of an adjudication adds something that is just not practical, unless you want to have many cases in the court system. He wondered whether the committee would be creating more problems than it is solving by requiring an adjudication. He said he understands the goal, but that it creates more problems than it actually takes care of.

Ms. Bell said the legislature could determine the appropriate procedure, and that would be in line with the proposals of the 1970s Commission. She added that changes in attitudes toward mental health over time mean that the legislature is in the best position to adopt laws reflecting the latest information, as opposed to attempting to address it in the constitution. She said the solution would be to give the legislature the right to set up procedures, because these are policy issues that are appropriately determined by the legislature.

Vice-chair Jacobson said use of the word "lacks" as opposed to the phrase "has been adjudicated to lack," would allow the legislature to act. He said his fear is that this will cause prosecutors to have to come into court with a mass of names of persons who are residents of a facility, to say all must be adjudicated to lose the right to vote. He said as a former party chairman he knows that has happened from time to time. He asked "Do you want to make a requirement that the state set up a 'star chamber' to consider the mental capacity of its citizens?"

Ms. Bell directed the committee to a quote from the report of the 1970s Commission, indicating a lack of guidance resolving how hearings must be conducted and whether medical evidence would be required. She read from the report that "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."

Vice-chair Jacobson agreed that this may be an issue but said it is for the General Assembly to determine. Judge Fischer commented that the 1970s Commission issued its recommendation before provisional balloting came into use, and that provisional balloting could take care of that issue rather easily. Ms. Bell said that the provisional balloting form is too complicated. Vice-chair Jacobson disagreed that provisional ballots are a problem, saying there were a lot of provisional ballots counted in the last election.

Vice-chair Jacobson asked whether there were any other arguments or proposed amendments to the wording, and suggested the committee take a vote.

Rep. Amstutz said he thinks the common sense approach allows for an improvement. He said, "for us to improve the provision, the committee needs to use the simple 'lack' and not put the word adjudication there." He said the need for adjudication will arise, but that needs to happen not in language in the constitution.

The committee then took a straw poll on whether to include "has been adjudicated to lack" in the recommendation. Three members of the committee, Ms. Bell, Sen. Skindell, and Representative Kathleen Clyde, voted to include that language. Four members of the committee, Vice-chair Jacobson, Mr. Cole, Judge Fischer, and Rep. Amstutz, voted not to use the phrase "has been adjudicated to lack."

Mr. Hollon then explained the procedure for approving a report and recommendation. He said this is the first presentation, and that the committee meets again in November. He said at that time the committee will have a new draft of the report and recommendation using the word "lacks" and will indicate the other change as "rights and privileges of an elector." He said it will be up to the chair and the committee to determine if those changes would result in the report and recommendation being a first reading. He said the other question is whether the rest of the report and recommendation is acceptable to the committee. He said, if not, the committee will make changes if needed.

Ms. Bell suggested, given that the committee has voted 4-3 at one meeting to include adjudication, and now 4-3 to exclude adjudication, whether it would be alright to continue to put both options in the proposed language. Vice-chair Jacobson remarked that the committee, comprised of an even 10 members, will deadlock if all attend and again vote as they have been voting.

Mr. Hollon said if that happens, the committee might let the full Commission determine the question. Vice-chair Jacobson said he is not comfortable passing that duty on to the Commission, saying, from his perspective, the provision can only be done in a certain way, one narrow, the other more broad, and that the versions are not equal. He said he would be uncomfortable in presenting both to the full Commission.

Rep. Clyde asked a procedural question, wondering whether, when the agenda indicates there is a report and recommendation, it is an "action item." Mr. Hollon answered that, if there is going to be a final vote, it is an action item. He said in this instance, staff is presenting options as a first presentation; it is not the final vote. Rep. Clyde said the process has been a little unclear, wondering what the vote means. She asked whether this is an informal editing process that is getting the committee to language for which the committee has a more formal process. Mr. Hollon said the committee has cinched down the language during the last few meetings.

Vice-chair Jacobson explained that the vote the committee had just taken was not the final vote. Mr. Cole asked whether there would be a roll call vote on the final recommendation, and Vice-chair Jacobson agreed that is what would occur.

Mr. Hollon said that, on the agenda next time, the committee will have this report and recommendation as a second presentation, action item, with language reflecting today's vote. Vice-chair Jacobson requested that staff also edit parts of the report and recommendation that might be inconsistent with the changes in the language that the committee just adopted.

Sen. Skindell asked what rights and privileges of an elector existed in 1851, both in the constitution and by statute, and wondered if any rights and privileges have been added since

then. He said he feels this is important to his consideration of this issue, because rights and privileges are much broader now than in 1851.

Vice-chair Jacobson commented that the constitution is a living document, and the extent to which there are more privileges today, they are meant to be included and restored. Sen. Skindell said his concern is that, when considering an amendment to this provision, should the committee consider the rights and privileges of an elector that are different than they were in 1851. He said, "if, now in statute, the General Assembly says a judge has to be an elector, and that judge has a stroke and is temporarily incapacitated, does that mean he has to forfeit his office? Or does he remain in office during that mental incapacity."

Vice-chair Jacobson said Sen. Skindell is talking about a different provision of the constitution and its impact on statute. He said what "rights and privileges" means is not governed by this section of the constitution. Sen. Skindell said his point is that the "rights and privileges of an elector" has changed since 1851, and what he is suggesting is the committee needs to understand that when discussing mental incapacity.

Judge Fischer said the word "elector" is important because of the United States Constitution. He said in 1803 and 1851, constitutional convention delegates were trying to make the Ohio Constitution consistent with the U.S. Constitution. He said he concluded that eliminating "elector" would be a mistake.

Sen. Skindell said, with regard to mental capacity, he is not comfortable taking away the right to vote and privileges of an elector. He said he wants to be sure the committee is considering this.

Rep. Amstutz said what Sen. Skindell is arguing is how a court would interpret the particular situation he described, but the question of whether the person is qualified at the outset is different from if something affects the person's mental capacity.

Sen. Skindell said if a person lacks the mental capacity to be an elector, the definition of "elector" is different than it was in the 1800s.

Senior Policy Advisor Steven H. Steinglass said that the word privilege is only used five or six times in the 1851 constitution, mostly outside of this context. He said it was not used in Article V, Section 1, but was used in Section 4 for felon disenfranchisement, and in Section 6. He said privilege is not a word that runs through the constitution outside of the one article the committee is looking at. He said the question may be different regarding statutory law.

Mr. Cole referenced one statute, Ohio Revised Code 1907.13, "Qualifications of County Court Judges," that references being an "elector." He said he can see the point that if a person has lost the rights and privilege of an elector he is no longer a qualified elector. But, he wondered, what clarity can the committee get on this?

Vice-chair Jacobson said he understands the concern, but the question asked for research will illuminate the question. He wondered whether the committee needs to clarify what specific rights and privileges one might lose by losing the ability to be an elector.

Mr. Cole said this is a statutory problem. Judge Fischer said if one is unable to vote, he shouldn't be a judge. Sen. Skindell expressed his concern that a stroke victim, even after rehabilitation, could forfeit his office. Mr. Cole said that is a statutory problem. Sen. Skindell continued that his point is that the law is different from 1851.

Vice-chair Jacobson said he is unaware this issue has ever come up. He said the committee is being careful about specifically saying "during the incapacity." He said the General Assembly should change the law if it is a problem.

Mr. Bell asked whether the question really relates to the policies that exist regarding leave and illness. She said there are protections available under the law, for example the Americans with Disabilities Act.

Sen. Skindell maintained that the committee needs to have an understanding of the meaning of "rights and privileges" before acting. He asked if staff could provide research on that question. Vice-chair Jacobson said the chair would have to request this. Mr. Hollon said he would consult Chair Saphire about the research question.

Committee Discussion:

Article V, Section 4 (Felon Disenfranchisement)

Vice-chair Jacobson then turned the committee's attention to the question of felon voting under Article V, Section 4 (Felon Disenfranchisement). Mr. Hollon said in the summer of 2014, the committee had held a straw vote to keep the language in the provision, but then Professor Douglas A. Berman from the Ohio State University Moritz College of Law presented to the committee on the section in October 2014. He said the committee had not held a great deal of discussion after that. He said staff needs to know whether the committee wants to keep Section 4 as is, or whether there is some suggestion about changing the language.

Judge Fischer said Prof. Berman wanted to know if there could be a provision for someone to petition the governor to be able to vote while in prison. Vice-chair Jacobson said the General Assembly has the right to make the decision on restoration of voting rights for felons. He asked whether the governor should have that right.

Mr. Cole observed that the General Assembly could provide for that by statute now, but the question is whether the constitution should say that.

Mr. Hollon said staff needs a preliminary indication of the committee's intention on this question. He said the committee did say keep the section as it is, but wondered whether that had changed after Prof. Berman's presentation.

Mr. Cole moved to recommend retaining the section as is, and Ms. Bell seconded. The committee voted unanimously to retain the section as is. Mr. Hollon then said next time staff will provide the committee with a first presentation of a report and recommendation recommending retention of Article V, Section 4 as is.

Article V, Section 1 (Who May Vote)

Vice-chair Jacobson then directed the committee to the last item on the agenda, which was a discussion for the first time of Article V, Section 1 (Who May Vote). Vice-chair Jacobson suggested the committee may want to look at the section's listing of political subdivisions, asking what that means and whether it could be revised. He said the issue could be put on the agenda for next time, and Mr. Hollon suggested staff could prepare a memorandum on the section.

Mr. Cole noted the difference in the language between Section 1 and the statute he had referenced (R.C. 1907.13) about qualifications to run for judge. He said the constitutional provision refers to "qualifications of an elector," while the statute refers to having to be a "qualified elector." He said the difference in those two phrases might suggest a solution to Sen. Skindell's concerns.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:50 a.m.

Approval:

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

_____
Richard B. Saphire, Chair

_____
Jeff Jacobson, Vice-chair

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE
BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION
ARTICLE I, SECTION 20

POWERS RESERVED TO THE PEOPLE

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 20 of the Ohio Constitution concerning powers that are reserved to or retained by the people. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article I, Section 20 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 20 reads as follows:

> This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people.

Adopted as part of the 1851 Ohio Constitution, the provision was preceded by Article VIII, Section 28 of the 1802 constitution, which reads:

> To guard against the transgressions of the high powers which we have delegated, we declare that all powers not hereby delegated remain with the people.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution.

Mirroring language from both the Ninth and Tenth Amendments to the United States Constitution, Section 20 has been viewed as lacking much legal force other than expressing the view that the powers of the government are derived from the people.[1] Despite the textual similarities to the federal amendments, Ohio courts have generally not looked to federal law in

interpreting Section 20. In part, this is because there is little United States Supreme Court guidance on the meaning of the Ninth Amendment and because the Tenth Amendment does not address the relationship between the individual and the state.

The Ninth Amendment states:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Ninth Amendment has been the subject of much scholarly commentary but little judicial construction. For example, constitutional scholars have variously interpreted the Ninth Amendment as preserving natural rights that were recognized in 1791 or that changed over time, as incorporating rights contained in state constitutions and the common law, and as supporting federalism and the autonomy of local government.[2] More importantly, the U.S. Supreme Court has been reluctant to offer much guidance as to the meaning of the Amendment. For example, the most noteworthy reliance on the Ninth Amendment by the Court was in a concurring opinion by Justice Goldberg in *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). In agreeing with the decision striking down the Connecticut limitation on birth control, Justice Goldberg concluded that a right of privacy in a marital relationship is a right retained by the people because the Ninth Amendment was meant to protect individual rights that otherwise were not listed in the Bill of Rights. However, despite Justice Goldberg's concurrence, the Court has not provided an authoritative construction of the amendment.[3] Instead, the Court has preferred to rely on the liberty provision of the Fourteenth Amendment when dealing with unenumerated rights.[4] As a result, Ohio courts are unable to rely on Ninth Amendment jurisprudence to give meaning to Section 20.

The Tenth Amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by the States, are reserved to the States respectively, or to the people.

The Tenth Amendment initially addresses the relationship between federal and state power. The Court once famously noted that "[t]he amendment states but a truism that all is retained which has not been surrendered." *United States v. Darby*, 312 U.S. 100, 124 (1941). In more recent years, however, the Court has utilized the Tenth Amendment to limit federal actions that commandeered state institutions. For example, the Court has held that Congress cannot require a state to choose between expanding Medicaid or losing all Medicaid-related federal funding (*Natl. Fedn. of Indep. Business v. Sebelius*, ___U.S.___, 132 S.Ct. 2566 (2012)); cannot require a state to choose between storing toxic waste or passing a regulatory scheme designed by Congress (*New York v. United States*, 505 U.S. 144 (1992)); and cannot require state police officers to perform background checks of prospective handgun purchasers (*Printz v. United States*, 521 U.S. 898 (1997)).

Although the Court has given some meaning to the first portion of the Tenth Amendment, it has not done the same for the final "reserved to the people" language of the amendment. Thus, the Tenth Amendment does not provide guidance as to the proper construction of Section 20.

Despite the absence of guidance from the federal constitution, a source of guidance could come from the constitutions of other states. Some state constitutions adopted prior to the federal constitution contained inherent or natural rights clauses,[5] and today a majority of states have unenumerated powers clauses. State courts have adopted a variety of approaches when interpreting these provisions, with decisions ranging from those assigning little significance to them to those concluding that they protect a variety of unenumerated rights.

Amendments, Proposed Amendments, and Other Review

Article I, Section 20 has not been amended since its adoption as part of the 1851 Ohio Constitution.[6] The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.[7]

Litigation Involving the Provision

Ohio courts generally have not dealt with Section 20, with the major decision construing it being over 100 years old. In 1876, the Ohio Supreme Court stated that the section "only declares that powers not delegated remain with the people. It does not purport to limit or modify delegated powers." *State ex rel. Atty. Gen. v. Covington*, 29 Ohio St. 102, 112 (1876). In that case, the General Assembly passed a law calling for the state to select the police commissioners of Cincinnati. Arguing the law was unconstitutional under Section 20, respondents argued that at the time of adoption of the 1851 constitution, the power to appoint a police board was local. Thus, because the power had not been delegated to the General Assembly, it was to remain with the people. The Court rejected this argument, stating:

> By such interpretation of the constitution, the body of law in force at the time of its adoption would have become as permanent and unchangeable as the constitution itself. For such argument would apply with equal force to every subject of legislation concerning which no special direction is contained in the constitution. Indeed, the true rule for ascertaining the powers of the legislature is to assume its power under the general grant ample for any enactment within the scope of legislation, unless restrained by the terms or the reason of some express inhibition.

Id. at 113-14.

Other Ohio Supreme Court decisions generally cite Section 20 only in conjunction with other sections of the Bill of Rights. *See, e.g., Mirick v. Gims*, 79 Ohio St. 174, 86 N.E. 880 (1908)(applying Section 20 and Article II, Section 28 to conclude that the police powers of the state are limited by the Declaration of Rights such that they may not be exercised in an

unreasonable or arbitrary manner). As such, Section 20 has not been considered as containing any particular rights not otherwise found in the Ohio Constitution.

Currently, Section 20 generally is only raised in death penalty *habeas corpus* cases in which the defendant argues his or her trial violated multiple state and federal constitutional rights. However, no court has relied on Section 20 to overturn a conviction. *See, e.g., State v. Mack,* 8th Dist. No. 101261, 2015-Ohio-2149, 2015 Ohio App. LEXIS 2075, 2015 WL 3560451; *Lang v. Bobby,* 2015 U.S. Dist. LEXIS 39365, 2015 WL 1423490 (N.D. Ohio).

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Conclusion

The Bill of Rights and Voting Committee concludes that Article I, Section 20 should be retained in its current form.

Date Adopted

After formal consideration by the Bill of Rights and Voting Committee on November 12, 2015 and _____, the committee voted to adopt this report and recommendation on _____.

Endnotes

[1] Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* 125 (2nd prtg. 2011).

[2] Ryan C. Williams, *The Ninth Amendment as a Rule of Construction*, 111 Columbia L. Rev. 498, 500 (2011).

[3] *See, e.g.*, Kurt T. Lash, *The Lost Jurisprudence of the Ninth Amendment*, 83 Texas L.Rev. 597, 708-709 (2005).

[4] *Id.* at 714.

[5] *See, e.g.*, Pa. Const. of 1776, Art. I, Declaration of Rights ("That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending of life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."); Va. Bill of Rights of 1776, Section 1 ("That all men * * * have certain inherent rights [that] cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.").

[6] Steinglass & Scarselli, *supra.*

[7] Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, 50-51 (Apr. 15, 1976), http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf, (last visited Oct. 5, 2015).

See also Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research, Appendix K, 478-79 (June 30, 1977), http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf (last visited Oct. 5, 2015).

This page intentionally left blank.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE V, SECTION 4

EXCLUSION FROM FRANCHISE FOR FELONY CONVICTION

The Bill of Rights and Voting Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article V, Section 4 of the Ohio Constitution concerning the disenfranchisement of persons convicted of a felony. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article V, Section 4 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article V, Section 4 reads as follows:

> The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.

The clear purpose of the provision is to disqualify from voting, and from holding public office, persons who have been convicted of a felony. 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]

Adopted as part of the 1851 Ohio Constitution, the provision was amended in 1976. The word "felony" is not original to the 1851 Ohio Constitution. Before it was revised, Article V, Section 4 stated:

> The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime.

The section is not self-executing, but empowers the General Assembly to enact laws that exclude felons from voting or holding office, rather than directly disenfranchising. In the exercise of this authority, the General Assembly enacted Ohio Revised Code Section 2961.01, which provides that a person who pleads or is found guilty of a felony "is incompetent to be an elector or juror or to hold an office of honor, trust, or profit." R.C. 2961.01(A)(1).[2] When a felon is granted parole, judicial release, or conditional pardon, or is released under a control sanction, the statute provides that he or she is competent to be an elector during that period. R.C. 2961.01(A)(2). Finally, under the statute, a felon is incompetent to "circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition." R.C. 2961.01(B).

Amendments, Proposed Amendments, and Other Review

The Ohio Constitutional Revision Commission ("1970s Commission") recognized that the phrase "infamous crime" was vague and out-of-date, and that the term "felony" would bring the constitutional provision into line with the criminal statutes. The Elections and Suffrage Committee ("E&S Committee") of the 1970s Commission, in attempting to discern the definition of "infamous crime," noted that in some states the term is synonymous with "felony."[3] A "felony" generally is described as an offense for which more than a year's incarceration may be imposed, or an offense otherwise identified as a felony in the particular criminal statute. R.C. 2901.02 (E), (F).

The E&S Committee also was influenced by the enactment in 1973 of the new Ohio Criminal Code (effective January 1, 1974), which created R.C. 2961.01, specifying that felons are disenfranchised only during their incarceration.[4] The E&S Committee initially recommended no change to the provision's phrase "bribery, perjury, or other infamous crime," focusing instead on a proposal to eliminate Section 6 (disenfranchisement of mentally incapacitated persons) and to add the phrase "and any person mentally incompetent for the purpose of voting" to the end of Section 4.[5]

However, on September 19, 1974, the E&S Committee issued a revision of its recommendation, by which it indicated it was no longer recommending that disenfranchisement of the mentally impaired be included in the provision.[6] The E&S Committee further recommended that reference to eligibility for public office be severed from the provision, instead suggesting that the General Assembly could enact laws to preclude felons from holding public office even after the conclusion of their incarceration. Most importantly, the E&S Committee recommended a change that would substitute the word "felony" for "bribery, perjury, or other infamous crime."[7]

The 1970s Commission did not approve the E&S Committee's revised recommendation in full, ultimately only recommending the substitution of the word "felony" for "bribery, perjury, or other infamous crime." In so recommending, the 1970s Commission articulated its desire "to preserve the flexibility now available to the General Assembly to expand or restrict the franchise in relation to felons in accordance with social and related trends."[8] Thus, the 1970s Commission recognized that the constitutional provision needed to track the statutory enactment under the

criminal code, which the 1970s Commission recognized as providing that "when a convicted felon is granted probation, parole, or conditional pardon, he is competent to be an elector during such time and until his full obligation has been performed and thereafter following his final discharge."[9]

The 1970s Commission recommendation, that Article V, Section 4 read that "The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony," was presented in the 111th General Assembly by resolution pursuant to Am. S.J.R. No. 16, submitted by ballot and approved by voters, with an effective date of June 8, 1976.[10]

Litigation Involving the Provision

Although felony disenfranchisement has been challenged under the Equal Protection Clause, it has been upheld by the United States Supreme Court. In *Richardson v. Ramirez*, 418 U.S. 24, 33 (1974), individuals with felony convictions argued that California's felony disenfranchisement law was unconstitutional because it was not narrowly tailored to meet a compelling state interest. However, the U.S. Supreme Court upheld the law on the basis that the Fourteenth Amendment guarantees the right to vote "except for participation in rebellion, or other crime." *Id.* at 54. The Court therefore found an "affirmative sanction" for felony disenfranchisement laws in the Fourteenth Amendment. *Id*.

The Ohio Supreme Court has cited Article V, Section 4 only a few times, primarily in cases pertaining to eligibility for public office, rather than to the disenfranchisement of felons.

In *Mason v. State ex rel. McCoy*, 58 Ohio St. 30, 50 N.E. 6 (1898), John W. Mason, after being elected Adams County probate judge, was removed from office for buying votes during his campaign. Mason argued that Article V, Section 4 mandated that the only way he could be removed from office was if he had been convicted of a criminal offense. The court disagreed, stating:

> The most that can be said for section 4, article 5, of the Constitution of Ohio is that the general assembly is, by it, given the absolute power to exclude any person from the privilege of ever being eligible to an office – it does not contemplate a grant of a right to an office to all persons not so made eligible to hold one.

Id., 58 Ohio St. at ___, 50 N.E. at 16.

In *Grooms v. State*, 83 Ohio St. 408, 94 N.E. 743 (1911), another Adams County voter fraud case, the court considered whether it was unconstitutional for a criminal sentence to include disenfranchisement for five years where the accused pled guilty to selling his vote for ten dollars.[11] Against Grooms' argument that bribery is not an "infamous crime," the court interpreted the prior version of Article V, Section 4, disenfranchising a person convicted of "bribery, perjury, or other infamous crime," as indicating bribery is, in fact, an "infamous crime." Although the decision does not specify the criminal charge, the court's decision appears

to be based on the notion that, regardless of whether selling a vote is categorized as "bribery," it does meet the definition of "infamous crime," and so the disenfranchisement was not unconstitutional.

The unsuccessful argument in *Mason, supra,* again was attempted in *In re Removal of Member of Council Joseph Coppola,* 155 Ohio St. 329, 98 N.E.2d 807 (1951), wherein the court reiterated that Article V, Section 4 does not infringe the power of the General Assembly to legislate as to reasonable qualifications for office, or to enact laws providing for the removal of a public officer for misconduct. *Id.*, 155 Ohio St. at 335-36, 98 N.E.2d at 811.

Interpreting the amended, current version of Article V, Section 4, the Ohio Supreme Court in *State v. Bissantz,* 40 Ohio St.3d 112, 532 N.E.2d 126 (1988), addressed whether a person convicted of bribery in office is forever barred from holding public office if his record is expunged. The court concluded the General Assembly was within its authority under Article V, Section 4 to impose qualifications on those who seek public office, and that the prohibition "reflects an obvious, legitimate public policy * * * that felons convicted of crimes directly related to and arising out of their position of public trust should not ever again be entitled to enjoy such a position." *Id.*, 40 Ohio St.3d at 116, 532 N.E.2d at 130.

Presentations and Resources Considered

On October 9, 2014, Douglas A. Berman, professor of law at the Moritz College of Law, Ohio State University, presented to the committee on felony disenfranchisement. Professor Berman said Ohio is recognized as one of the few states that allow felons to vote once they have been released from incarceration. Stating that voting is a right, privilege, and responsibility, Prof. Berman expressed that the state must have a strong rationale before disenfranchising.

Asserting the disproportionate impact of felon disenfranchisement on minorities, Prof. Berman cited to statistics showing that, while only 0.6 percent of Ohio's entire voting population is disenfranchised by having a current felony sentence, that rate is four times higher for African Americans, where 2.4 percent of all voting-age Ohioans of this racial category are disenfranchised by having a felony conviction. Prof. Berman noted that approximately 25,000 of the 50,000 prison population in Ohio is African American.

Prof. Berman asserted that re-enfranchised felons are less likely to commit additional crimes because voting allows them to invest in the laws of the state. Upon release from incarceration, the act of voting becomes a strong symbol of re-entry into society, according to Prof. Berman.

Stating his belief that even those currently serving time should be allowed to vote, Prof. Berman stated that Maine and Vermont allow for this without problems, and that the administrative burden of providing voting opportunities to prisoners is diminished by use of absentee ballots. To Prof. Berman, voting engenders a desire to be involved and informed. Prof. Berman added that the voting right is not about punishment, but about a felon's engagement with the laws to which he is subject.

Proposing a potential change to Section 4, Prof. Berman suggested that it might be amended to include an express provision allowing incarcerated felons to petition the governor to be re-enfranchised.

Discussion and Consideration

Upon discussion, the consensus of the committee is that Ohio's disenfranchisement of felons only during the period of their incarceration is a reasonable approach that appropriately balances the goals and interests of the criminal justice system with those of incarcerated felons.

Upon considering Prof. Berman's suggestion that the section be revised to include a provision allowing the governor authority to grant petitions to vote by incarcerated felons, the committee concludes that the review and/or modification of the governor's authority is not within the purview of this committee's charge. The committee further acknowledges the possibility that the broad scope of the governor's power to grant reprieves, commutations, and pardons under Article III, Section 11 may already encompass an ability to permit felon enfranchisement. Thus, the committee makes no recommendation in this regard.

Conclusion

The Bill of Rights and Voting Committee concludes that Article V, Section 4 should be retained in its current form.

Date Adopted

After formal consideration by the Bill of Rights and Voting Committee on November 12, 2015 and _____, the committee voted to adopt this report and recommendation on _____.

Endnotes

[1] Article V, Section 1 provides:

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

[2] R.C. 2961.01, relating to civil rights of convicted felons, provides:

> (A) (1) A person who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned, unless the plea,

verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.

(2) When any person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector thereafter following final discharge. The full pardon of a person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under division (A)(1) of this section, but a pardon shall not release the person from the costs of a conviction in this state, unless so specified.

(B) A person who pleads guilty to a felony under laws of this state or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition.

(C) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(2) "Non-jail community control sanction" means a community control sanction that is neither a term in a community-based correctional facility nor a term in a jail.

(3) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

[3] Ohio Constitutional Revision Commission (1970-77), Proceedings Research, Volume 5, Elections and Suffrage Committee Research Study No. 25, 2365 (Aug. 20, 1973), http://www.lsc.ohio.gov/ocrc/v5%20pgs%202195-2601%20elections-suffrage%202602-2743%20local%20govt.pdf (last visited Aug. 13, 2015).

[4] Ohio Constitutional Revision Commission (1970-77), Vol. 5, Elective Franchise Recommendations, *supra*, at 2513 (Apr. 22, 1974).

For an in-depth discussion of the 1973 enactment of the Criminal Code, see Harry J. Lehman and Alan E. Norris, *Some Legislative History and Comments on Ohio's New Criminal Code*, 23 Clev.St.L.Rev. 8 (1974).

[5] Ohio Constitutional Revision Commission (1970-77), Volume 5, Elective Franchise Recommendations, *supra*, at 2513-16.

[6] Ohio Constitutional Revision Commission (1970-77), Volume 5, Elections and Suffrage Committee Revision of Committee Recommendation, *supra* at 2586 (Sept. 19, 1974).

[7] *Id.*

[8] Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Part 7, Elections and Suffrage, 21-22 (March 15, 1975), http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf (last visited Aug. 13, 2015).

See also Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix G, 264-65 (June 30, 1977),

http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf (last visited Sept. 16, 2015).

[9] *Id.*

[10] *Id.*

[11] *Grooms* was yet another case of vote-buying in Adams County, which had experienced a severe problem with the corrupt practice around the turn of the last century. As described by one author:

> During Christmas week, 1910, Judge Albion Z. Blair and a grand jury revealed a state of affairs in this Ohio River county which shocked Ohio and the nation. For thirty years, the testimony disclosed, voters of every class and political affiliation – clergymen, physicians, prominent businessmen, as well as humble farm hands and the village poor – had been selling their votes to candidates for office of either party, whichever was willing to pay the price. When the grand jury completed its work in mid-January, 1911, 1,690 persons – all vote sellers – were indicted and pleaded guilty before Judge Blair. Since his purpose in initiating the probe had been to stop the practice rather than to exact a heavy punishment, his penalties were light. A typical sentence was a fine of twenty-five dollars, with all but five dollars remitted, a prison sentence of six months, at once suspended, and loss of voting rights for five years, which was absolute. The number disenfranchised totaled nearly a third of the voting population.

Hoyt Landon Warner, *Progressivism in Ohio 1897-1917*, 267-68 (1964).

This page intentionally left blank.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE V, SECTION 6

MENTAL CAPACITY TO VOTE

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

Recommendation

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

> *No person who ~~[has been adjudicated to lack] [lacks]~~ the mental capacity to vote shall have the rights ~~to vote~~ and ~~the~~ privileges of an elector during the time of incapacity.*

Background

Article V of the Ohio Constitution concerns the Elective Franchise.

Article V, Section 6 reads as follows:

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

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

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

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

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

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

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

Amendments, Proposed Amendments, and Other Review

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

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

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

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

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

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

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

Litigation Involving the Provision

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

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

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

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

Presentations and Resources Considered

Michael Kirkman, Disability Rights Ohio

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

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

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

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

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

Research Materials

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

Staff research presented to the committee indicates that voting is a fundamental right that the United States Supreme Court calls the "essence of a democratic society." *Reynolds v. Sims*, 377 U.S. 553, 555 (1964). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In addition, disenfranchisement is considered to be a denial of a fundamental liberty, subject to basic due process protections that ensure fundamental fairness. *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 24 (1981). In reviewing provisions affecting the

exercise of the elective franchise, courts apply the balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), by which the individual's interest in participating in the democratic process is weighed against the state's interest in ensuring that those who vote understand the act of voting. *Dunn v. Blumstein*, 405 U.S. 330 (1972). Because voting is a fundamental right, the high court has held a state's interest in limiting its exercise must be compelling, and the limitations themselves must be narrowly tailored to meet that compelling interest. *See, e.g., Kramer v. Union Free Sch. Dist.*, 395 U.S. 621 (1969); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008).[7]

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

Additional Resources

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

Discussion and Consideration

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

The committee also discussed whether to retain the section's "self-executing" status, or whether to include language that would specifically authorize or require the General Assembly to create laws governing the disenfranchisement of mentally incapacitated persons. On this question, some members asserted that expressly requiring or empowering the General Assembly to act was unnecessary because this legislative authority is inherent. It was the consensus of the committee that expressly requiring or enabling action by the General Assembly is unnecessary, and so the committee concluded that the section need not 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 ~~to vote~~ 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.

On taking a straw poll, committee members realized they were evenly divided between those who wanted to include a reference to adjudication, and those who did not. Acknowledging

persuasive arguments on either side of the issue, and not wishing to delay the process of modifying the section by further discussion of a question on which the committee was unlikely to reach a consensus, the committee concluded that its recommendation could 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 ~~to vote~~" and ~~the "~~privileges of an elector," and that the disenfranchisement would only be during the period of incapacity.

~~Because the committee failed to reach a consensus about adjudication, it~~ A majority of the committee concluded that ~~the decision of whether to expressly require an adjudication could be left to the full Commission.~~ the phrase "lacks the mental capacity to vote" was preferred over "has been adjudicated to lack the mental capacity to vote" because the simple use of the word "lack" suggests that the determination of whether someone lacked that capacity would occur before disenfranchisement. ~~Alternately, the Commission could forward the committee's recommendation to the General Assembly without resolving the question, allowing the issue to be worked out in the legislative process.~~

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

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

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

Conclusion

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

> *No person who ~~[has been adjudicated to lack] [lacks]~~ the mental capacity to vote shall have the rights ~~to vote~~ and ~~the~~ privileges of an elector during the time of incapacity.*

The recommended amendment serves the goal of:

- Removing all outdated or pejorative references to mentally incapacitated persons;

- Specifying that the disenfranchisement only applies to the period of incapacity; and
- Requiring that only mental incapacity *for the purposes of voting* would result in disenfranchisement.

Date Adopted

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

Endnotes

[1] Article V, Section 1 provides:

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

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

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

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

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

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

[5] *Id.* at 2516.

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

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

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

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Bill of Rights and Voting Committee

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

Part II

November 12, 2015

Ohio Statehouse
Room 017

This page intentionally left blank.

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 E. Erin Oehler, Student Intern**

DATE: **October 27, 2015**

RE: **Introduction to and Comparison of State Voter Registration Laws In Article V, Section 1 (Qualifications of an Elector)**

Introduction

The Bill of Rights and Voting Committee has asked staff to provide research that will assist in the committee's review of Article V, Section 1 (Qualifications of an Elector).

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.

This memorandum focuses on one aspect of the section: the requirement that a voter must be registered to vote for thirty days in order to qualify as an elector. The memorandum is intended as a general introduction to the topic of voter registration as well as indicating current trends in state voter registration laws.

To facilitate the committee's review of Article V, Section 1, the attachments to this memorandum provide two surveys of voting registration laws across the United States. The first survey indicates which states provide for online voter registration, and is provided as Attachment

A. The second survey indicates which states allow same day registration. It is provided as Attachment B.

Background

Currently, Ohio does not provide for online voter registration. However, there are three bills in committee in the House and one bill in committee in the Senate which would allow for online voter registration. House Bill 41, introduced in February 2015 by Rep. Michael Stinziano, and House Bill 181, introduced in April 2015 by Rep. Kathleen Clyde, have been assigned to the House Government Accountability and Oversight Committee, but have not yet had a first hearing. Senate Bill 63, introduced in February 2015 by Sen. Frank LaRose, passed the Senate in June 2015, was considered for the first time by the House in June 2015, and has been assigned to the House Government Accountability and Oversight Committee. Senate Bill 158, introduced in May 2015 by Sen. Kenny Yuko, has been assigned to the Senate Government Oversight and Reform Committee, and has not had a first reading.

There is no current legislation in either the House or the Senate that would allow for same day voter registration.

Analysis

Presently, there are 28 states[1] that allow for online voter registration (D.C. included). Twenty-three states[2] allow for online voter registration by statute, and 5 states[3] did not require legislation to implement online voter registration. Of the 23 states that do not allow for it, 10[4], including Ohio, have pending legislation that would amend a statute in order to allow for online voter registration.

Iowa is also engaged in the process of allowing online voter registration, although its measure does not require legislation for implementation. In January 2015, the Iowa Voter Registration Commission voted unanimously to allow online voter registration.

Additionally, Maine and Montana had proposed bills to allow online voter registration this year, but in Maine, the bill died in the Senate, and, in Montana, the bill died in the House. Nationwide, there has been no movement to amend a state constitution to allow for online voter registration.

[1] AZ, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, KS, LA, MD, MA, MN, MO, NE, NV, NY, OK, OR, PA, SC, UT, VA, WA, WV

[2] CA, CO, CT, DE, FL, DC, GA, HI, IL, IN, LA, MD, MA, MN, NE, NV, OK, OR, SC, UT, VA, WA, WV

[3] AZ, KS, MO, NY, PA

[4] AK, ID, KY, MI, NJ, NM, OH, RI, TX, WI

Currently, 14 states[5] have same-day voter registration (D.C. included). All of the states that allow for it have done so by statute and do not have a restrictive clause in their constitutions that prevent same-day registration. Of the 36 states[6] that do not have same day voter registration, 14[7] have proposed legislation to allow for it. Thirteen of them do not have restrictive clauses in their constitutions and have proposed only amendments to statutory language in order to allow for same day voter registration.

The remaining state, New York, does have a restrictive clause in its state constitution. Therefore, New York has two proposed bills. One would delete the restrictive clause in the constitution, and the other would amend a statute to allow for same-day voter registration. Further, there are six states[8], including Ohio, that have restrictive clauses in their constitutions. New York is the only one to propose changes thus far.

Reception of Online Voter Registration

The Brennan Center for Justice at the New York University School of Law maintains an online data resource that, among other topics, has addressed voter registration modernization efforts in the 50 states. The following excerpts from the website are provided as a brief overview of what some states are doing with regard to online voter registration.

Arizona[9]

> Automated and online registration have transformed the process of voter registration in Arizona. Mail-in registration, which made up 60 percent of all transactions as recently as 2001-02, fell below 20 percent in 2007-08. Now online registrations predominate in election years and MVD registrations in off years. Voters were quick to embrace both systems, and together they account for 70 percent of all registrations received between 2007 and 2009.
>
> In Maricopa County, home to over half of all Arizona residents, officials have found that young voters are particularly drawn to online registration. They recently determined that 18 to 34 year-olds, an age group that accounts for only some 25 percent of registered voters nationwide, have submitted 36 percent of all updates made through the online portal. With regard to party preference, Maricopa County's data suggest that online users are fairly typical of the general population.

[5] CA, CO, CT, DC, HI, IL, IA, ME, MN, MT, NH, VT, WI, WY

[6] AL, AK, AZ, AR, DE, FL, GA, IN, KS, KY, LA, MD, MA, MI, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV

[7] AL, AK, DE, GA, MA, MI, NE, NV, NJ, NM, NY, NC, PA, UT

[8] AR, MS, NY, OH, OR, VA

[9] https://www.brennancenter.org/analysis/vrm-states-arizona (last visited November 2, 2015).

Maricopa County officials have also found that electronic registrations are far less prone to defects than paper forms. On August 17, 2009, they surveyed all records then "on suspense"—applications that contain incomplete, inaccurate, or illegible information, and which require further input from applicants. Paper applications, which made up only 15.5 percent of all registrations received in 2009, accounted for over half of these suspended records. Conversely, electronic submissions were a minority in the suspense pool despite accounting for over 84 percent of all registrations.

Cost savings have been substantial, particularly in the Phoenix area. Maricopa County automatically reviews and accepts about 90 percent of the electronic transactions it receives, and officials there estimate they spend an average of 3¢ to process an electronic application compared to 83¢ per paper form. As the county received 462,904 applications electronically in 2008, this represents savings of over $370,000. Factoring in other savings on labor and printing costs, the county saved well over $450,000 in 2008. In return, state officials estimate they spend a total of at most $125,000 annually to operate, enhance, and maintain the online and MVD systems.

Colorado[10]

Almost 5,000 people registered online in the system's first three months, with one of the online bill's sponsors, Democratic State Representative Joe Miklosi, declaring himself "absolutely thrilled" with this response. The Secretary of State's office has provided a demographic breakdown of this group of users that reveals several notable trends.

The most striking is online registration's popularity with younger voters. While 40 to 60 year-olds accounted for 34 percent of users, 17-30 year-olds accounted for 33 percent (17 year-olds are permitted to register if they will turn 18 before the next election). This parity is highly unusual, because younger voters usually lag far behind older ones in their rate of registration. In 2008, 18 to 30 year olds only accounted for about 20 percent of registered voters nationwide, whereas 40 to 60 year olds accounted for 40 percent. Analysis also determined that men made up 54 percent of these initial online users (compared to 48 percent of all registered voters in 2008), while a plurality (39 percent) affiliated with the Republican Party.

Delaware[11]

Delaware has boasted one of the nation's most successful [Department of Motor Vehicles ("DMV")] registration programs since the mid-1990s, regularly

[10] https://www.brennancenter.org/analysis/vrm-states-colorado (last visited November 2, 2015).

[11] https://www.brennancenter.org/analysis/vrm-states-delaware (last visited November 2, 2015).

accounting for around 80 percent of all voter registrations in the state. Initial data suggest that e-Signature has not been drawing more people into the process, though it may account for a significant increase in changes of party affiliation.

E-signature has substantially reduced the time and expense of processing voter registrations. Each DMV office will now save the cost of printing an estimated 1000 pages a day in election years, and 300 a day in off years. And each registration transaction now takes DMV employees an average of 30 seconds to complete, compared to 90 seconds in the past. A large drop in workloads since e-Signature debuted also allowed officials to eliminate five staff vacancies in 2009, representing more than 10 percent of Delaware's total election staff. This move has already created $200,000 in annual [savings], according to Commissioner of Elections Elaine Manlove, and she hopes to eliminate up to four additional positions as they become vacant.

Officials have encountered no technical difficulties or security problems with either online or DMV registration, and are considering ways to expand both systems. One idea is to allow the online system to retrieve signatures from the DMV. And officials are currently planning to introduce e-Signature into the offices of social service agencies that offer voter registration.

Florida[12]

Election officials in Leon County, home to Tallahassee, have found that the automated system works smoothly and conveniently, though in a few instances they have failed to receive a person's registration data. When the possibility of this arises, they can confirm that a person attempted to register by examining her printed receipt from the DHSMV or by contacting the agency directly to inquire whether her file has been marked for voter registration. If they find that a registration attempt occurred, they will add the person to the rolls or validate her provisional ballot.

Georgia[13]

State Director of Elections Wesley Tailor reports that, beyond savings at the county level, full automation has relieved state officials of printing, sorting, and mailing expenses; formerly they served as intermediaries in directing forms from DDS offices to the appropriate county election officials, a process that could take up to ten days in its entirety.

[12] https://www.brennancenter.org/analysis/vrm-states-florida(last visited November 2, 2015).

[13] https://www.brennancenter.org/analysis/vrm-states-georgia (last visited November 2, 2015).

Indiana[14]

> Approximately 2,500 people used the online system in its first month, and election officials expect the rate of use to increase registration deadline for the 2010 general election approaches. According to Regina Harris, the Registration Administrator for Lake County, her office can process paperless registrations in half the time needed for a paper form, or even less.

Kansas[15]

> Kansas recently saw a large jump in DMV registrations. The state reported approximately 110,000 of these transactions in 2007-08, compared to over 107,000 in 2009 alone. Use of the online portal was limited in the months after its introduction, likely due in part to the fact that there were no regular elections during that time.
>
> Kansas's paperless systems have improved the registration process in a variety of ways. One local official estimates that counties can process electronic applications twice as quickly as paper forms. And automation at the DMV has reduced the number of registrations forwarded to the wrong county, while fewer unregistered people are erroneously supplying a change of address rather than making a new registration. According to Brad Bryant, the State Election Director, the online and automated DMV registration systems have not been difficult to develop or maintain.

Louisiana[16]

> Commissioner of Elections Angie LaPlace anticipates that, by reducing the amount of data entry required of local election officials, the online system will reduce the potential for data entry errors, and will also help relieve some of the burden placed on these officials during the busy period before elections.
>
> In the Orleans Parish Registrar of Voter's office, Assistant Chief Deputy Rachel Penns estimates that her office can process an electronic registration in the half the time required for a paper form. She notes that online system also saves time for her office by providing registrations that are consistently accurate and complete, and describes the lack of legibility problems, in particular, as "really, really wonderful."

[14] https://www.brennancenter.org/analysis/vrm-states-indiana (last visited November 2, 2015).

[15] https://www.brennancenter.org/analysis/vrm-states-kansas (last visited November 2, 2015).

[16] https://www.brennancenter.org/analysis/vrm-states-louisiana (last visited November 2, 2015).

Nevada[17]

> [State Elections Deputy Matt] Griffin anticipates that the online system will prove more reliable and more secure than paper-based registration, while also delivering "huge" cost savings. He notes that the address verification process, in particular, will likely ensure a higher degree of accuracy and dramatically reduce the time county officials spend reviewing applications. He further expects that the online system will succeed in drawing in new applicants on its own, especially among younger residents, and thus reduce the role of sometimes-problematic voter registration drives.
>
> Larry Lomax, the Clark County Registrar of Voters, has found that, thanks to the lack of data entry and the verification checks that occur before a person even submits an online registration, a large majority of these applications require "almost no work" when they reach his office. As of September 23, 2010, less than a month since the online portal debuted, he estimated that online submissions have come to account for one in every five new registrations he receives.

Pennsylvania[18]

> Pennsylvania has been processing a very large number of motor vehicle registrations for many years. Between 2001 and 2008 the state received an average of over a million of these registrations annually, a total equivalent to over 10 percent of its voting-age citizen population. Full automation does not appear to have impacted these registration rates.
>
> State election officials report that electronic applications from PennDOT are more accurate than paper, and quicker to process. They also note that the new system allows them to trace the history of any transaction from the time it is first submitted at a PennDOT office. On the debit side, they find that visitors who are not yet registered sometimes mistakenly submit address updates (rather than a new registration); county officials must then attempt to contact these people in order to obtain the full range of information they require to make a new registration.

Washington[19]

> DOL registrations have increased dramatically since 2008. From 95,000 in 2004 and 103,000 in 2007, their number grew to 178,000 in 2008 and 205,000 in 2009. In relative terms, the DOL accounted for approximately 15 percent of all

[17] https://www.brennancenter.org/analysis/vrm-states-nevada (last visited November 2, 2015).

[18] https://www.brennancenter.org/analysis/vrm-states-pennsylvania (last visited November 2, 2015).

[19] https://www.brennancenter.org/analysis/vrm-states-washington (last visited November 2, 2015).

registrations recorded by the Secretary of State's office in 2004 compared to about 27 percent in 2008. In 2009 this proportion rose to 70 percent. Voters were also quick to embrace online registration, submitting over 200,000 online transactions in 2008, of which 18-24 year olds submitted nearly one in three.

Paperless registration saved over $126,000 for the Secretary of State's office in 2008, minus the one-time cost of mailing electronic registrations to counties still in the process of upgrading their systems. The effect has been even greater at the county level. Officials in Pierce County estimate that they can process an electronic registration in half the time required for a paper form, or less. They also report that electronic registrations are less error-prone than paper, requiring less follow-up work with voters. A recent survey of four Washington counties has further determined that they save "anywhere from $.50 to $2.00" on each registration they receive electronically.

In addition, DOL officials estimate their employees save 30 seconds per registration over the old approach, while offices save on the costs printing and processing paper. DOL IT Specialist Michael Bethany also reports that his office received a large amount of positive feedback from employees and visitors alike when it first introduced the new system. And Election Information Services Manager David Motz has estimated that, assuming people who submitted online transactions would otherwise send mail-in forms, the online portal saved voters nearly $90,000 in postage in 2008.

Reception of Same Day Voter Registration

News reports suggest that voters generally support same-day registration in states that permit it, and that attempts to eliminate same-day registration have not been successful.

Maine

(The following is a direct excerpt from Bangor *Daily News*)[20]

By a relatively wide margin, Mainers on Tuesday overturned a recently passed law that would have ended a 38-year-old practice of allowing voters to register on Election Day.

Question 1 asked: "Do you want to reject the section of Chapter 399 of the Public Laws of 2011 that requires new voters to register to vote at least two business days prior to an election?"

[20] https://bangordailynews.com/2011/11/08/politics/early-results-indicate-election-day-voter-registration-restored/ (last visited November 2, 2015).

> "Maine voters sent a clear message: No one will be denied a right to vote," said Shenna Bellows, director of the American Civil Liberties Union of Maine. "Voters in small towns and big cities voted to protect our constitutional right."

Minnesota

(The following is a direct excerpt from CNN)[21]

> Americans who want to vote should be able to decide that on Election Day. That's true in Minnesota, where you can walk into your polling place, register and cast a ballot -- all at the same time. It's not true in many states, where voter registration closes days or weeks before Election Day. Research shows that states with same-day registration have turnout rates 5 percent to 7 percent higher than those that don't, according to Michael McDonald at George Mason University.
>
> The drawback, some would argue, is an increased risk of voter fraud. [Mark] Ritchie, the [former] Minnesota secretary of state, told me that hasn't posed a real threat, and the state has been using the system since the 1970s. "Imagine you're registering a voter that's standing in front of you versus registering someone through a form in the mail. Which one of those has more integrity? Obviously, the person who is standing in front of you." The state checks on Election-Day registrations against computer databases the next day to catch duplicates, he said.

Montana

(The following is a direct excerpt from Demos)[22]

> Legislative Referendum 126 (LR-126), which would have cut off the voter registration deadline from when the polls closed on Election Day to the Friday before, met resounding defeat upon being placed into the hands of Montanans. Fifty-seven percent of voters opposed the repeal of Montana's SDR program compared to 43 percent who favored the referendum.
>
> In an Explainer outlining the illogical and unproven arguments of removing SDR, Demos cites earlier polling that delivers the same message: Montana voters view SDR as a benefit as opposed to hindrance.
>
> Montana's Same-Day Registration fight is relatively new. Detractors' first salvo against SDR began in 2011, with the passage of HB 180 by the state legislature. Then-Governor Brian Schweitzer vetoed that bill, but in 2013, a similar SDR-repeal measure was introduced in House; its language was used for a companion bill in the Senate. This bill also passed, and was thereafter also vetoed, this time

[21] http://www.cnn.com/2012/10/27/opinion/ctl-minnesota-best-voting/ (last visited November 2, 2015).

[22] http://www.demos.org/blog/11/7/14/montana-voters-keep-same-day-registration (last visited November 2, 2015).

by Governor Steve Bullock. LR-126 was subsequently born out of a desire to circumvent gubernatorial veto power, in the hopes that voters would agree that the reform caused longer lines and too much overall confusion at the polls.

The problem with the sentiment behind LR-126, however, was that Montanans had already made it clear that they felt differently about Same-Day Registration. Polling showed that 70 percent of respondents believed SDR to be necessary to protect voter participation in Montana, with 66 percent also believing that SDR protects Montana's democracy overall. More than 28,000 Montanans have benefitted from SDR since it became available in 2006.

Montana Secretary of State Linda McCulloch perhaps states it best: "There is no reason to change a law that works, especially when that law secures your fundamental right to actively participate in our democracy."

Conclusion

This memorandum provides a starting point for the Bill of Rights and Voting Committee's review of the voter registration portion of Article V, Section 1. Staff is pleased to provide additional research on this topic as needed.

ATTACHMENT A

SURVEY OF VOTER REGISTRATION PROVISIONS

State	Online Registration?	Year Implemented	How Enacted	Current Proposed Legislation	Sources
Alabama	No	N/A	N/A	No	AL Const. Amend. 579; brennancenter.org; Ala.Code 1975 § 17-4-60
Alaska	No	N/A	N/A	Yes (SB 93 to amend statute)	AK Const. Art. 5, Sect. 4; 2015 Alaska Senate Bill No. 93
Arizona	Yes	2002	No legislation required	N/A	AZ Const. Art. 8, Sect. 12; A.R.S. § 16-131
Arkansas	No	N/A	N/A	No	AR Const. Amend. 39; http://www.dmv.org/ar-arkansas/voter-registration.php
California	Yes	2012	Statute	N/A	ncsl.org; CA Const. Art. 2, § 3; Ann.Cal.Elec.Code § 2196
Colorado	Yes	2010	Statute	N/A	ncsl.org; CO Const. Art. 7, § 1; C.R.S.A. § 1-2-202.5
Connecticut	Yes	2014	Statute	N/A	ncsl.org; CT Const. Art. 6, § 1; CT Const. Art. 6, § 11; C.G.S.A. § 9-19k
Delaware	Yes	2014	No legislation required	N/A	ncsl.org; Del.C.Ann. Const., Art. 5, § 4

District of Columbia	Yes	2015	Statute	N/A	ncsl.org; DC ST § 1-1001.02
Florida	Yes	Not yet implemented; bill passed in 2015	Statute	N/A	ncsl.org; F.S.A. Const. Art. 6 § 2; 2015 SB 228
Georgia	Yes	2014	Statute	N/A	ncsl.org; GA Const. Art. 2, § 1; Ga. Code Ann., § 21-2-221.2
Hawaii	Yes	2015	Statute	N/A	ncsl.org; Const. Art. 2, § 4; HRS § 11-15.3
Idaho	No	N/A	N/A	Yes (HB 488—proposed in 2014 to amend statute—being held in the State Affairs Committee)	ID Const. Art. 6, § 2; I.C. § 34-407; I.C. § 34-404; 2014 HB 488
Illinois	Yes	2014	Statute	N/A	ncsl.org; IL Const. Art. 3, § 1; 10 ILCS 5/1A-16.5
Indiana	Yes	2010	Statute	N/A	ncsl.org; IN Const. Art. 2, § 2; IC 3-7-26.7
Iowa	No	N/A	No legislation required	Yes (In Jan. 2015, the Iowa Voter Registration Commission voted unanimously to adopt rules establishing an online registration system)	IA Const. Art. 2, § 1; I.C.A. § 48A; http://www.desmoinesregister.com/story/news/politics/2015/01/20/online-voter-registration-iowa/22062699/

Kansas	Yes	2009	No legislation required	N/A	ncsl.org; KS Const. Art. 5, § 4; K.S.A. 25-2309
Kentucky	No	N/A	N/A	Yes (HB 334 to amend statute)	KY Const. § 147; KRS § 116.045; 2015 Kentucky House Bill No. 334
Louisiana	Yes	2010	Statute	N/A	ncsl.org; LA Const. Art. 11, § 1; LSA-R.S. 18:31
Maine	No	N/A	N/A	No (2015 bill proposed to amend statute—died in Senate)	ME Const. Art. 2, § 1; 21-A M.R.S.A. § 122
Maryland	Yes	2012	Statute	N/A	ncsl.org; MD Constitution, Art. 1, § 2; MD Code, Election Law, § 3-201
Massachusetts	Yes	2015	Statute	N/A	ncsl.org; M.G.L.A. 51 § 33A
Michigan	No	N/A	N/A	Yes (SB 61 to amend statute)	MI Const. Art. 2, § 1; M.C.L.A. 168.497; 2015 Michigan Senate Bill No. 61
Minnesota	Yes	2013	Statute	N/A	ncsl.org; MN Const. Art. 7, § 1, M.S.A. § 201.061
Mississippi	No	N/A	N/A	No	MS Const. Art. 12, § 242; Miss. Code Ann. § 23-15-37; Miss. Code Ann. § 23-15-47
Missouri	Yes	2014	No legislation required	N/A	ncsl.org; MO Const. Art. 8, § 5; V.A.M.S. 115.151

Montana	No	N/A	N/A	No (2015 bill proposed to amend statute died in House)	MT CONST Art. 4, § 2; MCA 13-2-110
Nebraska	Yes	2015	Statute	N/A	ncsl.org; NE Const. Art. VI, § 1; Neb.Rev.St. § 32-304
Nevada	Yes	2012	Statute	N/A	ncsl.org; NV Const. Art. 2, § 6; N.R.S. 293.506;
New Hampshire	No	N/A	N/A	No	NH Const. Pt. 1, Art. 11; N.H. Rev. Stat. § 654:7-a
New Jersey	No	N/A	N/A	Yes (A4613 to amend statute—bill passed both by House and Senate)	NJ Const. Art. 2, § 1, ¶ 3; Chapter 31 of Title 19 of the Revised Statutes; 2014 A4613 Establishes "The Democracy Act"
New Mexico	No	N/A	N/A	Yes (SB 643 to add a section to the Election Code)	NM Const. Art. 7 § 1; 2015 Regular Session SB 643
New York	Yes	2011	No legislation required	N/A	ncsl.org; NY Const. Art. 2, § 5; NY CLS Elec § 5-210
North Carolina	No	N/A	N/A	No	NC Const. Art. 6, § 3; N.C. Gen. Stat. § 163-82
North Dakota	No	N/A	N/A	ND does not require voter registration	ND Const. Art. 2, § 1

Ohio	No	N/A	N/A	Yes (HB 41 to amend statute; HB 181 to amend statute; SB 63 to amend statute; SB 158 to amend statute)	OH Const. Art. 5, § 1; ORC Ann. 3503.19; 2015 Bill Text OH H.B. 181; 2015 Bill Text OH H.B. 41; 2015 Bill Text OH S.B. 63; 2015 Bill Text OH S.B. 158)
Oklahoma	Yes	Not implemented yet (Bill Passed in 2015)	Statute	N/A	ncsl.org; OK Const. Art. 3, § 4; ENROLLED Senate Bill No. 313
Oregon	Yes	2010	Statute	N/A	ncsl.org; OR Const. Art. 2, § 2; O.R.S. § 247.019
Pennsylvania	Yes	2015	No legislation required	N/A	ncsl.org; PA Const. Art. 7, § 6; 25 Pa.C.S.A. § 1321; 25 Pa.C.S.A. § 1325
Rhode Island	No	N/A	N/A	Yes (HB 6051 to amend statute)	RI Const. Art. 2, § 2; Gen.Laws 1956, § 17-9.1-10; 2015 Rhode Island House Bill No. 6051, Rhode Island 2015 Legislative Session
South Carolina	Yes	2012	Statute	N/A	ncsl.org; SC Const. Art. 2, § 8; Code 1976 § 7-5-185
South Dakota	No	N/A	N/A	No	SD Const. Art. 7, § 2; https://sdsos.gov/elections-voting/voting/register-to-vote/
Tennessee	No	N/A	N/A	No	TN Const. Art. 4, § 1; T. C. A. § 2-2-109

Texas	No	N/A	N/A	Yes (HB 446 to amend statute)	Vernon's Ann. Texas Const. Art. 6, § 2; V.T.C.A., Election Code § 13.002; 2015 Texas House Bill No. 446, Texas Eighty-Fourth Legislature
Utah	Yes	2010	Statute	N/A	ncsl.org; UT Const. Art. 4, § 2; U.C.A. 1953 § 20A-2-206
Vermont	No	N/A	N/A	No	VT Const. CH 2, § 42; 17 V.S.A. § 2144a
Virginia	Yes	2013	Statute	N/A	ncsl.org; VA Const. Art. 2, § 2; § 24.2-416.7. Application for voter registration by electronic means
Washington	Yes	2008	Statute	N/A	ncsl.org; WA Const. Art. 6, § 7; West's RCWA 29A.08.123
West Virginia	Yes	2015	Statute	N/A	ncsl.org; WV Const. Art. 4, § 12; W. Va. Code, § 3-2-5
Wisconsin	No	N/A	N/A	Yes (SB 281 to amend statute)	WI Const. Art. 3, § 1; W.S.A. 6.33; 2015 Wisconsin Senate Bill No. 281, Wisconsin One Hundred Second Legislature - 2015-2016 Regular Session
Wyoming	No	N/A	N/A	No	WY Const. Art. 6, § 12; W.S.1977 § 22-3-104

ATTACHMENT B

SURVEY OF SAME DAY VOTER REGISTRATION LAWS

State	Same Day Registration?	Constitutional Requirement	Statutory Requirement	Proposed Law for Same Day Registration	Sources
Alabama	No	N/A	Must register 15 or more days before an election	Yes (HB 93 to amend statute)	AL Const. Amend. 579; Ala.Code 1975 § 17-3-50; 2015 Alabama House Bill No. 216
Alaska	No	N/A	Must register 30 or more days before an election	Yes (SB 93 to amend statute)	AK Const. Art. 5, § 4; AS § 15.07.070; 2015 Alaska Senate Bill No. 93
Arizona	No	N/A	Must register 29 or more days before an election	No	AZ Const. Art. 7 § 12; A.R.S. § 16-120; www.brennancenter.org/analysis/vrm-states-arizona
Arkansas	No	Must register 30 or more days before an election	Must register 30 or more days before an election	No	AR Const. Amend. 51, § 9; A.C.A. § 7-5-201
California	Yes	N/A	Same day voter registration – available starting in 2016	N/A	ncsl.org; CA Const. Art. 2, § 3; http://www.calnewsroom.com/2014/02/05/same-day-voter-registration-law-delayed-until-2016/
Colorado	Yes	N/A	Same day voter registration	N/A	ncsl.org; CO Const. Art. 7, § 1; C.R.S.A. § 1-2-201

Connecticut	Yes	N/A	Same day voter registration	N/A	ncsl.org; CT Const. Art. 6, § 1; C.G.S.A. § 9-19j
Delaware	No	N/A	"Must register by the 4th Saturday prior to any Presidential, Primary, or General Election"	Yes (SB 111 to amend statute)	DE Const. Art. 5, § 4; 148th General Assembly Senate Bill 111
District of Columbia	Yes	N/A	Same day voter registration	N/A	ncsl.org; https://www.dcboee.org/faq/voter_reg.asp
Florida	No	N/A	Must register 29 or more days before for the next election	No	FL Const. Art. 6 § 2; F.S.A. § 97.055
Georgia	No	N/A	Must register on or before the 5th Monday before the election	Yes (HB 355 to amend statute)	GA Const. Art. 2, § 1, ¶ II; Ga. Code Ann., § 21-2-224; 2015 Georgia House Bill No. 355
Hawaii	Yes	N/A	Same day voter registration—available starting in 2018	N/A	ncsl.org; HI Const. Art. 2, § 4; 2015 House Bill 2590
Idaho	Yes	N/A	Same day voter registration	N/A	ncsl.org; ID Const. Art. 6, § 2; I.C. § 34-408A

Illinois	Yes	N/A	Same day voter registration	N/A	ncsl.org; IL Const. Art. 3, § 1; HB0105 98th General Assembly
Indiana	No	N/A	Must register 29 or more days before an election	No	IN Const. Art. 2, § 14; IC 3-7-13-11
Iowa	Yes	N/A	Same day voter registration	N/A	ncsl.org; IA Const. Art. 2, § 1; I.C.A. § 48A.7A
Kansas	No	N/A	Must register 21 or more days before an election	No	KS Const. Art. 5, § 1; K.S.A. 25-2311
Kentucky	No	N/A	Must register before "the fourth Tuesday preceding through the first Monday following any primary or general election"	No	KY Const. § 147; KRS § 116.045;
Louisiana	No	N/A	Must register 30 or more days before an election	No	LA Const. Art. 11, § 1; LSA-R.S. 18:135
Maine	Yes	N/A	Same day voter registration	N/A	ncsl.org; ME Const. Art. 2, § 1; 21-A M.R.S.A. § 121-A

Maryland	No	N/A	Must register 29 or more days before an election; Same day voter registration during early voting	No	MD Constitution, Art. 1, § 2; MD Code, Election Law, § 3-302; 2013 SB 0279
Massachusetts	No	N/A	Must register 20 or more days before the next election	Yes (HB 540 to amend statute)	MA Const. Pt. 1, Art. 9; MA Const. Amend. Art. 3; 2015 Massachusetts House Bill No. 540
Michigan	No	N/A	Must register 30 or more days before an election	Yes (HB 5789 to amend statute—introduced in 2014—held in committee)	MI Const. Art. 2, § 1; http://www.dmv.org/mi-michigan/voter-registration.php; 2014 House Bill 5789
Minnesota	Yes	N/A	Same day voter registration	N/A	ncsl.org; MN Const. Art. 7, § 1; M.S.A. § 201.061
Mississippi	No	Must be registered 4 months or more before the next election (exceptions)	Must register 30 or more days before an election	No	MS Const. Art. 12, § 242; MS Const. Art. 12, § 244A; MS Const. Art. 12, § 249; MS Const. Art. 12, § 251

Missouri	No	N/A	Must register on or before the "fourth Wednesday prior to the election"	No	MO Const. Art. 8, § 5; V.A.M.S. 115.135
Montana	Yes	N/A	Same day voter registration	N/A	ncsl.org; MT Const. Art. 4, § 2; MCA 13-2-304; http://www.dmv.org/mt-montana/voter-registration.php
Nebraska	No	N/A	Must register on or before the "second Friday preceding any election"	Yes (Legislative Bill 491 to amend statute)	NE CONST. Art. VI, § 1; Neb.Rev.St. § 32-302; 2015 Nebraska Legislative Bill No. 491
Nevada	No	N/A	Must register prior to the "third Tuesday preceding any primary or general election"	Yes (SB 316 to amend statute)	NV Const. Art. 2, § 6; N.R.S. 293.560; 2015 Nevada Senate Bill No. 316
New Hampshire	Yes	N/A	Same day voter registration	N/A	ncsl.org; NH Const. Pt. 1, Art. 11; N.H. Rev. Stat. § 654:7-a
New Jersey	No	N/A	Must register 21 or more days before an election	Yes (A4613 to amend statute— passed by both House and Senate)	NJ Const. Art. 2, § 1, ¶ 3; N.J.S.A. 19:31-6.1; 2014 A4613 Establishes "The Democracy Act"

New Mexico	No	N/A	Must register 28 or more days before an election	Yes (HB 405 to amend statute)	NM Const. Art. 7, § 1; N. M. S. A. 1978, § 1-4-8; 2015 New Mexico House Bill No. 405
New York	No	Registration is to be completed at least 10 days before each election	Must register 25 or more days before an election	Yes (Assembly Bill 5891 to amend constitution—remove ten day requirement) AND (SB 6041 to amend statute)	NY Const. Art. 2, § 5; 2015 New York Assembly Bill No. 5891; McKinney's Election Law § 5-210 ; 2015 New York Senate Bill No. 6041
North Carolina	No	N/A	Must register 25 or more days before an election	Yes (HB 124 bill to amend statute)	NC Const. Art. VI, § 3; NC Const. Art. VI, § 4; N.C.G.S.A. § 163-82.6; 2015 North Carolina House Bill No. 124
North Dakota	No	N/A	N/A	No	ND Const. Art. 2, § 1
Ohio	No	Must register 30 or more days before an election	Must register 30 or more days before an election	No	OH Const. Art. V, § 1; R.C. § 3503.19
Oklahoma	No	N/A	Must register 25 or more days before an election	No	OK Const. Art. 3, § 4; 26 Okl.St.Ann. § 4-110.1; 2015 Okla. Sess. Law Serv. Ch. 87 (S.B. 313)

Oregon	No	Must register 21 or more days before an election	Must register 21 or more days before an election	No	OR Const. Art. II, § 2; O.R.S. § 247.025
Pennsylvania	No	N/A	Must register 30 or more days before an election	Yes (HB 13 to amend statute)	PA Const. Art. 7, § 6; 25 Pa.C.S.A. § 1326; 2015 Pennsylvania House Bill No. 13
Rhode Island	No	N/A	Must register 30 or more days before an election	No	RI Const. Art. 2, § 2; Gen.Laws 1956, § 17-9.1-3
South Carolina	No	N/A	Must register 30 or more days before an election	No	SC Const. Art. 2, § 8; Code 1976 § 7-5-150
South Dakota	No	N/A	Must register 15 or more days before an election	No	SD Const. Art. 7, § 2; SDCL § 12-4-5; http://www.dmv.org/sd-south-dakota/voter-registration.php
Tennessee	No	N/A	Must register 30 or more days before an election	No	TN Const. Art. 4, § 1; T. C. A. § 2-2-109
Texas	No	N/A	Must register 30 or more days before an election	No	TX Const. Art. 6, § 2; V.T.C.A., Election Code § 13.143
Utah	No	N/A	Must register 30 or more days before an election	Yes (HB 219 to amend statute)	UT Const. Art. 4, § 2; U.C.A. 1953 § 20A-2-102.5; 2015 H.B. 219

Vermont	Yes	N/A	Same day voter registration	N/A	ncsl.org; VT Const. CH II, § 42; 17 V.S.A. § 2144
Virginia	No	Registration records shall not be closed more than 30 days before an election	Must register 22 or more days before an election	No	VA Const. Art. 2, § 2; VA Code Ann. § 24.2-416
Washington	No	N/A	Must register 29 or more days before an election	No	WA Const. Art. 6, § 7; RCWA 29A.08.140
West Virginia	No	N/A	Must register 21 or more days before an election	No	WV Const. Art. 4, § 12; W. Va. Code, § 3-2-6
Wisconsin	Yes	N/A	Same day voter registration	N/A	ncsl.org; WI Const. Art. 3, § 1; W.S.A. 6.29
Wyoming	Yes	N/A	Same day voter registration	N/A	ncsl.org; WY Const. Art. 6, § 12; W.S.1977 § 22-3-104

Bill of Rights and Voting Committee

Planning Worksheet
(Through October 2015 Meetings)

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
Started							

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

Article V – Elective Franchise

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

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

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

Sec. 4 – Exclusion from franchise (1851, am. 1976)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Started							

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

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

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

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

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)							