



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Bill of Rights and Voting Committee

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

Part I

December 15, 2016

Ohio Statehouse
Room 017

OCMC Bill of Rights and Voting Committee

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

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

BILL OF RIGHTS AND VOTING COMMITTEE

THURSDAY, DECEMBER 15, 2016

9:30 A.M.

OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

➤ Meeting of July 14, 2016

[Draft Minutes – attached]

IV. Presentations

➤ None scheduled

V. Reports and Recommendations

➤ None scheduled

VI. Committee Discussion

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

The committee chair will lead discussion regarding Article V, Section 1 (Qualifications of an Elector) and what revisions, if any, the committee would like to make to the provision.

[Testimony by Carrie L. Davis, Executive Director of the League of Women Voters of Ohio, to the committee at its May 12, 2016 meeting – attached]

[Voters' Bill of Rights as proposed by State Representative Alicia Reece, House District 33 – attached]

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

[Memorandum by Shari L. O'Neill, et al. titled "Introduction to and Comparison of State Voter Registration Laws," dated October 27, 2015 – attached]

[Memorandum by Shari L. O'Neill, et al. titled "State Provisions Regarding Voting Age," dated May 2, 2016 – attached]

[Memorandum by Shari L. O'Neill, et al. titled "State Provisions Regarding Purging Voter Rolls," dated May 11, 2016 – attached]

VII. Next steps

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

[Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 14, 2016

Call to Order:

Chair Richard Saphire called the meeting to order at 9:44 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the May 12, 2016 meeting of the committee were approved.

Discussion:

Article V, Section 1
"Qualifications of an Elector"

Chair Saphire announced the committee would be beginning its review of Article V, Section 1, which sets the requirements for a person to be an elector in Ohio, including age, registration, and residency. He noted that, in the 1970s, the last clause of the provision, requiring a voter to vote at least once within a four-year period in order to keep registration current, was added.

Mr. Jacobson asked exactly when that requirement was added. Executive Director Steven C. Hollon indicated the date was 1977. Senior Policy Advisor, Steven H. Steinglass confirmed that there was a commission proposal submitted to voters in the late 1970s, with an initiated effort to impose the 30-day registration period also occurring at that time. He said there was an "instant voter referendum," consisting of a proposal to bar instant voting from the constitution.

Peg Rosenfeld, elections specialist with the League of Women Voters of Ohio (LWVO), speaking from the audience, said that Senate Bill 125 in the 112th General Assembly was an omnibus bill that, in part, provided for Election Day registration. She said the Republican Party, particularly Secretary of State Ted Brown, was against same-day registration, and supported an initiative petition to amend the constitution to amend Article V, Section 1 to require 30-day registration. She said same-day registration occurred for one election, in November 1977, and that was the same election that had on the ballot the initiated constitutional amendment that required a voter to have been registered for 30 days. Ms. Rosenfeld said that many people registered the day of the November 1977 election and then, that same day, voted to rescind same-day registration. She said the way the ballot measure was worded, some voters were confused and said they voted the opposite of what they had intended.¹ Ms. Rosenfeld noted that the four-year voting requirement may conflict with the National Voter Registration Act (NVRA). She said the previous voting frequency requirement had been two years, and that the four-year requirement was meant to allow voters who only wished to vote in presidential years to do so without having to re-register.

Mr. Jacobson said he would like more research on these questions. He said he favors having a voter identification requirement in the constitution. He added that in 2005 the General Assembly approved absentee voting despite objections by many legislators. He said his concern with absentee voting is that not everyone votes at the same time, raising the cost of elections and campaigns because campaign spending has to be extended for the entire period of time during which there is absentee voting. He said this puts a premium on being the incumbent, and has made it more crucial to get big donors. He said he does not believe it is in the best interest of those who vote early because they do not have the benefit of information about the candidates that is provided right up until Election Day. He said this topic may be difficult, but suggested there may be a better way to accommodate voters who cannot vote on Election Day.

Chair Sapphire noted he provided a memorandum to the committee outlining potential issues.

Representative Kathleen Clyde said she would like additional information regarding the source of the “purging” language, requiring voters to vote within a four-year period or be stricken from the rolls. She said she thinks that requirement is in direct conflict with the NVRA. Chair Sapphire noted the history of that provision has been described in the litigation briefs in the case that has now been appealed to the Sixth Circuit, offering to circulate the briefs.²

Rep. Clyde said the most problematic part of this language, besides the four-year voting requirement, is the 30-day voter registration requirement. She said there may be some space to make adjustments under the current constitution, but she would like more information on that from LWVO. She said the 30-day deadline is a single item under Ohio law that impacts voter

¹ The ballot language read: Proposed Constitutional Amendment to Amend Section 1 of Article V of the Constitution of Ohio. To provide that a person is entitled to vote at all elections if he has been registered to vote for 30 days and has the other qualifications of an elector and to provide that a person who is registered and fails to vote in at least one election during any period of four consecutive years must register again before being entitled to vote.” Source: [https://ballotpedia.org/Ohio_30-Day_Voter_Eligibility_Amendment_1_\(1977\)](https://ballotpedia.org/Ohio_30-Day_Voter_Eligibility_Amendment_1_(1977)) (last visited July 15, 2016).

² *Ohio A. Philip Randolph Inst. v. Husted*, Case No. 16-3746 (6th Cir. 2016), on appeal from *Ohio A. Phillip Randolph Inst. v. Husted*, Case No. 2:16-cv-303, 2016 U.S. Dist. LEXIS 84519 (S.D. Ohio June 29, 2016).

turnout and is the longest deadline allowed under federal law. She said the provision requires voters to complete something well in advance of an election. Similar to Mr. Jacobson's points about 30 days of voting, Rep. Clyde said the 30-day registration requirement also has the problem of people thinking about what they want to do but are not energized because the major focus of campaigns is right before Election Day. She said those would-be voters are excluded because they did not do the paper work 30 days in advance. She said there is no evidence that states that have same-day registration have problems. She said "We can look to those states for best practices; states that have same-day registration have ten percent higher voter turnout than we have here in Ohio. That is the problem we should be considering, why do we lag other states in the number of people who are turning out to vote in our elections." She suggested that the 30-day requirement is onerous and she would be open to discussions about changing that language. Alternately, she said she favors doing something like same-day registration, or opening up the possibility for automatic registration. She said the election process would benefit from new constitutional language that would allow the General Assembly to provide statutory law on these options.

Mr. Steinglass, answering Mr. Jacobson's question about the history of the four-year voting requirement, said the language on purging and the 30-day registration requirement were both proposed by initiative and approved in November 1977. He said, prior to that time, there was no explicit provision in Article V, Section 1 on either registration or on purging. He said there may have been statutory requirements on either. He suggested it would be helpful to look at the secretary of state's website for data comparing voter turnout with eligibility and registration requirements.

Mr. Jacobson asked about the registration requirements in other states. Rep. Clyde said about ten states have 30-day registration requirements.

Chair Sapphire described that the absentee voting provision arose in 2005 in reaction to events occurring in the 2004 presidential election, when the voting system broke down. He said there are some provisions of the Help America Vote Act (HAVA) that affect provisional and absentee voting. He said it would be useful to consider whether the HAVA provisions affect the committee's ability to change Article V, Section 1. He continued that further research regarding the four-year voter purge requirements in Article V, Section 1 would be useful, noting that issue is subject to litigation in the *Randolph* case, noted above, in which he is co-counsel for plaintiff, as well as litigation in a Georgia federal district court. He said it has not been authoritatively resolved as to whether NVRA or other federal provision prohibits voter purging.

Mr. Jacobson referenced his interest in constitutionalizing a voter identification provision. Chair Sapphire said such provisions, where they exist, are being challenged around the country. Mr. Jacobson noted that at least one such requirement, in Indiana law, has been approved by the United States Supreme Court.³

Chair Sapphire requested that the committee receive more historical background on how the registration clause was placed in Article V, Section 1, and that it would be useful to know more about the residency requirement of Article V, Section 1.

³ *Crawford v. Marion Cty. Election Bd.*, 553 US. 181 (2008).

Chair Sapphire continued that the committee may wish to address whether the constitution should include reference to allowing 17-year-olds to vote in the primary if they will be 18 by the time of the general election.

Judge Patrick Fischer said he would like research regarding voter turnout percentages, asking if the secretary of state's office might have information about whether changes in the law have increased voter turnout. He said turnout percentages for presidential elections have stayed the same since the 30-day provision. If the committee is to propose changes, he said he would like to know those changes would increase voter turnout. He requested research on this from Ohio or from other states.

Mr. Jacobson suggested there are very few nonpartisan election experts in election law. Chair Sapphire noted the committee is fortunate to have professors at the Ohio State University who specialize in election law, but Mr. Jacobson said they are advisors to only one side of the issues. Chair Sapphire said he knows there is a lot of research on Judge Fischer's question.

With regard to the question regarding absentee voting, Mr. Jacobson said he concedes that it is good for democracy for people to participate, but that early absentee voters may be making choices that they might not make if they had up to Election Day to decide.

Judge Fischer asked whether the committee would be considering making Article V, Section 1 gender neutral, pointing out that the last part of the provision uses the pronoun "he."

Chair Sapphire asked Mr. Steinglass whether there was a group within the Commission that was considering the question of gender neutralizing the entire constitution. Mr. Steinglass said there is a working group that logically would include that task, but that group has not really convened. He said he has provided draft research and there is a placeholder for addressing that issue. Asked whether other committees have included a gender neutral discussion, Mr. Hollon said other committees have only considered gender neutral language where other changes were being contemplated, and have not considered it as a stand-alone topic.

Mr. Steinglass noted, "we clearly have a 19th century constitution; there are many references that are outdated, and one could do a grammatical update, but that has not been a high priority." He observed that other states have done that in different ways than simply presenting it to the electorate. For instance, he said, there can be a delegation to a group to come up with an amendment, and one state allowed the state supreme court to handle it. He said the Constitutional Revision and Updating Committee presumably will be looking at other ways to address those issues.

Chair Sapphire said, if the committee were to decide to retain the existing provision, it would not recommend gender neutralizing the language. Mr. Hollon said he has had conversations with the Coordinating Committee on this question, and his conclusion was that asking each individual committee to perform the gender neutralizing function does not necessarily make sense. He said, for consistency, it would be important to have one committee working on this, and he thinks it should be the Coordinating Committee, upon the suggestion of the subject matter committee.

Judge Fischer then withdrew his suggestion.

Chair Sapphire said the committee had requested extensive research and would be in a better position at its next meeting in October to further discuss these questions.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:39 a.m.

Approval:

These minutes of the July 14, 2016 meeting of the Bill of Rights and Voting Committee were approved at the December 15, 2016 meeting of the committee.

Richard B. Sapphire, Chair

Jeff Jacobson, Vice-chair

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Ohio Constitutional Modernization Commission

Bill of Rights and Voting Rights Committee

Carrie Davis, League of Women Voters of Ohio

May 12, 2016

Chairman Sapphire, members of the Committee, thank you for the invitation to share the League of Women Voters of Ohio's views on Article 5, Section 1 of the Ohio Constitution¹ about who may register to vote and how.

The fundamental right to vote and voter registration have been key components of LWV's mission since our founding in 1920. We were born out of the women's suffrage movement, with the charge to register, inform, and empower women to vote. In the 96 years since, that mission has expanded to engaging all eligible voters, women and men.

Today, the League of Women Voters, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.

LWV advocates on issues when our membership has studied an issue and adopted a position through consensus. At the national level, LWVUS has adopted a number of public policy positions relative to the right to vote.

- ***Representative Government*** - Promote an open governmental system that is representative, accountable and responsive.
- ***Voting Rights - Citizen's Right to Vote*** - Protect the right of all citizens to vote; encourage all citizens to vote.
- ***Election Process*** - Support uniform national voting qualifications and procedures for presidential elections.

¹ **Article 5 Elective Franchise, § 01 Who may vote**

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote. (Amended, November, 1977.)

At the state level, LWVO has adopted an additional position on *Government: Ohio Constitution - General Criteria* - LWVO believes a constitution should be a clearly stated body of fundamental principles. It should provide for the flexible operation of government and be logically organized and internally consistent.

Recommendations on Art. 5, Sec.1

The League’s overarching recommendation for any constitutional, statutory, or regulatory provision related to the vote is that voting should be free, fair, and accessible. And as we also have a state position that the Ohio Constitution should be a document of general principles, we strongly urge this Committee to keep that broad “free, fair, and accessible” principle in mind in your deliberations over what to include in Article 5, Section 1.

Article 5, Section 1 contains two clauses – the first spells out the qualifications of an elector, and the second addresses when someone may cease to be an elector.

Clause A – Qualifications of an Elector

The first clause lists the following as the qualifications to be an elector in Ohio:

“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.”

The League believes voting is a fundamental right of all citizens. This Committee could choose to include such an acknowledgement in this section of the state constitution that anyone meeting the qualifications of an elector as set forth herein has a fundamental right to vote.

In the primary election this spring, a question arose as to 17-year-olds who will be age 18 by the general election and the extent to which they could participate in a primary election. Specifically, 17-year-olds could nominate candidates to appear on the general election ballot when they will be age 18, but they could not elect candidates or vote on issues to be decided at the primary when they are not yet age 18. This Committee may wish to consider whether to incorporate language in Art. 5 Sec. 1 on that topic, such as “of the age of eighteen years on or before the general election.”

We would suggest that this Committee and the OCMC legal counsel take a close look at the phrase “who has been a resident... such time as may be provided by law.” There has been a line of cases that call into question the constitutionality of durational residency requirements. See, e.g., Dunn v. Blumstein, 405 U.S. 330 (1972). A state may require residency in order to vote, but attaching a duration to the residency seems to be the threshold trigger for legal challenges. One possible alternative would be to say “...who is currently a resident of the state, county, township, or ward.”

We recommend eliminating the phrase “and has been registered to vote for thirty days” and replace it with “and is registered to vote as may be provided by law.” This would retain the

general principle that an elector must be lawfully registered in order to vote, but it would provide greater flexibility for the legislature to enact changes to modernize how we conduct our voter registration. For example, this would allow the legislature to consider adopting:

- If a registered voter moves from another state to Ohio within the month before an election, the law could be changed to allow such persons to register here when they move and have it take effect right away instead of missing out on participating in the election because they were not yet a resident on the (current) 30-day registration deadline.
- The League supports moving to same-day registration (SDR) also known as Election Day registration. Same-day registration has been demonstrated to be safe and accurate by the jurisdictions that use it, and it has been shown to increase voter turnout.
- A growing number of states are also moving to automatic voter registration (AVR) of citizens who meet specified required criteria. The League supports automatic voter registration if it is done with the proper safeguards in place.

While current Ohio officeholders seem inclined not to adopt either SDR or AVR, as other states utilize and refine such processes, they may become more appealing to Ohio lawmakers. Refining the language in the constitution to allow “current registration as may be provided by law” allows flexibility for the legislature to modernize the state process as new technology and best practices become viable to adopt here.

Clause B – Cease to be an Elector

The League of Women Voters strenuously lobbied for the passage of the National Voter Registration Act (NVRA or “motor voter”) that was signed into law in 1993. The vision that drove the NVRA is simple: the more people who vote, the stronger our democracy.

NVRA did two main things. It enabled many more eligible voters to become registered by requiring government agencies to offer voter registration. And it set forth clear procedures for voter list maintenance including when and under what circumstances voters may be removed from the rolls.

The second clause of Article 5, Section 1 does not correspond to the procedures set forth in the NVRA, and we strongly recommend that this provision be amended to reflect current federal law. The legislative history of the NVRA and the text of the act and related regulations make clear that voters should only be removed from the rolls based on eligibility (i.e., they cease to be eligible) and that proper safeguards must be in place to ensure no one is removed in error.

In addition to aligning the second clause to use the NVRA process, we also encourage this Committee to add language making voter registration permanent and portable within the state. LWV supports permanent and portable registration. Once a person is registered in the state, even if they move within the state, they are still registered, with the move becoming a simple update. The legislature recently amended state statute to make it easier for registered voters to file a change of address when they vote, and the Secretary of State even allows address changes to be made online. Incorporating this permanent and portable principle in the constitution would

ensure that subsequent legislatures or Secretaries of State could not recant and make it harder for Ohioans to move in state and still participate fully in our elections.

Thank you for the opportunity to testify, and we would be happy to answer your questions.

The League of Women Voters of Ohio, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.

INITIATIVE PETITION

To the Attorney General of Ohio: Pursuant to Ohio Revised Code § 3519.01(A), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed Amendment to the Ohio Constitution and a summary of the same.

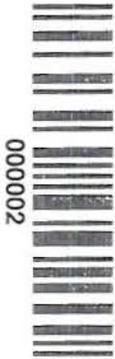
TITLE

The Ohio Voters Bill of Rights

SUMMARY

The Amendment would enact the Ohio Voters Bill of Rights by amending current Section I of Article V of the Ohio Constitution with provisions to include that:

- The right of all Ohio citizens qualified under the Article to cast a ballot and have their votes counted is declared to be a fundamental right.
- A person may cast a ballot at an election as an elector if the person is a citizen of the United States, at least 18 years old, registered to vote by the deadline set by law, which may not be more than 30 days before the election, and a resident of the county where seeking to vote.
- The State shall maintain the broadest feasible and accessible means for persons to register and update their registration to vote, including through electronic means. A certificate of registration would be issued whenever a person registered or updated their registration to vote.
- Voting shall be by secret ballot. Every elector may vote on election day between 6:30 a.m. and 7:30 p.m. at a convenient designated polling location. More than one such location where an elector may vote may be designated by local election authorities.
- In lieu of voting on the day of an election, electors shall be permitted to vote in person or by mail during the early voting period, which shall begin 35 days before each election and end on the day before the election for early in person voting and the day of the election for voting by mail. During the early voting period, local election authorities must make ballots available for in person voting during their regular business hours at their office or another location in the county and at other times during the early voting period, which shall include no less than 12 hours across the two days of each of the final two weekends before the date of a general election, 10 hours on each weekday of the final two weeks before each general election, and 12 hours on the last day of voter registration for an election. Local election authorities shall have the discretion to expand the hours of early in person voting for an election and to designate multiple locations for early in person voting based on the identified needs of their counties, including making in person early voting convenient and easily accessible for working and non-working electors.
- The State must make applications to vote by mail generally available, including electronically. An elector may return a completed and signed application to the appropriate election authority by electronic or non-electronic means. A ballot returned by mail shall be timely if postmarked by election day and received by the appropriate election authority no later than 10 days after the election. An elector who applies for a vote by mail ballot may also choose to cast a provisional ballot on election day, but such ballot shall not be counted if the elector's vote by mail ballot is timely received by the appropriate election authority.



- An elector who chooses to cast a ballot ¹⁴ in person during the early voting period or on election day, if required by law to verify his/her identity, may do so, with: the last 4 digits of his/her social security number, a current Ohio driver's license or license number, current U.S. Passport or passport number, current photo identification, utility bill, bank statement, government check, or paycheck, or any current form of identification issued to the person by the State, a political subdivision or instrumentality of the State, the federal government, a branch of the U.S. Military, or a public or private institution of higher education, or any other form of identification authorized by the State for voting identification purposes. If an elector is unable to provide any of these forms of identification at the time of voting, he/she shall be permitted to cast a provisional ballot after signing an affirmation under penalty of election falsification attesting to his/her identity, which shall be counted if the elector submits or causes to be submitted one of the authorized forms of identification to the appropriate election authority no later than 10 days after the election. Federal election law does not permit certain of these forms of ID to be used to verify a voter's identity in a federal election if the person registered by mail and has not previously voted in a federal election.
- If an elector casts a ballot using a method and at a time authorized under this Article, the ballot shall not be rejected for a reason attributable in whole or part to poll worker or election official error. Laws must be enacted to minimize the potential for such errors.
- If an elector marks his/her ballot in such a manner that it may not be properly recorded by tabulation equipment, all votes on such ballot for candidates and issues which the elector is entitled to vote upon shall be counted if local election authorities are able to determine the voter's intent.
- When an elector casts a provisional ballot in person in his/her county, but not in the correct precinct, the ballot shall be counted but only for candidates and issues that are on the ballot in the precinct where the elector resides.
- A person who is unable to cast a regular ballot at an election shall be permitted to cast a provisional ballot after signing an affirmation attesting under penalty of election falsification to his/her qualifications as an elector. The ballot shall be counted if the ballot is cast in the person's county of residence and his/her qualifications as an elector are verified. A provisional voter shall have up to 10 days following the election to submit or cause to be submitted to the appropriate election authority information necessary to establish his/her qualifications as an elector or to have his/her ballot counted. To facilitate the timely providing of such information, the identity of provisional voters at an election shall be publicly available.
- The State may institute additional reliable means of voting that become available through technological advancements.
- The General Assembly may pass laws expanding and facilitating the voting rights and opportunities guaranteed under this Article, but in no manner denying or limiting them. The State shall not impose any qualification, except as provided in this Article, nor impose a tax, charge or expense, as a condition to voting or registering or updating a registration to vote.
- Any person requesting or casting a ballot who, with the purpose to defraud, impersonates another person or votes more than once in an election, would be guilty of a felony.

The Amendment would repeal and replace the existing language of Section 1 as set forth in the full text attached to this petition. The existing language sets forth qualifications of an elector as being a citizen of the United States, resident of the state, county, township or ward such time as may be established by law and registered for 30 days before the election, and provides that any elector who fails to vote for 4 consecutive years ceases to be an elector unless he again registers to vote. However, this 4 year provision has been superseded by the National Voter Registration

Act of 1993 that provides a person may only be removed from the voter rolls under specific circumstances that include failing to vote at all in any 4 year election cycle that includes 2 federal elections, followed by specific action taken by the state to communicate with the voter.

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

Alicia Reece	2081 Seymour Ave. A	Cincinnati, Ohio 45237
John R. Smith	3900 Delphos Ave.	Dayton, Ohio 45402
Vernon Sykes	133 Furnace Run Dr.	Akron, Ohio 44307
Rev. Otis Moss, Jr.	87 Haskell Dr.	Bratenahl, Ohio 44108

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FULL TEXT OF AMENDMENT

Be it Resolved by the People of the State of Ohio that Article V of the Ohio Constitution is hereby amended to add the following to Section 1 as the Ohio Voters Bill of Rights and repeal the existing language of Section 1 shown below with strike throughs:

Section 1 Ohio Voters Bill of Rights

- a. The right of all Ohio citizens qualified under this Article to cast a ballot and have their votes counted is declared to be a fundamental right in this State. A person may exercise this right as an elector in an election if he or she is a citizen of the United States, at least 18 years of age on the date of the election, registered to vote in this State on or before the deadline established by law, which shall be no more than 30 days before the date of the election, and a resident of the county in which he or she seeks to vote.
- b. The State shall maintain the broadest feasible and accessible means for citizens to register to vote and update their voter registration, including through electronic means. The State shall issue a certificate of registration to all persons registering to vote or updating their voter registration.
- c. Voting shall be by secret ballot. Every elector shall be permitted to obtain and cast a ballot in person on the date of each election between 6:30 a.m. and 7:30 p.m. at a convenient designated polling location. More than one location where an elector may vote on election day may be designated by local election authorities.
- d. In lieu of voting on the date of the election, every elector shall be permitted to obtain and cast a ballot in person or by mail during the early voting period preceding the election, which shall begin 35 days before the date of each election and end the day before the election for early in person voting and the day of the election for voting by mail. During the early voting period, local election authorities shall make ballots available for in person voting during regular business hours at their office or another location in the county and at other times during the early voting period, which shall include no less than 12 hours across the two days of each of the final two weekends before the date of a general election, 10 hours on each weekday of the final two weeks before each general election, and 12 hours on the last day of voter registration for an election. For early voting periods, local election authorities shall have the discretion to expand the hours of early in person voting and to designate multiple locations for early in person voting based on the identified needs of their counties, including making in person early voting convenient and easily accessible for working and non-working electors.
- e. The State shall make applications necessary to obtain vote by mail ballots generally available and easily accessible to voters statewide, including through electronic means. Electors may transmit such completed and signed applications to the appropriate

election authority through electronic or non-electronic means. A ballot returned by an elector by mail shall be considered timely if postmarked by the date of the election and received by the appropriate election authority no later than 10 days after the election. An elector who applies for a vote by mail ballot may also choose to cast a provisional ballot on election day, but such provisional ballot shall not be counted if the elector's vote by mail ballot is timely received by the appropriate election authority.

f. An elector who chooses to cast a ballot in person on the date of the election or in person during the early voting period, if required by law to verify his or her identity, may do so by furnishing any of the following at the time he or she requests a ballot: the last four digits of his or her social security number, his or her current Ohio driver's license or current Ohio driver's license number, his or her current United States passport or passport number, a current photo identification, utility bill, bank statement, government check, or paycheck, or any current form of identification issued to the person by the State, a political subdivision or instrumentality of the State, the federal government, a branch of the United States military, or a public or private institution of higher education, or any other form of identification that the State may authorize electors to use to verify their identity. If such person is unable to provide any of the above at the time he or she offers to vote, he or she shall be permitted to cast a provisional ballot upon signing an affirmation attesting to his or her identity under penalty of election falsification. In such case, the elector shall have until 10 days following the election to provide or cause to be provided to the appropriate election authority an authorized form of identification.

g. If an elector has cast a ballot using a method and at a time authorized by this Article, such ballot shall not be rejected for a reason attributable in whole or part to poll worker or election official error. The General Assembly shall enact laws providing for training and other measures to minimize the potential for errors by poll workers and election officials. If an elector has marked his or her ballot in such a manner that it may not be properly recorded by tabulation equipment, all votes on such ballot for candidates and issues which the elector is entitled to vote upon shall be counted if local election authorities are able to determine the elector's intent. When an elector casts a provisional ballot at a voting location in his or her county of residence, but not in the correct precinct, the election officials shall count all of the votes cast on such ballot, except any votes for candidates or issues not on the ballot in the precinct where that elector resides. A person who is unable to cast a regular ballot at an election shall be entitled, upon signing an affirmation attesting under penalty of election falsification to his or her qualifications as an elector, to cast a provisional ballot, which shall be counted if cast in the person's county of residence and it is verified that the person was otherwise qualified under this Article to vote in the election. A provisional voter shall have until 10 days following the election to provide or cause to be provided to the appropriate election authority any information necessary to establish his or her qualifications as an elector or to have his or her ballot counted. To facilitate the timely providing of such information, the identity of provisional voters at an election shall be publicly available.

h. The State may institute additional reliable methods for casting ballots as they become available through technological advancements. The General Assembly may pass laws expanding and facilitating the voting rights and opportunities guaranteed under this Article, but in no manner denying or limiting them. The State shall not impose any qualification, except as provided in this Article, nor institute any test, tax, charge or expense, as a condition to voting, registering to vote, or updating voter registration.

i. In requesting or casting a ballot, no person shall, with the purpose to defraud, impersonate another person or vote more than once in an election. Any person who does so shall be guilty of a felony.

~~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.~~

Article V

Elective Franchise

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

SECTION 1

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

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

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

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

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

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

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

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

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

¹⁴⁷ *Ibid.*, 266.

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

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

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

¹⁴¹ 1787 Ordinance, § 9.

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

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

¹⁴⁴ *Ibid.*, 104–9.

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

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

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

SECTION 2

By ballot. All elections shall be by ballot.

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

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

The Ohio Supreme Court has also held that Article II, section 1, which vests legislative power in the General Assembly, gives the General Assembly the power to determine ballot requirements within the limits of this section and the equal protection and benefit clause of Article I, section 2 (*State ex rel. Bateman v. Bodé*, 1896). The General Assembly's power is also limited by other provisions of the Ohio Constitution (*see, e.g., Art. V, section 2a*), by the U.S. Constitution, and by laws enacted by Congress, such as the Voting Rights Act of 1965.¹⁴⁸

SECTION 2a

Names of candidates on ballot. The names of all candidates for an office at any election shall be arranged in a group under the title of that office. The General Assembly

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

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

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

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

¹⁴⁸ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1(1994)).

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Bill of Rights and Voting Committee

Planning Worksheet (Through November 2016 Meetings)

Preamble

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

Article I – Bill of Rights (Select Provisions)

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

Sec. 2 – Right to alter, reform, or abolish government, and repeal special privileges (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd 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 – Exclusion from franchise for felony conviction (1851, am. 1976)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	11.12.15	N/A	11.12.15	12.10.15	12.10.15	1.14.16	1.14.16

Sec. 6 – Idiots or insane persons (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	9.10.15	11.12.15	3.11.16	4.14.16	4.14.16	5.12.16	

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

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

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

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14