

The
Constitutional
Modernization
Commission Colloquium
Planning Committee

Held on
March 22, 2012

summary of

A Colloquium

WE, THE
PEOPLE OF THE
STATE OF OHIO,
GRATEFUL TO ALMIGHTY
GOD FOR OUR FREEDOM, TO
SECURE ITS BLESSINGS AND
PROMOTE OUR COMMON
WELFARE, DO ESTABLISH
THIS CONSTITUTION.

CONSTITUTION

OF THE

STATE of OHIO;

DONE IN CONVENTION,

ADOPTED AND HELD AT CHILLICOTHE, ON THE THIRTY
DAY OF NOVEMBER, A. D. ONE THOUSAND EIGHT
HUNDRED AND TWO, AND AT THE INDE-
PENDENCE OF THE UNITED
STATES THE TWENTY-
SEVENTH.

Hosted by:

The Ohio State University Moritz College of Law Election
Law @ Moritz and Program on Dispute Resolution

The Constitutional Modernization Commission
Colloquium Planning Committee

Funding provided by the Joyce Foundation



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Featuring discussions on:

- other states' experiences with constitutional commissions,
- Ohio's history of constitutional revision,
- the role of state constitutions, and
- procedural options for the Constitutional Modernization Commission*

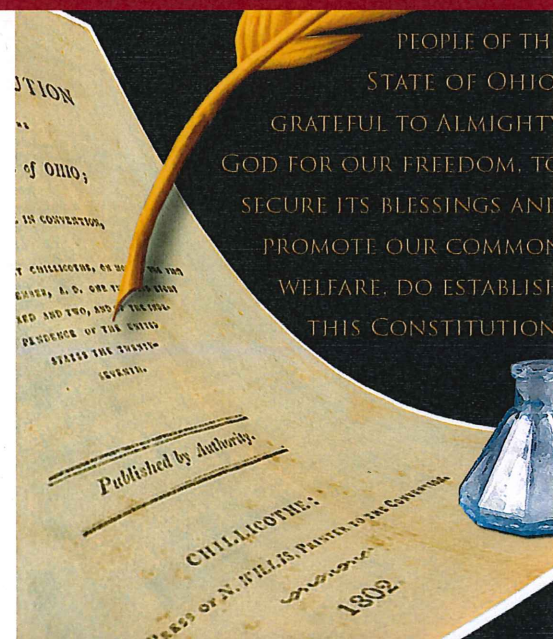
A more detailed agenda is forthcoming.

* The General Assembly established the Commission, which consists of 12 legislative members and 20 public members. Over the next ten years, the Commission will develop recommendations to the General Assembly for improving and modernizing Ohio's Constitution. These recommendations will become law only if approved, first, by the General Assembly and, second, by Ohio voters. The Colloquium Planning Committee was formed with assistance by the Ohio State University Moritz College of Law faculty to hold a Colloquium for the Commission members and interested members of the public.

Colloquium Planning Committee Members

James A. Brogan, Co-Chair
Jo Ann Davidson
Robert M. Duncan
Eric Fingerhut
Edward B. Foley
Nathaniel Jones
Chuck Kurfess, Co-Chair
Joan W. Lawrence
Cynthia Lazarus
Harry J. Lehman

Betty Montgomery
John Ong
Nancy Rogers, Facilitator
Ben Rose
Richard B. Sapphire
Zack Space
Steven Steinglass
Bob Taft
William K. Weisenberg



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Commission Colloquium Planning
Committee

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A Summary of Information for New Commission Members:

Colloquium on the Ohio Constitutional Modernization Commission

and Report of the Colloquium Planning Committee

This is a summary of information presented in the March 22, 2012 Colloquium on the Ohio Constitutional Modernization Commission and the Report generated by the Planning Committee for the Colloquium. The summary was developed for new Commission members, who can learn more by viewing a video recording of the Colloquium, or reading the Report, through the Ohio Modernization Commission website, under materials, at <http://www.ocmc.ohio.gov>. In parentheses, this summary notes where to find information, e.g. "Video recording at (time)" or "Report, page ()".

The Ohio State University Moritz College of Law Election Law @ Moritz and Dispute Resolution Programs hosted the Colloquium on the Constitutional Modernization Commission, with support from the Joyce Foundation. The Colloquium was planned and presented by a Planning Committee that included a former governor, former House speakers, former attorneys general, former legislators, former state and federal judges, a former U.S. representative, former law deans, law professors, and other Ohioans who were part of earlier such commissions or otherwise involved in public life. The Planning Committee examined the prior constitutional revision experiences in Ohio and other states and prepared the Colloquium report.

Over 100 people attended the Colloquium, welcomed by Planning Committee Co-Chairs Chuck Kurfess and James Brogan, Commission Co-Chairs House Speaker Bill Batchelder and Rep. Vernon Sykes, and Ohio State University Moritz College of Law Dean Alan Michaels. Colloquium speakers and panel discussions provided information, some of which is summarized below with references to the video recording and full written report.

Part 1 Background on Constitutional Commissions, and the Keys to Success or Failure – Robert F. Williams

It is important for the public to understand what state constitutions are, and how they differ from the U.S. Constitution in function, origin, form and quality (Video recording at 29:00). It is important to have a public education strategy that provides information about the role, structure, history, and benefits of change to a state Constitution. This lays the groundwork for overcoming political indifference and building active citizen support for constitutional reform (Report, p. 13).

- State constitutional commissions are exercises in the art of the possible and in moderation, with caution to avoid overreaching (Video recording at 34:08). The Commission will likely have to consider, as a process matter, how easy or how hard it is to change the Constitution.
- Constitutional commissions are more successful when the public has time to consider proposals; all stakeholders are engaged; political leaders from all parties support the proposals; and voters are informed about the history or the issues and the benefits of the changes (Report, p. 11).
- Constitutional revision can be a long process and this commission should be allowed the time to do the work it has been called to do (Video recording at 36:02).
- Leadership within the commission and strong leadership from the governor have helped past commissions dramatically (Video recording at 37:40). Support from political leadership demonstrates that government officials are unified in the reform efforts (Report, p. 13).
- Public involvement is crucial (Video recording at 38:37). Incorporating stakeholders into the decision-making process allows a commission to address concerns, reach widespread consensus, and avoid organized opposition from individuals who feel locked out of the process (Report, p. 12)
- Detailed preparation prior to the beginning of formal meetings of the commission will help considerably (Video recording at 39:36).
- The Commission will have to think about criteria for inclusion or exclusion, whether an issue should be included in the state constitution. Whether an idea is a good one or not is a separate discussion from whether it should be entrenched in the state constitution (Video recording at 40:34).
- Timing is crucial for introducing recommendations to the legislature and from the legislature to the public (Video recording at 36:20). The Commission will have to decide how to present proposals to the electorate - whether as individual proposals or as "all or nothing" packages (Video recording at 43:00).
- The failure of a Commission is not always a failure. The work done is not in vain (Video recording at 43:57).

Part 2 Lessons from the 1970s Ohio Revision Commission – Jo Ann Davidson, Judge Alan Norris, John McDonald

The experience of the 1970-1977 Ohio Constitutional Revision Commission illustrates the impact that well thought-out processes can have on the success of a state constitutional revision commission (Report, p. 5).

- The Commission should understand its purpose, which means being able to determine what should be in the Constitution and what should be in a statute (Video recording at 57:13). The tasks might include reviewing and updating provisions or on finding the right balance between making it too easy or too difficult to change the Constitution (Video recording at 65:50).
- The two-thirds majority requirement will tamp down the enthusiasm of the majority and give comfort to the concerns of the minority (Video recording at 54:34). Having a two-thirds majority requirement means that members have to listen to each other with an open mind and be willing to listen to people with divergent viewpoints (Video recording at 60:44). Disagreements occurred in 1970s, but they were not partisan (Video recording at 54:00).
- The 1970-1977 Revision Commission began slowly, but eventually developed a comprehensive strategy to inform itself and Ohio voters (Report, pp. 6, 11-14). Today's Commission has time built in to organize and plan (Video recording at 63:42).
- There should be an active and ongoing liaison between the Commission and General Assembly to engage and explain why a proposal was recommended or not recommended (Video recording at 64:16). Legislative members of the Commission have to carry proposals on the floor of the General Assembly. They have to sell the proposals. (Video recording at 64:26).
- The commitment and continuity of the public members were important in the 1970s (Video recording at 55:09), as was the practice of continuing to appoint committed legislators to the Commission. (Video recording at 65:00). A qualified and committed research staff was vitally important to its success (Video recording at 56:16).
- Look at unsuccessful proposals from the 1970s and ask why they were unsuccessful and if they are good ideas still (Video recording at 67:02). Some issues may not be ripe for change or may be handled better later in the process (Video recording at 69:45).
- Look at the many options for reaching out to the public available today -- for soliciting public input, educating the community, and for communication from the Commission to the public (Video recording at 61:45).

Part 3 The History of the Ohio Constitution – Steven Steinglass

The history of the Ohio Constitution and previous Ohio Conventions can help the Commission understand today's Constitution and the revision process.

1802

- The first Constitution, which was written and adopted in 1802, was a key step on Ohio's path to statehood (Video recording at 105:02).

- The drafters looked to other states, especially Tennessee, Kentucky, and Pennsylvania, for guidance and best practices (Video recording at 111:35).
- Constitutions should be designed to endure (Video recording at 109:17).

1851

- The Constitution of 1802, Ohio's current Constitution, is the sixth oldest in the U.S. and the second oldest outside New England (Video recording at 105:37).
- The Convention expanded the commitment to popular democracy by submitting the proposed Constitution to voters even though they did not have to (Video recording at 113:48).
- The new Constitution gave voters a central role in amending the Constitution and expanded methods for proposing constitutional amendments (Video recording at 114:30).
- The new Constitution included an automatic convention call to be on the ballot every 20 years. This is part of the Jeffersonian ideal that each generation should get to choose its government (Video recording at 115:15).

1874

- The constitution proposed by the Third Convention was too long, the process of deliberation was too drawn out, and public support for constitutional revision evaporated (Video recording at 114:40).
- The proposed constitution was presented as an up or down choice, along with three side issues (Video recording at 117:53).
- Opponents of the side issues urged a no vote on the entire constitution, and the voters overwhelmingly rejected the proposed constitution and the side issues (Video recording at 105:50 & 118:18).

1912

- There was broad support across many sectors for a constitutional convention. Many groups wanted constitutional changes. They all had an interest in revising the Constitution, and there was support for expanding popular involvement in constitution-making (Video recording at 119:20).
- The Constitution had become an obstacle for proper governance of the State, and the courts were widely seen as hampering the ability of the General Assembly to address serious problems (Video recording at 119:30).
- To avoid a rejection as in 1874, the convention proposed piecemeal constitutional revision by submitting 42 proposed amendments to the voters (Video recording at 105:54).

1970

- Ohio voters approved 15 or 16 of the amendments initially proposed by the Ohio Constitutional Revision Commission (Video recording at 106:09).

Part 4 Role of State Constitutions: Competing Visions – Robert F. Williams and Steven Steinglass

- Constitutional provisions should have an enduring quality and allow flexibility to govern (Video recording at 126:22).
- State constitutions have a lot of ground to cover, but a state constitution can stand in the way when its provisions are obsolete and too rigid (Video recording at 127:25).
- There are two tiers of constitutional provisions – cosmetic matters and substantive matters (Video recording at 129:09).
- Often people are afraid to make changes, afraid to take things out, and afraid to rewrite provisions because they do not know how courts will interpret the changes (Video recording at 129:35).
- A functional point of view asks: How does the Constitution work? Is the Constitution inhibiting modernization? Is it causing problems, i.e. is the Constitution causing problems for the operation of state government? Is it limiting the legislature from doing what the public wants? (Video recording at 133:09).
- There is a tendency to include statutory-type provisions in state constitutions. The question is how to keep the Constitution limited to the most appropriate provisions (Video recording at 134:50).

Part 5 External Process Options for the Constitutional Modernization Commission – Ben Rose, Nancy Rogers, Betty Montgomery, Zack Space

The experiences of revision commissions across the nation suggest that an informed and engaged public contributes to the success of constitutional reform efforts (Report, p. 30).

- Creating an official Commission website is valuable because it could provide Ohioans easy access to information about the Commission, its work, and the Ohio Constitution (Report, pp. 31-46). The website can also preserve information for the historical record and increase interaction with the public (Video recording at 141:12).
- Other methods of interacting with the public include television, such as the Ohio Channel or public TV network, colleges and universities, professional organizations, and regional meetings with the public (Video recording at 141:37).

- The Commission is a public body, so it is subject to open records and public meeting laws. Commissioners, especially legislative members, ought to be careful how they conduct themselves at these meetings and communicating with each other outside of official meetings (Video recording at 142:26).
- The Commission will face immediate needs to get information to and to educate the public. Investing in educating the public will help when it is time for the public to vote on proposed changes. Education will raise the public's consciousness and increase the public's trust that the process is a bi-partisan effort.
- A good strategy is to communicate to families through their children to educate them about Ohio's Constitution, for example by including a children's section on the website (Video recording at 145:40).
- Holding regional meetings provides the public both the opportunity to see the Commission at work and a forum to speak. They also encourage and promote transparency, and can raise the Commission's profile across the state (Video recording at 148:35).
- Addressing easier and less controversial issues first can help Commission members get to know each other, work together, and build trust. Establishing a positive track record early on may also make it easier to address more difficult and controversial issues later. (Video recording at 152:05).

Part 6 Internal Procedures and Staffing – Bob Taft, Eric Fingerhut, Joan Lawrence, Harry Lehman, Richard Saphire, Steven Steinglass

Competent staff and consultants are necessary to the completion of the Commission's mission (Report, p. 52).

- Ground rules can help build consensus by ensuring that all parties understand their roles and responsibilities. Aspirational ground rules reflect principles that every participant can agree to (Report, p. 17). Procedural ground rules and rules of conduct can create a productive work environment while providing guidance for commissioners and public participants (Report, p. 19).
- Meeting facilitation skills can be used to steer the group to a problem-solving process and maximize the effectiveness of group discussions (Report, p. 20).
- When studying the Constitution, the Commission could approach the task by examining it article by article or by examining problems that may travel across many articles (Video recording at 165:30). A problem-solving approach facilitates decision-making by creating a process whereby an issue is identified, defined, and then solved (Report, p. 15). An issue-based structure for some of the committees could reinforce that approach (Report, pp. 22-30).

- The Commission could do its work through different phases, such as gathering information, analyzing that information, generating ideas, drafting proposals, submitting recommendations to the legislature, and informing the public (Video recording at 167:02).
- One of the first steps could be to establish an executive director, to define the scope of the staff, and to determine a budget (Video recording at 171:40, Report, pp. 52-57).
- A Public Information Officer, who works to manage the Commission's public communications and coordinate the Commission's online activities, would be an important asset to the Commission. (Report, p. 55). The Internet could be key to linking Ohio's large and diverse population to the process. A website could also be the principal means of communication between Commission members, Commission members and staff, and Commission members and the public (Video recording at 169:50).
- It is important for the Commission to have access to information and expertise. Academic resources, like law school students and faculty, and other colleges and universities across Ohio, can help coordinate and facilitate legal and policy research. (Video recording at 174:15, Report pp. 46-49).

Part 7 Committee Responses to Ideas and Questions from the Audience Judge Nathaniel Jones, Jo Ann Davidson, Bill Weisenberg

- For many of the issues the Commission will come across, the Commission will have to ask where issues should be addressed (in the Constitution? in statute? other?), and how they should be addressed? (Video recording at 193:03).
- It is essential for Commission members to keep an open mind when looking at issues, especially ones with high political interest (Video recording at 197:10).
- What would prevent Commission staff from "wagging the dog"? The Commissioners and staff should have a collaborative working relationship; the staff should support and facilitate the Commission's work (Video recording at 200:55).
- How will the Commission reach rural and less populated areas of the state, or those without the Internet? The success of the Commission is predicated on public trust and confidence in the Commission's work, and personal contact (e.g. regional hearings and meetings) is essential. (Video recording at 204:50).
- An audience-member recommended that the Constitution, constitutional amendments, and statutes ought to be written in plain English to guard against trickery and deception (Video recording at 211:11).

James Brogan and Charles Kurfess: ***Congratulations to the members of the Commission, best wishes and thank you for accepting the interesting challenge before you.***

Colloquium Planning Committee Members

James A. Brogan, Colloquium Planning Committee Co-Chair, former Judge, Ohio Second District Court of Appeals

Charles Kurfess, Colloquium Planning Committee Co-Chair, former Speaker and Minority Leader, Ohio House of Representatives, former Judge, Court of Common Pleas, Wood County

Jo Ann Davidson, Chairman, Ohio Casino Control Commission; former Speaker, Ohio House of Representatives

Robert M. Duncan, former Judge of Franklin County Municipal Court; former Justice of the Supreme Court of Ohio; former Judge of the United States Court of Appeals for the Armed Forces, former Judge of the United States District Court for the Southern District of Ohio

Eric Fingerhut, Vice President, Battelle Memorial Institute; former U.S. Representative, former Ohio Board of Regents Chancellor, former Ohio Senator and Representative

Edward B. Foley, Chief Justice Thomas J. Moyer Professor for the Administration of Justice and the Rule of Law and Director of Election Law @ Moritz, The Ohio State University Moritz College of Law; former State Solicitor, Office of Ohio Attorney General

Nathaniel R. Jones, former Judge, U.S. Court of Appeals for the Sixth Circuit

Joan W. Lawrence, former Ohio Representative

Cynthia Lazarus, CEO and President, Flying Horse Farms; former CEO and President of YWCA Columbus; former judge on the Tenth District of Appeals; former member of Columbus City Council

Harry J. Lehman, former Ohio representative, retired partner, Jones Day

Betty Montgomery, Special Advisory to Governor Kasich, Montgomery Consulting Group, MacMurray, Peterson & Schuster; former Ohio Attorney General, Ohio Auditor, and Ohio Representative

John D. Ong, Chairman Emeritus, B.F. Goodrich Company; former United States Ambassador to Kingdom of Norway

Nancy H. Rogers, Colloquium Planning Committee Facilitator, Professor Emeritus, The Ohio State University Moritz College of Law; former Ohio Attorney General

Ben Rose, Lima attorney; former Chief of the Ohio Ethics Commission and former Ohio House Assistant Minority Leader

Richard B. Saphire, Professor, University of Dayton School of Law

Zack Space, Vorys Advisors; former U.S. Representative and former Ohio Representative

Steven H. Steinglass, Dean Emeritus, Cleveland-Marshall College of Law, Cleveland State University

Bob Taft, University of Dayton; former Ohio Governor, former Ohio Secretary of State

William K. Weisenberg, Assistant Executive Director, Ohio State Bar Association

Staff and Student Support: Daphne Meimaridis, Program Administrator, Election Law @Moritz; Aaron Cornell, William Froehlich, Mary Lewis, Alex Sanchez, Research Fellows; Amanda Zerhusen, Crystal Miller, Brandon Mitchell, law students.

For Information Online

H.B. 188 that establishes the Ohio Constitutional Modernization Commission

http://www.legislature.state.oh.us/BillText129/129_HB_188_EN_N.pdf

Published recommendations from the 1970s Ohio Constitutional Revisions Commission

<http://www.lsc.state.oh.us/ocrc/>

The Ohio Constitutional Modernization Commission Colloquium Planning Committee web page

<http://moritzlaw.osu.edu/OCPC/index>

The full report prepared by the Colloquium Planning Committee

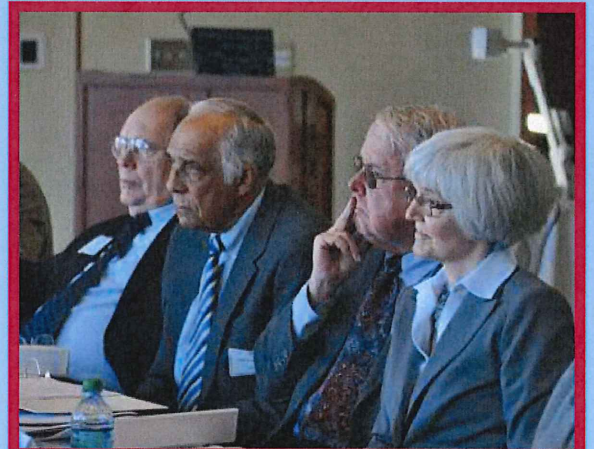
http://moritzlaw.osu.edu/OCPC/colloquium_report.pdf

The Colloquium on the Constitutional Modernization Commission

(Video)<http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=134888>

The Ohio Constitutional Modernization Commission web page

<http://www.ocmc.ohio.gov/ocmc/about;jsessionid=2ba359e9ebe72c457c347fd282e5?0>



The Constitutional Modernization Commission Colloquium Planning Committee at work in 2012.