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THE ONE-SUBJECT RULE OF THE OHIO CONSTITUTION

Ohio Constitutional Modernization Commission
Legislative Branch and Executive Branch Committee

Presentation of John J. Kulewicz

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Adopted in 1851, the one-subject rule of the Ohio Constitution provides in Article II, Section 15(D), that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." The time is ripe for re-examination. During the first century and a half of its existence, the provision operated as a rule of legislative procedure that only the General Assembly enforced. Ohio courts took a hands-off approach. In recent years, the one-subject rule has suddenly gained traction outside the legislature. Ohio courts have shown a new willingness to question compliance with the rule. Courts now invalidate legislation that is deemed to address more than one subject. Ohio governors in turn may see in the judicial redefinition of the one-subject rule an additional basis on which to exercise their veto authority in the discharge of their constitutional responsibilities.

For the Ohio Constitutional Modernization Commission, the dawn of this new era is a timely opportunity to compare the Ohio one-subject rule to its counterparts in other states, to consider whether the contemporary application of the one-subject rule is consistent with its original intent and history, to calculate the consequences of redistributing the power of its enforcement among the three branches of the state government and to question whether the one-subject rule continues to serve a worthy purpose.

I. Overview of the One-Subject Rule

Ohio is one of forty-three states that have adopted a constitutional provision that limits legislation to a single subject. At the state level, one-subject provisions have been a fundamental

part of American constitutional law since at least 1702.[1] Only the six New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont) and the state of North Carolina have constitutions that do not include some form of one-subject provision. The Constitution of the United States also has no limitation on the number of subjects that a bill in the Congress may include or prescribe any relationship between the subject matter of a bill and its title.[2] The appendix to this report contains a compilation of the one-subject rules of each of the forty-three states that have adopted a constitutional provision that limits legislation to a single subject.[3]

A. The Text of the Ohio One-Subject Rule Is Similar to That of Most States

The Ohio one-subject rule has two distinct provisions -- the single-subject requirement and the title requirement. No bill may have more than one subject. The title of each bill shall clearly express that subject. These provisions of Article II, Section 15(D), work in tandem and apply to all bills that proceed through the Ohio General Assembly. In these respects, the Ohio one-subject rule is similar to that of most other states.[4]

B. Limitation of the One-Subject Rule to Certain Types of Bills in Other States

There are certain categorical differences in the one-subject rule among the states. The first categorical difference concerns the scope of the rule. Fourteen states specifically exempt appropriations bills from the scope of their standard one-subject requirements (Alabama, Alaska,

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[1] *See* Justin W. Evans & Mark C. Bannister, *The Meaning and Purposes of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example*, 29 Valparaiso L. Rev. 87, 107 n.149 (2014).

[2] There have, however, been some inconspicuous efforts in recent years to add such a provision to the federal constitution. *See, e.g.,* One Subject at a Time Act, S. 1572, 114th Cong. (2015); SingleSubjectAmendment.com; Brett Joshpe, How about a federal single subject rule?, Washington Examiner (Oct. 14, 2014).

[3] *See generally* Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. Pitt. L. Rev. 803 (2006); Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 Minn. L. Rev. 389 (1958).

[4] See generally Steven H. Steinglass & Gino J. Scarselli, The Ohio State Constitution: A Reference Guide 140-41 (2004); Stephanie Hoffer & Travis McDade, *Of Disunity and Logrolling: Ohio's One-Subject Rule and the Very Evils It Was Designed to Prevent*, 51 Cleve. St. L. Rev. 557 (2004); John J. Kulewicz, *The History of the One-Subject Rule of the Ohio Constitution*, 45 Cleve. St. L. Rev. 591 (1997); James Preston Schuck, *Returning the "One" to Ohio's "One-Subject Rule,"* 28 Cap. U. L. Rev. 899 (2000).

Colorado, Delaware, Illinois, Kansas, Louisiana, Missouri, Montana, New Mexico, Oklahoma, Pennsylvania, Texas and Utah). Thirteen states explicitly carve out codification and revision bills from the one-subject requirement (Alabama, Alaska, Illinois, Indiana, Kansas, Louisiana, Montana, New Jersey, New Mexico, Oklahoma, Pennsylvania, Utah and Wyoming). Five states specifically confine appropriation bills to appropriations (Alabama, Alaska, New York, Pennsylvania and Texas). Two states (Arkansas and Mississippi) limit their one-subject rule to appropriation bills.

C. Existence and Enforceability of the Title Requirement in Other States

The next categorical difference concerns the title requirement. The one-subject rule of all but three states (Arkansas, Illinois and Indiana) includes an accompanying requirement that the title of a bill articulate the subject. In a dozen states with one-subject rules, the constitution provides that a multi-subject act shall be void only as to the subjects not included in the title. These states are Arizona, California, Colorado, Idaho, Iowa, Montana, New Mexico, North Dakota, Oklahoma, Oregon, West Virginia and Wyoming. The Texas constitution distinguishes between the single-subject rule, which is subject to adjudication, and conformance with the title requirement, which is not.[5]

D. Time Limits on One-Subject Challenges in Other States

Another categorical difference involves the time within which one-subject rules are judicially enforceable. There is no express time limit in the Ohio constitution. Thirteen states impose time limits on challenges to legislation based upon multiplicity of subject matter (Alabama, Florida, Georgia, Iowa, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia and Wyoming). One of those states -- Montana -- has included the time limitation in its constitution, which provides with respect to the one-subject

[5] Texas Const. art. III, § 35(b).

rule and other legislative prerequisites that "[a] law may be challenged on the ground of noncompliance with this section only within two years after its effective date."[6] Courts in the twelve other states apply a "codification rule," under which the codification of a legislative enactment precludes any constitutional challenge to its title and/or the extent of its subject matter (Alabama, Florida, Georgia, Iowa, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia and Wyoming). The rest of the states do not appear to limit the time during which legislation is subject to challenge for alleged violations of the one subject rule.

E. Application to the Initiative Process

A fourth category for comparison pertains to the initiative process. Fifteen states, including Ohio, have specifically applied a one-subject requirement to initiated legislation.[7] The Ohio Revised Code provides in Section 3519.01(A) that "[o]nly one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately." There are similar provisions in fourteen other states (Alaska, Arizona, California, Colorado, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, Utah, Washington and Wyoming).[8]

F. The Former "Directory" Interpretation of the Ohio One-Subject Rule

Until recently, the Ohio one-subject rule differed from that of every other state in one respect. "Ohio is the only state," the Supreme Court noted in 1984, "which holds its one-subject provision to be directory rather than mandatory."[9] In that context, "directory" meant that there was "no invalidating consequence for its disregard." As the Supreme Court explained, "'[t]he difference between a mandatory and directory provision is this, and nothing more: the former

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[6] Mont. Const., art. 5, § 11(6).
[7] *See generally* John G. Matsusaka and Richard L. Hasen, Aggressive Enforcement of the Single Subject Rule, 9 Elec. L.J. 399 (2010); Daniel H. Lowenstein, Initiatives and the New Single Subject Rule, 1 Elec. L.J. 35 (2002).
[8] Matsusaka & Hasen, *supra*, at 399.
[9] *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 156 (1984).

avoids, the latter does not.' In other words, 'an objection that [a directory provision was] not observed will be unavailing in the courts,' while 'a failure to observe [a mandatory provision] will render the statute void.'"[10]

In that respect, Ohio courts distinguished the Ohio one-subject rule by candor as to judicial policy. As the Supreme Court observed, "other states have achieved the laudable aim of judicial non-interference in the legislative process by holding that their one-subject constitutional provisions should be liberally construed or that they should be construed so as not to hamper the legislature or to embarrass honest legislation." And, the Court said, "[i]t is indeed most noteworthy that while this provision has been invoked in hundreds of cases in various jurisdictions, . . . 'in only a handful of cases have the courts held an act to embrace more than one subject.'"[11]

As set forth below, that has now changed, in Ohio and around the nation. "[R]ecently," as the commentators have noted, "some state courts have disapprovingly observed the same trend of the single subject rule devolving to a defunct constitutional letter."[12] Leaving aside the laissez-faire approach that has been customary for a century and a half, courts in Ohio and across the nation appear to have begun to recognize that "[o]f all the provisions common to state constitutions, the single subject rule is unique because it presents an inviting opportunity for legitimate judicial reanimation."[13]

II. The 1850-1851 Ohio Constitutional Convention: Ohio Adopts the One-Subject Rule

The new judicial approach is a significant departure from the origin and longtime interpretation of the Ohio one-subject rule. The original Ohio Constitution, adopted at the first

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[10] *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, ¶ 37 (quoting *State ex rel. Atty. Gen. v. Covington*, 29 Ohio St. 102, 117 (1876); *Ex Parte Falk*, 42 Ohio St. 638, 639 (1885)).
[11] *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 157 (1984).
[12] Evans & Bannister, *supra*, at 88.
[13] *Id.* at 89.

constitutional convention in 1802, had no provision as to the number of subjects that a bill could address. Nor did the first Ohio Constitution give the governor authority to veto any legislation. Legislators under the first constitution thus did not have to concern themselves with the possibility that judicial review or a gubernatorial veto could unravel a legislative compromise. The legislature, in fact, was recognized as the predominant branch of state government in Ohio.[14]

Amidst popular dissatisfaction with the lack of any practical constraints on legislative authority, the second Ohio constitutional convention got underway in Columbus in May 1850.[15] The one-subject rule evolved through a series of versions and amendments. As formally introduced during the third week by the Committee on the Legislative Department, the first version provided that "every bill shall contain but one act, embrace but one object, which shall be clearly expressed on its title."[16] After a short-lived transformation into the provision that "every bill shall contain one object, and that shall be expressed in its title," the proposal reverted to its original form ("one act, one object") when adopted by the Committee of the Whole on June 4, 1850.[17]

It stayed that way until the closing days. The Committee on Revision, Arrangement and Enrollment presented its report on March 5, 1851. The report included the language that the convention adopted on its final day, and that has survived to this day: "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title."[18] The convention submitted

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[14] *State ex rel. Ohio Civil Service Employees Assn. v. State Employment Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶ 25; *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 495 (1999).
[15] *See generally* Michael F. Curtin and Joe Hallett, Ohio Politics Almanac 98-99 (3d ed. 2015); George W. Knepper, Ohio and Its People 212-14 (1989) ; IV Eugene H. Roseboom, The History of the State of Ohio: The Civil War Era 114, 126-34, 200, 220-21, 235-36 (C. Wittke ed. 1944); IV Daniel J. Ryan, History of Ohio 104 (E. Randall & D. Ryan eds. 1912).
[16] I Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51, 69 (1851).
[17] *Id.* at 69, 150-51, 163, 233, 297, 318, 322, 560-61.
[18] *Id.* at 806-07, 858.

the one-subject rule as part of an omnibus constitutional package, which the voters of Ohio adopted at the special election on June 17, 1851.[19]

III. The *Pim* Decision Establishes the Judicial Outlook on the One-Subject Rule

The transcripts of the second constitutional convention debates contain little dialogue about the merits of the one-subject rule. There is a general assumption, at least in the judiciary, that its impetus came from "the same concerns over the General Assembly's dominance of state government that formed the most significant theme of the Constitution of 1851."[20] As the Supreme Court of Ohio has noted, "[a]dvocates of the one-subject rule sought to impose 'concrete limits on the power of the General Assembly to proceed however it saw fit in the enactment of legislation." The rule appears in retrospect to have been a product of "the drafters' desire to place checks on the legislative branch's ability to exploit its position as the overwhelmingly pre-eminent branch of state government prior to 1851."[21]

Much of what we know today about the specific intent of the framers comes from the opinion of the Supreme Court of Ohio in *Pim v. Nicholson* five years later.[22] In recounting the rationale for the rule, the *Pim* opinion set forth principles that Ohio courts observed until recent years in adjudicating the one-subject clause. The issue was whether a judge was authorized to issue a stay of execution under a state law that had established various judicial powers and duties. Mr. Nicholson, the party against whom the stay operated, argued that the judge had no power to issue the stay because the authorizing legislation had contained more than one subject. The Supreme Court rejected that argument.

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[19] *See* Ryan, History of Ohio, *supra*, at 116.
[20] *State ex rel. Ohio Civil Service Employees Assn. v. State Employment Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶ 25; *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 495 (1999).
[21] *Id.*
[22] *6 Ohio St. 176 (1856).*

Writing for the Court was Judge Joseph R. Swan, who was "considered one of the ablest lawyers of the State."[23] His opinion took on added weight because he had served at the 1850-1851 convention as a delegate from Franklin County. Judge Swan explained on behalf of the Court that the one-subject rule is "made a permanent rule in the introduction and passage of bills through the houses."[24] The constitution included the one-subject rule as to each bill, according to Judge Swan, "for the purpose of advising members of its subject, when voting in cases in which the reading has been dispensed with by a two-thirds vote. The provision that a bill shall contain but one subject," Judge Swan noted, "was to prevent combinations, by which various and distinct matters of legislation should gain a support which they could not if presented separately."[25]

The Court acknowledged that, "[a]s a rule of proceeding in the general assembly, [the one-subject rule] . . . is manifestly an important one. But if it was intended to effect any practical object for the benefit of the people in the examination, construction, or operation of acts passed and published," Judge Swan wrote, "we are unable to perceive it."[26] "The title of an act may indicate to the reader its subject, and under the rule each act would contain one subject. To suppose that for such a purpose the constitutional convention adopted the rule under consideration, would impute to them a most minute provision for a very imperfect heading of the chapters of laws and their subdivision."[27]

The Court ruled that the one-subject provision "being intended to operate upon bills in their progress through the general assembly, it must be held to be directory only."[28] Furthermore, "[i]t relates to bills and not to acts. It would be most mischievous in practice, to

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[23] *See* Ryan, History of Ohio, *supra,* at 109.
[24] 6 Ohio St. at 179.
[25] *Id.*
[26] *Id.*
[27] *Id.* at 179-80.
[28] *Id.* at 180.

make the validity of every law depend upon the judgment of every judicial tribunal of the state as to whether an act or a bill contained more than one subject, or whether this one subject was clearly expressed in the title of the act or bill."[29] Under such circumstances, "[s]uch a question would be decided according to the mental precision and mental discipline of each justice of the peace and judge . . . [and] [n]o practical benefits could arise from such inquiries."[30]

The Court concluded that "in general the only safeguard against the violation of these rules of the houses, is their regard for, and their oath to support the constitution of the state."[31] The Court provided that "whether a manifestly gross and fraudulent violation of these rules might authorize the court to pronounce a law unconstitutional, it is unnecessary to determine." The Court added, however, that "[i]t is to be presumed that no such case will ever occur."[32]

IV. Defense of *Pim* at the 1873-1874 Ohio Constitutional Convention

The *Pim* holding aroused a brief but heated debate at the next constitutional convention, which met in Columbus and Cincinnati from May 1873 through May 1874. Several delegates made proposals to amend the one-subject rule. The Convention rejected the proposals, however, and chose to retain the one-subject clause in its original form as construed in the *Pim* case.

Delegate Thomas Beer, a Crawford County lawyer, moved to delete the word "bill" and inserting the word "law."[33] His proposal was that the clause should provide that "[n]o law shall contain more than one subject, which shall be clearly expressed in its title."[34] His sought to override the *Pim* decision and give the one-subject rule effect beyond the legislative process.[35]

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[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] I Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio 75, 841 (1873-74); *See also* II-1 *id.* at 246.
[34] II-1 *id.* at 280.
[35] *Id.*

Delegate S.O. Griswold, a Cuyahoga County lawyer, spoke against the proposed amendment. He predicted that "it will lead to confusion and constant litigation of the question whether one subject is embraced . . . or not. A subject of legislation may require various provisions," he contended, "and men will be led to doubt whether these different provisions come within the language of this clause."[36] He warned that "the subjects of legislation have frequently such a wide range, and are so connected with other matters, that it is necessary, sometimes, to have your bill so enlarged that doubts will constantly be raised."[37] Adoption of the proposed language, said Mr. Griswold, "will lead to frequent litigation over statutes that ought not to be subjects of litigation."[38]

He pleaded that "[w]e cannot expect of a legislative body the highest wisdom, or perfect clearness in expression, besides, they do not always use the most appropriate language. Again, statutes are often so clumsily drawn that they lead to litigation; and now you propose to open a door to increase this."[39] Mr. Griswold concluded that "constant litigation, constant doubt, and constant uncertainty in your legislation" is what the proposed amendment would entail.[40]

Mr. Griswold later retook the floor to give an example of why changing the one-subject rule "is a dangerous proposition, and . . . invites constant litigation."[41] He recounted a bill in which the General Assembly had authorized the City of Cleveland to build a bridge across the Cuyahoga River and to lower the canal that the bridge would span. "I would like to have any gentleman say whether this is one and the same subject; and yet, such a measure as that, the connection of which was absolutely necessary the one to the other, . . . it is proposed to make . . .

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[36] II-1 *id.* at 284.
[37] *Id.* at 284-85.
[38] *Id.* at 285.
[39] *Id.*
[40] *Id.*
[41] *Id.* at 287.

absolutely void. . . . [T]he General Assembly, in their wisdom, may consider one subject as embracing cognate subjects, which are necessary to carry the bill into effect; and yet, everything of this kind will be open to the decision of the supreme court to say that it is void."[42]

Delegate Thomas W. Powell, a Delaware County lawyer, predicted that "it would be a dire calamity upon the State if a provision should be adopted making the law void -- a nullity -- instead of its being directory upon . . . [t]he members of the Legislature. . . . [I]t is a happy thing for this State," said Mr. Powell, "that the supreme court has put upon it in the construction that they have; for if, on every law that is passed, the question is left open to be raised that it is void, because it has two subjects in it, or that the title of it does not express clearly the substance of the law would . . . be a calamity."[43]

Delegate Samuel F. Hunt, a Hamilton County lawyer, reiterated the constitutional soundness of the *Pim* decision when he argued that "this section has already received judicial construction, and it would be unwise to disturb it. The court has already further pronounced upon it . . . and there need be no doubt hereafter."[44] The one-subject rule "certainly is not an idle provision," said Mr. Hunt, unless other provisions of the Constitution that depend upon the presumption of legislative observance also are deemed "idle."[45] He added the observation that "[t]he title to a bill is always the last part acted upon by the Legislature, and it is frequently entirely changed, to conform to the subject matter itself. There should, therefore, be considerable latitude in the matter of the title. The Legislature should have wide discretion. There is but little danger of its abuse."[46]

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[42] *Id.*
[43] *Id.* at 288.
[44] *Id.* at 290.
[45] *Id.* at 290-91.
[46] *Id.* at 291.

Logan County delegate William H. West, a Bellefontaine lawyer, explained a practical reason for leaving the one-subject rule undisturbed. He asked, "what is a single subject, one subject? Take, for example, the code of civil procedure. . . . You have a statute of limitation. True, that has a general relation to the subject of practice, but it is a very distinct thing from the organization of a jury, and a very distinct thing from the law of evidence; and yet, they are all embraced within the same act."[47] He reasoned that, "if we put into the Constitution the provision that no law shall contain more than one subject matter, may we not get into trouble and confusion about the matter? . . . [I]t may be difficult to incorporate a great many subordinate subjects that have relation to the general subject. . . . I fear very much, that our generalization of subjects will exclude a hundred and one subordinate subjects that ought to be embraced in the same bill, or might very properly be embraced in the same bill."[48]

Delegate George Hoadly, a former Hamilton County judge who later became governor, asked in the subsequent debate whether the adoption of this amendment "will not give rise to a large crop of litigation founded on legislative doubts as to whether the title of the act really described the contents fairly? And will it not lead . . . to the decision that a mere legislative blunder in describing the contents of an act, has the effect to annul a part of the act?"[49]

With these considerations in mind, the status quo carried the day and the one-subject rule remained intact. Not since the 1873-1874 constitutional convention has there been any serious proposal to change the text of the one-subject rule. Ohio voters technically reaffirmed the one-subject rule through adoption of amendments of other provisions in the legislative procedure sections of the Ohio constitution that contained the single-subject provision in 1912 and 1973.

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[47] *Id.*
[48] *Id.*
[49] *Id.* at II-2, 1180.

V. The Gubernatorial Veto Adds Another Dimension to the One-Subject Rule

The one-subject rule took on added significance in 1903. Ohio voters that year adopted a constitutional amendment that for the first time gave the governor power to veto legislation.[50] It authorized the governor to veto an entire bill or any section or appropriation in any bill that contained two or more sections or appropriations.[51] Nine years later, in 1912, the proceedings of the fourth constitutional convention led to a modest diminution of the veto authority. The convention recommended, and the voters adopted, a proposal that, among other measures, limited the line-item veto to appropriations bills.[52]

As has been noted, observance of the single subject rule "helps to ensure that governors can separately consider bills addressing different subjects.[53] "By limiting the scope of bills," as another analyst has pointed out, "the single subject rule allows governors to exercise their veto power with respect to each general provision that receives majority support in the legislature. This not only discourages logrolling and riding but also appears to boost governors' power by giving them more opportunities to exercise their authority.[54]

VI. Ohio Courts Recently Have Begun to Invalidate Legislation for Violation of the One-Subject Rule

Until recent years, the Supreme Court of Ohio consistently observed the principle that the one-subject rule is merely a directory provision. Even as late as the decision in *State ex rel. Dix v. Celeste* in 1984, the Court reiterated that "[t]he one-subject rule contained in Section 15(D), Article II of the Ohio Constitution is merely directory in nature; while it is within the discretion

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[50] 95 Laws of Ohio 962 (1902).
[51] *Id.* Override required not only a minimum two-thirds vote in each house but also compliance with the provision that "[t]he votes for the repassage . . . shall be no less than those given on the original passage."
[52] Proceedings and Debates of the Constitutional Convention of the State of Ohio (Columbus: F.J. Heer, 1912) 2:2112, 2125 (also reduced the override majority to three-fifths; repealed the requirement of a minimum repasssage vote equal to the original margin).
[53] Evans & Bannister, *supra*, at 152.
[54] Gilbert, *supra*, at 818.

of the courts to rely upon the judgment of the General Assembly as to a bill's compliance with the Constitution, a manifestly gross and fraudulent violation of this rule will cause an enactment to invalidated."[55]

Shortly after the *Dix* decision, however, the Court began a transformation that has led to much more assertive judicial review of legislation for conformance with the one-subject rule. In its 1985 decision in *Hoover v. Bd. of Commrs, Franklin County*, the Court reversed the dismissal of a complaint that alleged a violation of the one subject clause and specified that "if plaintiff can prove that the bill actually contains two subjects and those subjects are in fact so distinct that their combination defies rationality, he will be entitled to relief."[56] A concurring opinion expressed the view that "this court's previous renditions to the effect that such sections shall be viewed as directory, rather than mandatory, have been misinterpretations of the Constitution."[57]

In *State ex rel. Hinkle v. Franklin County Board of Elections* in 1991, the Court invalidated and severed a portion of a statute (defining a residential district for purposes of local liquor options, in a bill that pertained to the state judicial system) on the basis of the one-subject rule.[58] In *State ex rel. Ohio AFL-CIO v. Voinovich*, the Court in 1994 struck down the intentional tort provision and child labor exemption in a workers compensation bill.[59]

Five years later, in *Simmons-Harris v. Goff*, the Court reiterated its departure from its "pre-*Dix* holdings, [of] virtually total deference to the General Assembly."[60] Striking down the portion of the biennial budget bill that had established the school voucher program, in what it deemed to be "a rider attached to an appropriations bill," the Court explained that "[d]espite the

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[55] *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141 (1984) (Syllabus).
[56] *Hoover v. Bd. of Commrs, Franklin County*, 19 Ohio St.3d 1, 7 (1985).
[57] *Id.* (Holmes, J., dissenting).
[58] *State ex rel. Hinkle v. Franklin County Bd. of Elections*, 62 Ohio St.3d 145 (1991).
[59] *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225 (1994).
[60] *Simmons-Harris v. Goff*, 86 Ohio St.3d 1 (1999).

'directory' language of *Dix*, the recent decisions of this court make it clear that we no longer view the one-subject rule as toothless."[61] Less than three months afterward, in *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, the Court invalidated an entire bill on the ground that there was no "common purpose or relationship" among its "multitude of topics."[62]

In 2004, in *State ex rel. Ohio Civil Service Employees Assn, AFSCME v. State Employment Relations Board*, the Court struck down a provision of the budget corrections bill that exempted employees of the Ohio School Facilities Commission from the state collective bargaining process.[63] Even the dissenting opinion recognized that "by 1991 it became obvious that the court was more aggressively examining the one-subject rule."[64]

Two days after the *OCSEA* decision, the Supreme Court consummated this new approach when it issued its decision in *In re Nowak*.[65] The Court ruled that "[s]ince the one-subject provision is capable of invalidating an enactment, it cannot be considered merely directory in nature."[66] Having converted its construction of the rule from directory to mandatory, the Court abided by the principle that "[a] manifestly gross and fraudulent violation of the one-subject provision . . . will cause an enactment to invalidated."[67]

The Court explaincd that "[i]n its post-*Dix* decisions, the Court began to intuitively recognize that the holding in *Dix* had done something of a fundamental nature to belie the notion that the one-subject rule is directory instead of mandatory. Yet the Court has never been able to pinpoint that that something lies in the fact that *Dix* made observance of the one-subject rule necessary to the validity of legislation. And because of this failure, the court continues to

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[61] *Id.* at 15-16.
[62] *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451 (1999).
[63] *State ex rel. Ohio Civil Service Employees Assn, AFSCME v. State Employment Relations Board*, 104 Ohio St.3d 122, 2004-Ohio-6363.
[64] *Id.* at ¶ 74 (Lundberg Stratton, J., dissenting).
[65] *In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777.
[66] *Id.* at Syllabus ¶ 1.
[67] *Id.*

equivocate somewhat on that issue, although it has been moving ever closer to a clear recognition of the rule as mandatory."[68]

There is pending in the Supreme Court of Ohio this term yet another case that will further define the scope and effect of the one-subject rule. It is *State ex rel. Ohio Civil Service Employees Assn v. State of Ohio.*[69] The case concerns a Tenth District Court of Appeals decision holding that the inclusion of a prison privatization program in the biennial budget bill may state a claim for violation of the one-subject rule. The case was argued on May 20, 2015. We await the decision of the Court.

VII. The Future of the One-Subject Rule

The one-subject rule has come a long way since 1851. It has been transformed from a perfunctory rule of legislative procedure to a provision that "plays a momentous role in state constitutional law and policy."[70] For a century and a half, only in the most "manifestly gross and fraudulent circumstances" did Ohio courts recognize its enforceability outside of the legislative process. Beginning with the *Nowak* ruling in 2004, however, there is an unmistakable new direction from the Supreme Court of Ohio. No longer is the one-subject rule a merely aspirational concept.

That evolution poses a genuine challenge for each branch of the state government. For the General Assembly, there is an acute need to become more conscious of the breadth of its legislation -- a factor that is now exposed to scrutiny outside the halls of the House and Senate. The practical consequence of grouping unrelated subjects into one bill will be to invite frustration of legislative policy at the hands of the judicial and executive branches. The courts must rise to the occasion by enunciating guiding principles for the judicial foray into legislative

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[68] *Id.* at ¶ 48.
[69] Case No. 2014-0319.
[70] Gilbert, *supra*, at 808.

review. As noted in a dissent in 2004, "[t]his court continues to utilize the one-subject rule to invalidate legislation with little consistency or reason."[71] If the courts are going to entertain substantive challenges on a one-subject basis, legislators and litigants will need a standard by which to abide. Governors likewise will need to weigh carefully the added support that the new jurisprudence of the one-subject rule gives them in the exercise of their veto authority.

The experience of one hundred and sixty-four years also calls for reexamination of the avowed purposes of the one-subject rule and whether the rule functions to serve those objectives. Historically in Ohio, and across the states, the most frequently noted purpose of the one-subject rule is prevention of logrolling -- the practice of exchanging political favors by reciprocal voting for legislation that a lawmaker may not otherwise favor on its own merits. But as one team of commentators has observed, the one-subject rule is an impediment only to logrolling through multi-subject legislation, while "[l]ogrolling that is achieved by passage of multiple one-subject acts is, from the vantage of the single subject rule, altogether unobjectionable."[72]

It is fair to reconsider why "logrolling" is inherently unworthy, when compromise is the heart of the legislative process and state government in Ohio now operates within the system of checks and balances established by the Constitution of 1851 as amended. And the question also arises as to why "logrolling" is unacceptable in one context (a multi-subject bill) but appropriate in the other (multiple one-subject acts). If there is no justification for the condemnation of "logrolling" or for an altruistic distinction between the two scenarios, should the one-subject rule continue to function as an impediment to legislative deal-making? If the one-subject rule

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[71] *State ex rel. Ohio Civil Service Employees Assn, AFSCME v. State Employment Relations Board*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶ 80 (Lundberg Stratton, J., dissenting).

[72] Evans & Bannister, *supra*, at 152. It makes more sense, from their perspective, to view the purpose of one subject rules as a "guarantee that every subject considered and passed into law will be considered on its own merits, that legislators will be free to vote as they please on each subject considered for passage, and that the governor will similarly be free to approve or veto each subject passed by the legislature." *Id.*

remains intact, are Ohioans prepared to accept a redistribution of power among the three branches of state government as each branch effectuates the one-subject rule in its own way?

The title requirement has ostensibly served the additional purpose of transparency by specifying that the title of a bill must "clearly express" its "one subject." But has the advent of modern information-processing technology rendered that requirement obsolete? If the title requirement continues to serve a practical purpose, should it be adjusted to include a provision that, as in a dozen other states, a multi-subject act shall be void only as to subject matter that the title does not include -- an especially pertinent rule-of-thumb as courts become less inhibited about severing portions of disputed legislation?

Under any circumstances, as this Commission moves forward with its work, a more eventful future appears to be on the civic horizon for the long-dormant provision that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title."

Canvass of State Constitution One-Subject Provisions

A state-by-state compilation of constitutional one-subject provisions is set forth below.

Alabama

Article IV, § 45, of the Alabama Constitution provides in pertinent part that "[e]ach law shall contain but one subject, which shall be clearly expressed in its title, except general appropriations bills, general revenue bills, and bills adopting a code, digest, or revision of statutes[.]" Article IV, § 71, provides that "[t]he general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for the public schools. The salary of no officer or employe [sic] shall be increased in such bill, nor shall any appropriation be made therein for any officer or employe [sic] unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject."

Alaska

Article II, § 13, of the Alaska Constitution provides in pertinent part that "[e]very bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title.

Arizona

Article IV, Part 2, § 13, of the Arizona Constitution provides that "[e]very Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title."

Arkansas

Article V, § 30, of the Arkansas Constitution provides that "[t]he general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State; all other appropriations shall be made by separate bills, each embracing but one subject."

California

Article IV, § 9, of the California Constitution provides in relevant part that "[a] statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void[.]"

Colorado

Article V, § 21, of the Colorado Constitution provides in pertinent part that "[n]o bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

Connecticut

Connecticut does not have a constitutional provision limiting legislation to a single subject.

Delaware

Article II, § 16, of the Delaware Constitution provides that "[n]o bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title."

Florida

Article III, § 6, of the Florida Constitution provides in relevant part that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title[.]"

Georgia

Article III, § 5, para. III, of the Georgia Constitution provides that "[n]o bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof."

Hawaii

Article III, § 14, of the Hawaii Constitution provides in relevant part that "[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title[.]"

Idaho

Article III, § 16, of the Idaho Constitution provides in pertinent part that "[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title."

Illinois

Article IV, § 8(d), of the Illinois Constitution provides in relevant part that "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject[.]"

Indiana

Article IV, § 19, of the Indiana Constitution provides that "[a]n act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith."

Iowa

Article III, § 29, of the Iowa Constitution requires that all legislative acts deal with only one subject. This provision provides in pertinent part that "[e]very act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

Kansas

Article II, § 16, of the Kansas Constitution provides in pertinent part that "[n]o bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. . . . The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

Kentucky

Section 51 of the Kentucky Constitution provides in relevant part that "[n]o law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title[.]"

Louisiana

Article III, § 15(A), of the Louisiana Constitution provides that every bill "shall contain a brief title indicative of its object," and "except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object."

Maine

Maine does not have a constitutional provision limiting legislation to a single subject.

Maryland

Article III, § 29, of the Maryland Constitution provides in pertinent part that "[e]very Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title[.]"

Massachusetts

Massachusetts does not have a constitutional provision limiting legislation to a single subject.

Michigan

Article IV, § 24, of the Michigan Constitution provides in relevant part that "[n]o law shall embrace more than one object, which shall be expressed in its title."

Minnesota

Article IV, § 17, of the Minnesota Constitution provides that "[n]o law shall embrace more than one subject, which shall be expressed in its title."

Mississippi

Article IV, § 69, of the Mississippi Constitution provides in relevant part that "[g]eneral appropriation bills shall contain only appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid."

Missouri

Article III, § 23, of the Missouri Constitution provides in relevant part that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title, except . . . general appropriation bills[.]"

Montana

Article 5, § 11, of the Montana Constitution provides that:

"(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void."

"(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date."

Nebraska

Article III, § 14, of the Nebraska Constitution provides in pertinent part that "[n]o bill shall contain more than one subject, and the subject shall be clearly expressed in the title."

Nevada

Article IV, § 17, of the Nevada Constitution provides that "[e]ach law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised or section as amended, shall be re-enacted and published at length."

New Hampshire

New Hampshire does not have a constitutional provision limiting legislation to a single subject.

New Jersey

Article 4, § 7, of the New Jersey Constitution provides that "[t]o avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law."

New Mexico

Article 4, § 16, of the New Mexico Constitution provides in pertinent part that "[t]he subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void."

New York

Article III, § 15, of the New York Constitution provides that "[n]o private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title."

Article VII, § 6, states in pertinent part that "[e]xcept for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or

purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV."

North Carolina

North Carolina does not have a constitutional provision limiting legislation to a single subject.

North Dakota

Article 4, § 13, of the North Dakota Constitution states in part that "[n]o law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed."

Ohio

Article II, § 15(D), of the Ohio Constitution provides that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed."

Oklahoma

Article 5, § 57, of the Oklahoma Constitution provides that "[e]very act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length: Provided, that if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the laws as may not be expressed in the title thereof."

Oregon

Article IV, § 20, of the Oregon Constitution states that "[e]very Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

"This section shall not be construed to prevent the inclusion in an amendatory Act, under a proper title, of matters otherwise germane to the same general subject, although the title or titles of the original Act or Acts may not have been sufficiently broad to have permitted such matter to have been so included in such original Act or Acts, or any of them."

Pennsylvania

Article 3, § 3, of the Pennsylvania Constitution states that "[n]o bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof."

Article 3, § 11, states that "[t]he general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Rhode Island

Rhode Island does not have a constitutional provision limiting legislation to a single subject.

South Carolina

Article III, § 17, of the South Carolina Constitution states that "[e]very Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title."

South Dakota

Article 3, § 21, of the South Dakota Constitution states that "[n]o law shall embrace more than one subject, which shall be expressed in its title."

Tennessee

Article 2, § 17, of the Tennessee Constitution states in pertinent part that "[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title."

Texas

Article 3, § 35, of the Texas Constitution states that:

"(a) No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

(b) The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule.

(c) A law, including a law enacted before the effective date of this subsection, may not be held void on the basis of an insufficient title."

Utah

Article 6, § 22, of the Utah Constitution provides in part that "[e]xcept general appropriation bills and bills for the codification and general revision of laws, no bill shall be passed containing more than one subject, which shall be clearly expressed in its title."

Vermont

Vermont does not have a constitutional provision limiting legislation to a single subject.

Virginia

Article 4, § 12, of the Virginia Constitution provides that "[n]o law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length."

Washington

Article 2, § 19, of the Washington Constitution states that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title."

West Virginia

Article 6, § 30, of the West Virginia Constitution provides in part that "[n]o act hereafter passed, shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new act."

Wisconsin

Article 4, § 18, of the Wisconsin Constitution states that "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."

Wyoming

Article 3, § 24, of the Wyoming Constitution states that "[n]o bill, except general appropriation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: **Fred Mills, Chair; Paula Brooks, Vice-chair; and Members of the Legislative Branch and Executive Branch Committee**

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

DATE: **April 7, 2016**

RE: **Grouping of Article II Sections by Topic for Review by the Committee**

This memorandum provides summaries of the various sections contained in Article II that have been assigned to the Legislative Branch and Executive Branch Committee. The summaries are grouped into topical categories that might aid the committee in its review of the provisions.

It is very important to note that this is not a proposal, but merely a means of categorizing the topics in this and other articles that might aid the committee in its review and analysis of these provisions.

Category I – Section 1 (Legislative Power)

There is just one section in this category. It deals with vesting the legislative authority of government in the General Assembly and reserving to the people certain powers, such as the initiative and referendum. The sections on the initiative and referendum are closely related to the legislative authority and contain related numbering in the constitution, but they have been separately assigned to the Constitutional Revision and Updating Committee.

Section 1 – In Whom Power Vested (1851, amend. 1912, 1918, and 1953)

- This section states that the "legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives" and then goes on to state that the people reserve to themselves the power of the initiative and referendum to propose and reject laws passed by the General Assembly. The section also states that the limitations place on the General Assembly by the constitution shall also "be deemed limitations on the power of the people to enact laws."

The committee may wish to consider revising this provision into a more readable format. One possible format is provided at Attachment A. The suggested format sets out the powers in a cleaner fashion, which aids in reader comprehension without changing the meaning. However, suggesting that this section be amended for the sole purpose of clarity may not be a sufficient reason to change it.

Sections 1a through 1g – General Powers of Initiative and Referendum; Ballot Board (1912, amend. 2008)

- These sections deal with the powers of the initiative and referendum. They have been assigned to the Constitutional Revision and Updating Committee. An overriding question is whether the seven sections dealing with this topic should be removed from Article II and placed in a new article dealing with this topic specifically or whether they should be retained in this article as numbered. This question may require some discussion between the chairs of the Legislative Branch and Executive Branch Committee (Mills) and the Constitutional Revision and Updating Committee (Mulvihill) or a joint meeting of the committees.

Category II – Section 2 (Election of Legislators)

There is just one section in this category which deals with the election and terms of the members of the General Assembly.

Section 2 – Election and Term of State Legislators (1967, amend. 1992)

- This section deals with the election and terms of state legislators, including the term limitation language that was added to the constitution in 1992. The committee has already dealt with this topic and passed two separate reports and recommendations on the issue of term limits which have not yet been considered by the full Commission.

There is no need for the committee to take any further action on this section.

Category III – Sections 3, 4, 5, 11, and 31 (Qualifications, Vacancy, and Compensation of Members of General Assembly)

Sections 3, 4, 5, 11, and 31 deal with residency requirements and restrictions on those who serve in the General Assembly, the method for filling a vacancy of a member of the General Assembly, and the compensation of the members and officers of that body.

When reviewing these sections, and before preparing a single report and recommendation on these provisions, the committee may wish to consider whether some of the provisions should remain in Article II or whether they should be moved to another article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 3 – Residence Requirements (1851, amend. 1967)

- This section states that senators and representatives shall have lived in their districts for one year prior to their election.

Section 4 – Dual Office and Conflict of Interest Prohibited (1851, amend. 1973)

- This section sets out restrictions that no member of the General Assembly shall hold any other public office while serving as a member, except for an office in a political party, as a notary public, or an officer in the militia or of the United States armed forces. This is one of the topics the committee may wish to consider moving out of Article II and placing in an article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 5 – Who Shall Not Hold Office (1851)

- This section states that no person holding money for public disbursement shall have a seat in the General Assembly until accounting for and paying moneys into the treasury. It also states that no person convicted of embezzlement of public funds shall hold any office in the state. This last disability goes beyond just those serving in the General Assembly and applies to all offices. The committee may wish to consider removing this restriction from this section, and placing it in an article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 11 – Filling Vacancy in House or Senate Seat (1851, amend. 1961, 1968, 1973)

- This fairly lengthy section deals with how vacancies shall be filled in the Senate and House of Representatives.

Section 31 – Compensation of Members and Officers of the General Assembly (1851)

- This section states that members and officers of the General Assembly shall receive a fixed compensation to be prescribed by law and no other allowances and perquisites, and that no change in their compensation shall take place during their term in office.

Category IV – Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of General Assembly)

The sections in this category deal with the organization and power of the General Assembly and some basic standards for conducting the business of the body. Of the six sections in this category, four were adopted in 1851 and then amended in 1973, one was adopted in 1851 and has never been amended, and one was adopted in 1973, at the time the first four sections noted above were amended. The sections in this category could be considered in the same report and recommendation.

Section 6 – Powers of Each House (1851, amend. 1973)

- This provision provides for several, somewhat unrelated items, such as (i) each house shall be the judge of the election and qualifications of its members; (ii) each house may punish its members for disorderly conduct; (iii) a majority shall constitute a quorum to do business; and (iv) each house has all powers necessary to obtain information affecting legislative action, including the powers to enforce the attendance and testimony of witnesses.
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Section 7 – Organization of Each House of the General Assembly (1851, amend. 1973)

- This section states that the mode of operating each house of the General Assembly shall be prescribed by law, sets out the titles for the presiding officer of each house, and indicates that each house shall determine its own rules of proceeding.

Section 8 – Sessions of the General Assembly (1973)

- This section provides when regular and special sessions of the General Assembly may be convened, who may convene them.

Section 9 – House and Senate Journals (1851, amend. 1973)

- This section states that each house of the General Assembly shall keep a correct journal of its proceedings, and that on the passage of every bill the vote shall be taken by yeas and nays.

Section 13 – Legislative Sessions to be Public (1851)

- This section provides that the proceedings of both houses shall be public, except when two-thirds of those present find that secrecy is required.

Section 14 – Power of Adjournment (1851, amend. 1973)

- This provision states that neither house shall adjourn for more than five days without the consent of the other, nor reconvene in any place other than which the two houses are in session.

Category V – Sections 10 and 12 (Rights and Privileges of Members of General Assembly)

Sections 10 and 12 deal with the rights and privileges of the members of the General Assembly, specifically noted in the constitution. It makes sense that they should be considered by the committee at the same time and reviewed in the same report and recommendation.

Section 10 – Rights of Members to Protest (1851)

- This section states that any member of either house has the right to protest against any act or resolution, and that such protest shall be entered upon the journal.

Section 12 – Privileges of Members from Arrest (1851)

- This section deals with the immunity of members of the General Assembly (i) from arrest in going to or returning from a session, except for treason, felony or breach of the peace, and (ii) for any speech or debate.

Category VI – Sections 15, 16, 26, and 28 (Enacting Laws)

The four sections in this category deal with the process for enacting bills by the General Assembly, the requirement for the Governor's signature, how laws are to be applied, and restrictions on their enactment. These sections can be dealt with at the same time and in one report and recommendation. However, since these sections refer to actions by both the General Assembly and the Governor, and the effect of laws generally, a question the committee may wish to address is whether this grouping of provisions should be removed from Article II and placed in its own separate article that deals with enacting laws. I have provided at Attachment B a version of what this new separate article might look like.

Section 15 – How Bills Shall Be Passed (1973)

- This section details how bills shall be passed in the General Assembly, including requirements on the style of the laws, the one subject rule, and signing by the presiding officer.

Section 16 – Bills to be signed by Governor (1851, amend. 1903, 1912, 1973)

- This section details the requirements for the governor's signature on bills, the veto of bills, veto overrides by the General Assembly, and bills becoming law without the governor's signature.

Section 26 – Laws to have Uniform Operation (1851)

- This section states that laws of a general nature will have uniform operation throughout the state.

Section 28 – Retroactive Laws (1851)

- This section states that the General Assembly shall have no power to pass retroactive laws or laws impairing the obligation of contracts.

Category VII – Sections 33, 34, 34a, 35, 37 (Employee and Worker Protections)

The sections in this category deal with topics that concern protecting the interests of employees and workers. There are also two other provisions that have been proposed by a private citizen that broadly fall into this category and which have been assigned to the committee for its review. One question the committee may wish to consider is whether there are enough sections on this topic that would warrant removing this group of provisions from Article II and place them in a new and separate article dealing exclusively with this topic, in order to provide for greater clarity, transparency, and ease of comprehension by the reader.

Section 33 – Mechanics' and Contractor's Liens (1912)

- This section states that laws may be passed to allow for labors and materialmen to place liens on property for which they have provided labor or material.

Section 34 – Welfare of Employees (1912)

- This section states that laws may be passed regulating the hours of labor, and providing for the comfort, health, safety and general welfare of employees.

Section 34a – Minimum Wage (2006)

- Sets a minimum wage for every employer in the state to pay their employees.

Section 35 – Workers' Compensation (1912, amend. 1923)

- This section states that laws may be passed to provide compensation for workers and their dependents for death, injuries, and occupational disease occurring in the course of one's employment.

Section 37 – Workday and Workweek on Public Projects (1912)

- This section states that not more than eight hours shall constitute a day's work and not more than 48 hours shall constitute week's work on public work projects.

Proposed Section – No Public Resources in Collection of Labor Dues

- This proposal, submitted to the Commission by a private citizen, would prohibit the use of public resources to assist a labor organization in collecting dues or service fees from wages of public employees.

Proposed Section – Right to Work/Workplace Freedom

- This proposal, submitted to the Commission by a private citizen, would prohibit a person, as a condition of employment, from becoming a member of a labor organization or paying dues to a union organization.

Category VIII – Sections 4, 5, 20, 23, 24, 27, 38 (Officeholders)

The sections noted below deal with various topics that concern officers and officeholders, including their term, compensation, impeachment and removal, and filling of vacancies.

Section 20 – Term of Office, and Compensation of Officers in Certain Cases (1851)

- This section provides that the General Assembly, in cases not provided for in the constitution, shall fix the term of office and compensation for all officers.

Section 23 – Impeachments (1851)

- This section states the general procedures for impeachment including that the House of Representatives shall have the sole power of impeachment, which shall be tried by the Senate and require the concurrence of two-thirds of the senators.

Section 24 – Officers Liable to Impeachment (1851)

- This section states the offices liable to impeachment, including the governor, judges, and all state officers.

Sections 27 – Election and Appointment of Officers; Filing of Vacancies (1851)

- This section states that the election and appointment of all officers not provided by the constitution shall be as directed by law.

Section 38 – Removal of Officials for Misconduct (1912)

- This section states that laws shall be passed providing for the prompt removal from office of all officers, including state officers, judges, and members of the General Assembly, for misconduct involving moral turpitude, in addition to the method of impeachment.

In addition to these five sections, there are two other sections in Article II (as noted in Category III above) that might be combined with these sections to form a new and separate article that focuses on the topic of officeholders. The two sections in Article II (as noted in Category III above) are as follows:

Section 4 – Dual Office and Conflict of Interest Prohibited (1851, amend. 1973)

- This section sets out that no member of the General Assembly shall hold any other public office while serving as a member, except for an office in a political party, as a notary public, or an officer in the militia or of the United States armed forces. The committee may wish to consider making this a requirement as to all officeholders in the state.

Section 5 – Who Shall Not Hold Office (1851)

- This section states that no person holding money for public disbursement shall have a seat in the General Assembly until accounting for and paying moneys into the treasury. It also states that no person convicted of embezzlement of public funds shall hold any office in the state. This last disability goes beyond just those serving in the General Assembly and applies to all offices.

There are also two other sections in the constitution, at Article XV (Miscellaneous), that might be combined with the sections noted above to round out a separate article on officeholders. They are as follows:

Section 4 – Qualified Electors (1851, amend. 1913, 1953)

- This section states that no person shall be elected or appointed to any office in the state unless they are qualified as an elector.

Section 7 – Oaths of Officers (1851)

- This section states that every person chosen or appointed to any office shall, before entering into office, shall take an oath or affirmation to support the Constitution of the United States, and Ohio, and also an oath of office.

Finally, one other topic the committee may want to consider is the creation of a salary commission and, in so doing, whether such a section should be added to the sections noted above in the creation of a new article setting out the general requirements for all officeholders in state and local government.

Category IX – Sections 21, 22, 30, 32, 39 (Miscellaneous Topics)

The following sections deal with miscellaneous powers the constitution grants to the General Assembly, but which do not deal with a common topic. These sections perhaps more logically belong in other articles in the constitution and could be transferred to other committees for review, or they could be grouped with the sections noted in Category VI above (Enacting Legislation), either in a new and separate article or contained within Article II.

Section 21 – Contested Elections (1851)

- This section states that the General Assembly shall determine before what authority and in what manner elections shall be conducted. While this affirmative granting of authority may not be necessary in order for the General Assembly to enact legislation regarding elections, if the Commission wishes to retain this grant then perhaps it should be reviewed by the Bill of Rights and Voting Committee and the section transferred to Article V (Elections).

Section 22 – Appropriations (1851)

- This section states that no money shall be drawn from the treasury, except in pursuance of a specific appropriation, and that no appropriation shall be made for more than two years. This does not fit neatly into other articles or for review by other committees. The closest one that might be considered would be the Finance, Taxation, and Economic Development Committee, but neither Article VIII (Public Debt and Public Works) nor Article XII (Finance and Taxation) seem like clean places for this provision to land.

Section 30 – New Counties (1851)

- This section deals with the creation of new counties. It states that no new county shall contain less than 400 square miles or be reduced below that level, and notes that any changes as to county lines and county seats shall be submitted to the electors of the counties to be affected. The question is whether this section should remain in this article for review by this committee or whether review of the provision should be transferred to the Education, Public Institutions, and Local Government Committee which has been tasked with reviewing Article X (County and Township Organizations) to determine whether his provision should be transferred to that article.

Section 32 – Divorces and Judicial Power (1851)

- This section states that the judicial branch shall grant no divorce or exercise any judicial power not granted in the constitution. This section could be transferred to the Judicial Branch and Administration of Justice Committee for its review and perhaps a suggestion that it recommend the adoption of a provision in Article IV that states the issuance of a divorce shall be the sole determination of the judicial branch as provided by law.

Section 39 – Expert Testimony in Criminal Trials (1912)

- This section states that laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal proceedings. The committee should consider transferring this provision to the Judicial Branch and Administration of Justice Committee for its review. With the passage of the Modern Courts Amendment in 1968, rule-making authority was largely transferred to the Supreme Court, with some oversight

by the General Assembly. This provision is largely, if not totally, obsolete and the committee could also recommend its repeal.

Category X – Section 36 and Other Provisions (Natural Resources)

Section 36 deals with the topic of natural resources, as set out below. There are also other provisions located in different articles of the constitution that deal with the topics of (i) private property and eminent domain; (ii) the protection of private property rights in ground water, lakes, and water courses; and (iii) Ohio Livestock Care Standards Board, also as set out below.

Collectively, these four topics deal with the larger issue of the preservation of natural resources and rights in private property versus the interest of the state in conserving natural resources and regulating methods for their use and extraction.

Two of the provisions noted above are assigned to the Legislative Branch and Executive Branch Committee, and are as follows:

Section 36 – Conservation of Natural Resources (1912, amend. 1973)

- This section focuses on two topics. The first part of the provision deals with taxation of forestry and agriculture. The second section deals with the conservation of natural resources and the regulation of their use and extraction.

Article XIV, Section 1 – Ohio Livestock Care Standards Board (2009)

- This section, as passed by initiative in 2009, deals with the creation and operation of the Ohio Livestock Care Standards Board, governing the care and well-being of livestock and poultry.

The other two topics provisions mentioned above are assigned to the Bill of Rights and Voting Committee, and are as follows:

Article I, Section 19 – Eminent Domain (1851)

- This section discusses the foundational principle of eminent domain as placed in Article I of the constitution dealing with the Bill of Rights.

Article I, Section 19b – Preservation of Private Property Rights in Ground Water, Lakes, and Other Watercourses (2009)

- This section discusses the protection of Ohio property owners' riparian rights.

The question is whether it makes sense to place all of these items in one article in the constitution for the convenience of the reader or whether it would be too difficult a task to have the voters approve moving these provisions around, thus making more sense to leave well enough alone and just let the two committees complete their work on these topics as assigned.

Conclusion

There is plenty of work for the committee's consideration and determining the order and grouping of topics for its review will aid staff in the preparation of reports and recommendations for the committee's approval and submission to the full Commission.

ATTACHMENT A

ARTICLE II – LEGISLATIVE BRANCH

Section 1 – Legislative Power

(A) The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, and in the people, as they shall specifically reserve to themselves in the constitution. ~~but the~~

(B) The people reserve ~~to themselves~~ the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote, as ~~hereinafter~~ provided in the constitution.

(C) ~~They also~~ The people reserve the power to adopt or reject any law, section of any law, or any item to any law, appropriating money passed by the General Assembly, except as ~~herein after~~ provided in the constitution ~~;~~ .

(D) The people reserve the power, ~~and~~ independent of the General Assembly, to propose amendments to the constitution and to adopt or reject the same at the polls, as provided in the constitution.

(E) The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Currently Art. II, Sec. 1 – (1851, amend. 1912, 1918, 1953)

ATTACHMENT B

ARTICLE ___ - ENACTING LAWS

Section 1 – Bills

The General Assembly shall enact no law except by bill, and no bill shall be passed without the concurrence of a majority of the members elected in each house. Bills may originate in either house, ~~but~~ and may be altered, amended, or rejected in the other.

Currently Art. II, Sec. 15(A) – (1973)

Section 2 – Style of Laws

The style of the laws of this state shall be, "be it enacted by the General Assembly of the state of Ohio."

Currently Art. II, Sec. 15(B) – (1973)

Section 3 – Consideration of Bills

Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement~~, and every~~. Every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill ~~may~~ shall be passed until ~~the bill~~ it has been reproduced and distributed to members of the house in which it is pending and every amendment been made available upon a member's request.

Currently Art. II, Sec. 15(C) – (1973)

Section 4 – One Subject (1973)

No bill shall contain more than one subject, which shall be clearly expressed in its title.

Currently part of Art. II, Sec. 15(D) – (1973)

Section 5 – Vote (1973)

On the passage of every bill, the vote ~~in either~~ of each house~~, the vote~~ shall be ~~taken~~ determined by yeas and nays, and ~~entered upon~~ the names of the members voting for and against the bill shall be ~~the~~ entered upon the journal.

Currently part of Art. II, Sec. 9 – (1973)

Section 6 – Entire Act (1973)

No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

Currently part of Art. II, Sec, 15(D) – (1973)

Section 7 – Certifying Passage of Bill

Every bill which has passed both houses of the General Assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met and shall be presented forthwith to the governor for his approval.

Currently Art. II, Sec. 15(E) – (1973)

Section 8 – Certifying Passage of Joint Resolution

Every joint resolution which has been adopted in both house of the General Assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for adoption have been met and shall forthwith be filed with the secretary of state.

Currently Art. II, Sec. 15(F) – (1973)

Section 9 – Signing by Governor; Filing with Secretary of State

If the governor approves an act passed by the General Assembly, ~~he~~ the governor shall sign it~~, it becomes law~~ and ~~he shal~~l file it with the secretary of state, whereupon it becomes law.

Currently part of Art. II, Sec. 16 – (1973)

Section 10 – Veto by Governor; Reconsideration by General Assembly

(A) If ~~he~~ the governor does not approve ~~it~~ an act passed by the General Assembly, ~~he~~ the governor shall return it, with ~~his~~ the governor's objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage.

(B) If three-fifths of the members ~~elected to~~ of the house of origin vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members ~~elected to~~ of the second house vote to repass it, ~~it~~ the bill becomes law notwithstanding the objections of the governor, and the presiding officer of the second house shall file it with the secretary of state. In no case shall a bill be repassed by a smaller vote that is required by the constitution on its original passage. In all cases of reconsideration, the vote of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal.

(C) If a bill is not returned by the governor within ten days, Sundays excepted, after being presented to ~~him~~ the governor, it becomes law in like manner as if ~~he~~ the governor has signed it, unless the General Assembly by adjournment prevents its return; in which case, it becomes law unless, within ten days after adjournment, it is filed by ~~him~~ the governor, with ~~his~~ the governor's objections in writing, in the office of the secretary of state. The governor shall file with the secretary of state every bill not returned by ~~him~~ the governor to the house of origin that becomes law without ~~his~~ the governor's signature.

(D) The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner prescribed by this section for the repassage of a bill.

Currently Art. II, Sec. 16 – (1851, amend. 1903, 1912, 1973)

Section 11 – Laws Shall Have Uniform Operation

All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except as it relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution.

Currently Art. II, Section 26 – (1851)

Section 12 – Retroactive Laws

The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of the state.

Currently Art. II, Section 28 – (1851)

Section 13 – Tax Levies, Appropriations, and Emergency Laws; Immediate Effect (1912)

(A) Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.

(B) ~~Such~~ Emergency laws shall require the vote of two-thirds of ~~all~~ the members ~~elected to~~ in each ~~branch~~ house of the General Assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea or nay vote, upon a separate roll call vote thereon.

(C) Laws mentioned in this section shall not be subject to the referendum as set out in Article ___, Section ___ of this constitution.

Currently Art. II, Sec. 1d – (1912)

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14