



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair

Rep. Ron Amstutz
Speaker Pro Tempore

December 10, 2015
Ohio Statehouse
Room 313

Ohio Constitutional Modernization Commission

Co-chair Sen. Charleta Tavares

Co-chair Rep. Ron Amstutz

Ms. Janet Abaray

Mr. Herb Asher

Mr. Roger Beckett

Ms. Karla Bell

Ms. Paula Brooks

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Sen. Bill Coley

Rep. Bob Cupp

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Judge Patrick Fischer

Mr. Edward Gilbert

Mr. Jeff Jacobson

Mr. Charles Kurfess

Mr. Larry Macon

Rep. Robert McColley

Mr. Frederick Mills

Mr. Dennis Mulvihill

Sen. Larry Obhof

Sen. Bob Peterson

Mr. Chad Readler

Mr. Richard Saphire

Sen. Tom Sawyer

Sen. Michael Skindell

Rep. Emilia Sykes

Gov. Robert Taft

Ms. Pierrette Talley

Ms. Kathleen Trafford

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COMMISSION MEETING

THURSDAY, DECEMBER 10, 2015

1:30 P.M.

OHIO STATEHOUSE ROOM 313

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of November 12, 2015
- IV. Standing Committee Reports
 - Coordinating Committee (Trafford)
- V. Subject Matter Committee Reports
 - Education, Public Institutions, and Local Government Committee (Readler)
 - Finance, Taxation, and Economic Development Committee (Cole)
 - Judicial Branch and the Administration of Justice Committee (Abaray)
 - Bill of Rights and Voting Committee (Saphire)
 - Constitutional Revision and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Mills)

VI. Reports and Recommendations

First Presentations

- Article I, Section 20 (Powers Reserved to the People) (Saphire)
 - First Presentation
 - Public Comment
 - Discussion
- Article V, Section 4 (Exclusion from Franchise for Felony Conviction) (Saphire)
 - First Presentation
 - Public Comment
 - Discussion

Second Presentations

- Article VI, Section 1 (Funds for Religious and Educational Purposes) (Readler)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**
- Article VI, Section 2 (School Funds) (Readler)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

VII. Executive Director's Report (Hollon)

- 2015 Annual Report
 - Presentation
 - Discussion
 - **Action Item: Consideration and Approval**

VIII. Old Business

IX. New Business

X. Adjourn

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, NOVEMBER 12, 2015

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:42 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Abaray, Asher, Beckett, Brooks, Clyde, Coley, Curtin, Fischer, Jacobson, Kurfess, Macon, Mills, Mulvihill, Peterson, Readler, Sapphire, Skindell, Sykes, Taft, Talley, and Trafford in attendance.

Co-chair Tavares noted that on November 6, 2015, Representative Robert McColley was named to replace Representative Nathan Manning on the Commission.

Approval of Minutes:

The minutes of the October 8, 2015 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Sen. Tavares then recognized Kathleen Trafford, chair of the Coordinating Committee. Ms. Trafford said the committee continues to meet to review reports and recommendations, and, in October, reviewed two reports and recommendations that are being presented to the Commission today. As a result of a suggestion to the Commission for interim status review of the committees' work, the Coordinating Committee will accept that task and, both this month and next month, will be hearing reports from subject matter committees as to their progress.

Public Education and Information Committee *Liaisons with Public Offices Committee*

Roger Beckett, chair of the Public Education and Information Committee reported to the Commission on behalf of his committee and the Liaisons with Public Offices Committee. Mr. Beckett acknowledged the work of staff and Communications Director Shaunte Russell to spread the news of the work of the Commission. He noted that the OCMC website will have a new

feature, which is a list of the reports and recommendations as adopted by the Commission. He also noted the website also will include the worksheets documenting the constitutional sections assigned to the various committees, as well as their progress in reviewing these provisions. In response, Sen. Tavares expressed her appreciation for the staff work on the website.

Organization and Administration Committee

Sen. Tavares noted that the Organization and Administration Committee did not meet in October and is not making a report at this time.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Chad Readler, chair of the Education, Public Institutions, and Local Government Committee, reported that the committee continues to work through Article VI, Education, and hopefully will complete its review of that article soon. He noted that, later in the meeting, he will be presenting, for the first time, two reports and recommendations for Article VI, Section 1, relating to funds for religious and educational purposes, and Article VI, Section 2, relating to school funds.

Finance, Taxation, and Economic Development Committee

In the absence of the chair and vice-chair of the committee, Executive Director Steven C. Hollon reported that the committee met in October, at which time it heard a presentation by Tim Keen, director of the Office of Budget and Management. Mr. Keen gave his perspective on Article VIII, offering suggestions on how the committee might address sections relating to state debt. Mr. Hollon indicated that this committee has had many ideas to come before it, but now has a plan for going forward, and expects to bring forth some reports and recommendations after its meeting in December.

Judicial Branch and Administration of Justice

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that the committee will meet next month to continue its discussion of issues pertaining to grand juries. She said some guest speakers will be appearing to provide insight on the use of the grand jury in state criminal prosecutions.

Bill of Rights and Voting Committee

Richard Sapphire, chair of the Bill of Rights and Voting Committee, reported that the committee today approved two reports and recommendations that will go to the Coordinating Committee. The first is on Article I, Section 20, dealing with powers reserved to the people. The second is on Article V, Section 4, involving disqualification from voting for felons. Mr. Sapphire said the committee then again took up its discussion of Article V, Section 6, involving mental capacity to vote. He said the committee is close to a final resolution with respect to a report and recommendation on that provision.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, reported the committee has been working for the better part of the year on what became Issue 2 on the November 3, 2015 ballot. He said the committee now is working on Article II, Section 1b, the statutory initiative process, to encourage citizens to use the statutory initiative route rather than the constitutional amendment route. He said the committee will study how to encourage that route, and will be drafting some language. He said the committee also will be looking at Article II, Section 1a, and that the committee is hoping to present recommendations to the Commission in the next several months.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee is scheduled to meet at 2:30 on November 12, 2015, immediately after the Commission meeting. He said its agenda includes continuing the review of the one-subject rule, on which the committee will be hearing a presentation. He added the committee also will hold a discussion of possible recommendations for Congressional redistricting reform, and that the committee is continuing to deal with the heavyweight subjects that have been assigned to it.

Reports and Recommendations:

Article VI, Section 1(Funds for Religious and Educational Purposes)

Sen. Tavares then directed the Commission's attention to two reports and recommendations being presented by Chad Readler, chair of the Education, Public Institutions, and Local Government Committee.

Mr. Readler began by noting that the committee reviewed Article VI, Section 1 with an eye on whether it is obsolete, and found it still has relevance today. He said Article VI, Section 1 provides that the principal of all funds arising from the sale or other disposition of lands or other property that is granted or entrusted to the state for educational and religious purposes shall be used or disposed of in such manner as the General Assembly shall prescribe by law. He noted the provision originally was adopted in the 1851 constitution, specifying that the principal of all funds of this nature would forever be preserved inviolate and undiminished, and required that the income from those funds be applied to the specific objects of the original grants or appropriations.

Mr. Readler said the history of the provision dates back to the Northwest Ordinance, when school lands provided by the federal government to the Ohio territory helped establish education as a priority of the new nation. By the time Ohio achieved statehood, a specific section in each township was solely dedicated to the establishment of schools. These lands were governed by the General Assembly, which at first leased the lands and later sold them, with proceeds being used for the benefit of schools.

He said the 1851 constitution allowed the proceeds granted for educational or religious purposes to be applied to the objects of the original grants, but in 1968, the U.S. Congress limited the use of sale proceeds to educational purposes only. He noted the report and recommendation summarizes a presentation made to the committee by Robert Cupp, who was, at that time chief

legal counsel for the Ohio Auditor of State and is currently serving as a state representative and a member of the Commission. Mr. Readler finished by stating that the report and recommendation documents the conclusion of the Education, Public Institutions, and Local Government Committee that Article VI, Section 1 should be retained in its current form.

Sen. Tavares then asked if there were public comments or discussion by Commission members regarding this report and recommendation. There being none, she indicated a second presentation would be made at the next Commission meeting, and that the Commission will vote at that time.

Article VI, Section 2 (School Funds)

Mr. Readler then gave a presentation regarding Article VI, Section 2, which deals with school funds, indicating that the section provides that the General Assembly shall make such provisions, by taxation or otherwise as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state. He said the section was adopted as part of the Ohio Constitution of 1851 and has never been amended, and that it includes the first use of the phrase “thorough and efficient” in the constitution of any state, a concept that was influenced by an 1837 report about education prepared by Calvin Ellis Stowe. He said some 22 states are recognized as having constitutional provisions imposing educational standards similar or identical to Ohio’s thorough and efficient clause, but that the definition of common schools as well as what constitutes a thorough and efficient system varies widely from state to state.

Mr. Readler indicated the section has been the subject of significant litigation and was the subject of much debate by the committee. He continued that the report and recommendation outlines the significance of the Ohio Supreme Court’s conclusion in the DeRolph line of cases that the state educational funding system violated the “thorough and efficient” clause. He noted the committee heard from many presenters on the topic, including Ohio Supreme Court Justice Paul E. Pfeiffer. He added that endnote 9 references scholarly work done by Senator Larry Obhof on the topic. He said the committee debated the issue quite thoroughly, but in the end decided to keep the language as is. Thus, he said, the report and recommendation indicates that the committee concludes that Article VI, Section 2 should be retained in its current form.

Sen. Tavares then asked if there were public comments or discussion by Commission members regarding this report and recommendation. There being none, she indicated a second presentation would be made at the next Commission meeting, and that the Commission will vote at that time.

Executive Director’s Report:

Sen. Tavares then recognized Executive Director Steven C. Hollon, who reported that he sent letter to public members relating to their interest in continuing service on the Commission. He said that the Commission co-chairs had requested the distribution of a form to allow members to indicate if they want to be reappointed. Mr. Hollon asked the public members of the Commission to respond by completing the form and returning it to him no later than November 30.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:10 p.m.

Approval:

The minutes of the November 12, 2015 meeting of the Commission were approved at the December 10, 2015 meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair
Representative Ron Amstutz
Speaker Pro Tempore

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE I, SECTION 20

POWERS RESERVED TO THE PEOPLE

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

Recommendation

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

Background

Article I, Section 20 reads as follows:

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

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

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

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

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

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

The Ninth Amendment states:

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

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

The Tenth Amendment provides:

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

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

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

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

Amendments, Proposed Amendments, and Other Review

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

Litigation Involving the Provision

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

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

Id. at 113-14.

Other Ohio Supreme Court decisions generally cite Section 20 only in conjunction with other sections of the Bill of Rights. *See, e.g., Mirick v. Gims*, 79 Ohio St. 174, 86 N.E. 880 (1908)(applying Section 20 and Article II, Section 28 to conclude that the police powers of the state are limited by the Declaration of Rights such that they may not be exercised in an unreasonable or arbitrary manner). As such, Section 20 has not been considered as containing any particular rights not otherwise found in the Ohio Constitution.

Currently, Section 20 generally is only raised in death penalty *habeas corpus* cases in which the defendant argues his or her trial violated multiple state and federal constitutional rights.

However, no court has relied on Section 20 to overturn a conviction. *See, e.g., State v. Mack*, 8th Dist. No. 101261, 2015-Ohio-2149, 2015 Ohio App. LEXIS 2075, 2015 WL 3560451; *Lang v. Bobby*, 2015 U.S. Dist. LEXIS 39365, 2015 WL 1423490 (N.D. Ohio).

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Conclusion

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

Date Issued

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

Endnotes

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

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

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

⁴ *Id.* at 714.

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

⁶ Steinglass & Scarselli, *supra*.

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

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



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE BILL OF RIGHTS AND VOTING COMMITTEE

OHIO CONSTITUTION ARTICLE V, SECTION 4

EXCLUSION FROM FRANCHISE FOR FELONY CONVICTION

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

Recommendation

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

Background

Article V, Section 4 reads as follows:

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

The clear purpose of the provision is to disqualify from voting, and from holding public office, persons who have been convicted of a felony. The provision modifies the broad enfranchisement of United States citizens over the age of 18 who otherwise meet the qualifications of an elector, as contained in Article V, Section 1.¹

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

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

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

Amendments, Proposed Amendments, and Other Review

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

The E&S Committee also was influenced by the enactment in 1973 of the new Ohio Criminal Code (effective January 1, 1974), which created R.C. 2961.01, specifying that felons are disenfranchised only during their incarceration.⁴ The E&S Committee initially recommended no change to the provision’s phrase “bribery, perjury, or other infamous crime,” focusing instead on a proposal to eliminate Section 6 (disenfranchisement of mentally incapacitated persons) and to add the phrase “and any person mentally incompetent for the purpose of voting” to the end of Section 4.⁵

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

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

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

The 1970s Commission recommendation, that Article V, Section 4 read that “The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony,” was presented in the 111th General Assembly by resolution pursuant to Am. S.J.R. No. 16, submitted by ballot and approved by voters, with an effective date of June 8, 1976.¹⁰

Litigation Involving the Provision

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

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

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

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

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

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

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

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

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

Presentations and Resources Considered

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

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

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

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

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

Discussion and Consideration

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

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

Conclusion

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

Date Issued

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

Endnotes

¹ Article V, Section 1 provides:

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

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

(A) (1) A person who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.

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

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

(C) As used in this section:

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

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

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

³ Ohio Constitutional Revision Commission (1970-77), Proceedings Research, Volume 5, Elections and Suffrage Committee Research Study No. 25, 2365 (Aug. 20, 1973), <http://www.lsc.ohio.gov/ocrc/v5%20pgs%20195-2601%20elections-suffrage%202602-2743%20local%20govt.pdf> (last visited Aug. 13, 2015).

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

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

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

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

⁷ *Id.*

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

See also Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix G, 264-65 (June 30, 1977), <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Sept. 16, 2015).

⁹ *Id.*

¹⁰ *Id.*

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

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

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



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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE VI, SECTION 1

FUNDS FOR RELIGIOUS AND EDUCATIONAL PURPOSES

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 1 of the Ohio Constitution concerning funds for religious and educational purposes. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article VI, Section 1 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 1 reads as follows:

The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law.

Article VI of the Ohio Constitution concerns education, and Section 1 deals more specifically with lands provided to the state for educational and religious purposes.

As originally adopted in the 1851 constitution, Article VI, Section 1 provides:

The principal of all funds arising from the sale or other disposition of lands or other property granted or entrusted to this state for educational or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

School Lands

School lands provided by the federal government to Ohio and other states played an important role in the development of public education in this country, and school lands supported education in virtually all the new states beginning with Ohio in 1803.¹

The history of school lands dates to the days before statehood, when the Confederation Congress, through the Land Ordinance of 1785,² reserved in every township in the survey of the land tract in the eastern portion of the state (which was known as the Seven Ranges) a one-mile square section for the maintenance of public schools.³ The Northwest Ordinance,⁴ enacted in 1787 by the Confederation Congress and reaffirmed by the first United States Congress in 1789,⁵ established a path to statehood for Ohio and the other states that were carved from the Northwest Territory. It also continued the commitment to public education by providing, in part, that “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”⁶ The founders’ emphasis on the value of education, and particularly on its relationship to religion and morality, is recognized as stemming from the view that the establishment of a new nation required “an educated, moral, sober citizenry in the new states that would have the stability and civil responsibility of a republican society.”⁷

In the 1802 Enabling Act, Congress moved Ohio along the path to statehood by enacting legislation to “enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government and for the admission of such State into the Union * * *.”⁸ It also contains an unusual provision offering the new state one “section, number 16, in every township” or other equivalent lands.⁹ The 1802 Constitutional Convention made a counteroffer¹⁰ that, in turn, was accepted by the federal government. This resulted in Ohio ultimately gaining control of 704,204 acres (or 2.77 percent of its land area) of federally-donated land to support public schools.¹¹

The importance of education to the new state was reflected in the 1802 constitution, which followed the Northwest Ordinance in providing, in Article VIII, Section 3, that “religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

After statehood, the General Assembly leased much of this land, with some leases being as long as 99 years and renewable forever. In 1826, however, Congress permitted land sales with the consent of township residents.¹² And in 1827, the General Assembly adopted legislation providing that proceeds from the sale of school lands were to be deposited in the Common School Fund and earmarked for the benefit of schools within the townships.¹³

Because of concerns about the local stewardship of the school lands, the General Assembly in 1914 and 1917 transferred supervision of the school (and ministerial) lands to the Auditor of State. In 1985, the General Assembly transferred supervision to the Director of Administrative Services, and in 1988, the General Assembly transferred supervision of all remaining monies to

the Board of Education in each school district that had been allotted these lands, with title held in trust by the State of Ohio.¹⁴

Ministerial Lands

In addition to allocating land to support education, the federal government allocated land in Ohio to support religion by providing that section 29 of certain land purchases be used to support religion.¹⁵ The granting of real property for religious purposes has been identified as a “holdover from English and other European traditions where one denomination constituted a state church and received its support and other perquisites from the state.”¹⁶ Ohio’s “ministerial lands,” which totaled 43,525 acres, represented only a small part of the total land originally granted to Ohio by Congress.¹⁷

The Confederation Congress (in the Ohio Company’s First Purchase in 1787) and the United States Congress (in the Symmes Purchase in 1794) reserved section 29 for the purpose of religion in what are today Washington, Meigs, Gallia, Lawrence, and Athens counties (from the Ohio Company’s First Purchase), and in Butler, Hamilton, and Warren Counties (from the Symmes Purchase). In addition, the Ohio Company on its own reserved section 29 from its Second Purchase in what are now Hocking and Vinton Counties.¹⁸ “ ‘Ministerial land,’ as these lands have since been termed, are found nowhere in the United States, except within these three parts of the state of Ohio.”¹⁹

In 1833, Congress allowed the sale of lands that had been granted to the state for the support of churches and religious societies, with the proceeds to be placed in a trust fund and interest thereon paid to local schools and religious societies.²⁰

The 1851 constitution addressed these issues by adopting a provision, Article VI, Section 1, which addressed both educational and ministerial lands and provided that the proceeds from the sale of lands granted for educational or religious purposes must be applied to the objects of the original grants.

Amendments, Proposed Amendments, and Other Review

By 1968, the practice of state payments to religious organizations was recognized as problematic under the Establishment Clause of the First Amendment to the United States Constitution, and Congress acted to limit the use of sale proceeds to educational purposes only, subject to the discretion of the General Assembly.²¹ Ohio voters subsequently approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.²² Thus, Article VI, Section 1 was altered to provide that funds arising from these lands would not be restricted to school or religious purposes, but “shall be used or disposed of in such manner as the General Assembly shall prescribe by law.” In the May 7, 1968, election, the voters approved an amendment proposed by the General Assembly to this section by a vote of 847,861 to 695,368, or 55 percent to 45 percent.²³

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section.²⁴

Litigation Involving the Provision

There has been no significant litigation involving Article VI, Section 1.

Presentations and Resources Considered

On November 13, 2014, the committee heard a presentation by former Ohio Supreme Court Justice Robert R. Cupp, who was at that time chief legal counsel for the Ohio Auditor of State.²⁵ Mr. Cupp explained that while some may consider Article VI, Section 1 as an obsolete provision, the section remains necessary as the state still possesses some “school lands” as referenced in the provision.

Mr. Cupp provided a brief history of the provision, indicating that these lands first had been managed and supervised by township trustees, then by the auditor of state, and later by the director of the Department of Administrative Services. However, in 1988, legislation went into effect that transferred supervision, management, and all remaining monies of school lands to the board of education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature remains under state title, but the most recent transfer by the state took place in 2009 to the Upper Scioto School District in Hardin County. He said the Hardin County property has a current market value of \$2.5 million and is leased by the school district for farming. The school district derives \$247,000.00 in annual revenue from this lease.

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted on October 8, 2015 to issue a report and recommendation recommending that Article VI, Section 1 be retained in its current form.

Presentation to the Commission

On November 12, 2015, on behalf of the Education, Public Institutions, and Local Government Committee, committee Chair Chad A. Readler appeared before the Commission to present the committee’s report and recommendation, by which it recommended retention of Article VI, Section 1. Chair Readler explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article VI, Section 1 in its current form.

Action by the Commission

At the Commission meeting held December 10, 2015, _____ moved to adopt the report and recommendation for Article VI, Section 1, a motion that was seconded by _____. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of ____ members of the Commission.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VI, Section 1 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on November 12, 2015, and December 10, 2015, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ See generally Jon A. Souder & Sally K. Fairfax, *State Trust Lands: History, Management, and Sustainable Use* (1996); Sean E. O'Day, *School Trust Lands: The Land Manager's Dilemma Between Educational Funding and Environmental Conservation, A Hobson's Choice?*, 8 N.Y.U. Envtl. L.J. 163 (1999). For a compendium of the various legislative enactments relating to the creation and preservation of Ohio school lands in the early 1800s, see *A Compilation of Laws, Treaties, Resolutions, and Ordinances, of the General and State Governments, which Relate to Lands in the State of Ohio; including The Laws Adopted by the Governor and Judges; The Laws of the Territorial Legislature; and the Laws of this State, to the Years 1815-16*, Published in Pursuance of Resolutions of the General Assembly, passed January 22, 1825. (1825).

² General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 1774-1789, at 375.

³ See generally Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 220 (2nd prtg. 2011).

⁴ Northwest Ordinance of 1787, as reprinted in Act of Aug. 7, 1789, ch. 8, 1 Stat. 50 et seq. It may be found online at: Journals of the Continental Congress, 1774-1789, 32:334 (Worthington C. Ford, et al., eds., 1904-37); Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787, <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim> (last visited May 12, 2015), and additionally is available at: The Avalon Project, *Northwest Ordinance; July 13, 1787*, Lillian Goldman Law Library, Yale Law School (2008), http://avalon.law.yale.edu/18th_century/nworder.asp (last visited Aug. 31, 2015).

⁵ Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50, 51.

⁶ Ordinance of 1787, *supra*, at Section 14 (Compact), Article III.

⁷ Matthew J. Festa, *Property and Republicanism in the Northwest Ordinance*, 45 Ariz. St. L.J. 409, 460 (2013). See also Alexandra Usher, "Public Schools in the Original Federal Land Grant Program" 5 The Center on Education Policy (Apr. 2011), http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED518388&ERICExtSearch_SearchType_0=no&accno=ED518388 (last visited Apr. 27, 2015), citing P.W. Culp, D.B.

Conradi, and C.C. Tuell, *Trust land in the American west: A legal overview and policy assessment* 4-8 (Cambridge MA: Lincoln Institute of Land Policy 2005).

⁸ Ohio Enabling Act, ch. 40, Sec. 7, 2 Stat. 173, 175 (1802),
http://www.ohiohistorycentral.org/w/Enabling_Act_of_1802?rec=1490 (last visited Apr. 27, 2015)
<http://research.archives.gov/description/299949> (last visited Apr. 27, 2015).

⁹ *Id.*

¹⁰ *Propositions From the Ohio Constitutional Convention to the Congress of the United States, Relating to the Admission of Ohio, Ordinance and Resolution Passed in Convention, Nov. 29, 1802*, as reprinted in Daniel J. Ryan, *From Charter to Constitution, Ohio Archaeological and Historical Publications*, Volume 5, Ohio St. Archaeological and Hist. Soc. 78 et seq. (1897),
[http://publications.ohiohistory.org/ohj/browse/displaypages.php?display\[\]=0005&display\[\]=1&display\[\]=164](http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0005&display[]=1&display[]=164)
 (last visited May 5, 2015).

¹¹ George W. Knepper, *The Official Ohio Lands Book* (2002). See also Steinglass & Scarselli, *supra*.

¹² Knepper, *supra*.

¹³ *Id.* at 58.

¹⁴ *Id.* at 58-59.

¹⁵ See generally William E. Peters, *Ohio Lands and Their Subdivision* 340-357 (2nd ed. 1918).

¹⁶ Knepper, *supra*, at 59.

¹⁷ *Id.* at 60.

¹⁸ Peters, *supra*, at 362-364.

¹⁹ *Id.* at 364.

²⁰ Steinglass & Scarselli, *supra*.

²¹ *Id.* at 220-21, citing Public Law 90-304 (May 13, 1968).

²² *Id.* at 221.

²³ Source: Ohio Secretary of State's website; May 7, 1968 Primary (Official Results),
<http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1960-1969Results/68priconst.aspx> (last visited May 5, 2015).

²⁴ Ohio Constitutional Revision Commission (1970-77), *Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research*, 53 (June 30, 1977),
<http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 5, 2015).

²⁵ On November 4, 2014, Mr. Cupp was elected state representative for the Fourth District (Allen County) for a term beginning January 6, 2015. Upon being sworn as state representative, Representative Cupp was selected to serve as a legislative member of the Ohio Constitutional Modernization Commission.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE VI, SECTION 2

SCHOOL FUNDS

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 2 of the Ohio Constitution concerning school funds. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article VI, Section 2 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 2 reads as follows:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

Article VI of the Ohio Constitution concerns education.

Section 2, adopted as part of the Ohio Constitution of 1851 and never amended, includes the first use of the phrase "thorough and efficient" in the constitution of any state.¹ The provision was influenced by an 1837 report about education in England and Europe commissioned by the Ohio legislature and prepared by Calvin Ellis Stowe, a professor of biblical literature at Lane Theological Seminary in Cincinnati.² Stowe, the husband of Harriet Beecher Stowe, was a strong supporter of universal public education, and urged Ohio to follow the Prussian example of state-supported education.³ Stowe's report was republished by the legislatures of Michigan, Massachusetts, Pennsylvania, North Carolina, and Virginia.⁴ In fact, some 22 states are recognized as having constitutional provisions imposing educational standards similar or

identical to Ohio’s “thorough and efficient” clause.⁵ Despite these similarities, the definition of “common schools,” as well as what constitutes a “thorough and efficient” system for providing education, varies widely from state to state due to differences in history, demographics, geography, and other factors.⁶

Amendments, Proposed Amendments, and Other Review

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section, concluding that adding specific language that dealt with school finance would undermine the view that a constitution should only state general principles and guidelines.

The 1970s Commission succinctly summarized its position on retaining current language by stating:

A system of school finance poses unique problems because so many factors are involved, many of which are legislative, economic and geographical considerations, and being subject to change, are not likely to be more adequately provided for in the [c]onstitution than by the language presently contained in that document.⁷

Litigation Involving the Provision

The most recent, and notable, litigation involving school funding is the *DeRolph* line of cases,⁸ in which a coalition of individuals and five Ohio school districts sued the state in 1991, alleging that the state educational funding system violated the “thorough and efficient” clause found in Article VI, Section 2.⁹ Specifically, the *DeRolph* plaintiffs argued that the school funding scheme in place at the time relied too heavily on local property taxes, resulting in disparities in the quality of educational facilities and resources in different communities across the state. Concluding that the school funding system was “wholly inadequate” to meet the constitutional mandate, the Ohio Supreme Court directed in 1997 that the General Assembly “create an entirely new school financing system” that was not overly dependent on local property taxes. *DeRolph v. State*, 78 Ohio St.3d 193, 239, 213, 1997-Ohio-84, 677 N.E.2d 733, 765, 747 (*DeRolph I*).¹⁰

The *DeRolph* litigation brought to light evidence that a lack of funding in many districts had resulted in deteriorating school facilities, outdated textbooks, insufficient school supplies, overcrowded classrooms, and other conditions that were seen to impede learning. In *DeRolph I*, a majority of the court concluded that “state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.” *Id.*, 78 Ohio St.3d at 208, 677 N.E.2d at 744. The court ordered the General Assembly to “first determine the cost of a basic quality education in both primary and secondary schools in Ohio, and then ensure sufficient funds to provide each student with that education, realizing that local property taxes can no longer be the primary means of providing the finances for a thorough and efficient system of schools.” *Id.*, 78 Ohio St.3d at 261-262, 677 N.E.2d at 780.

In 2000, after the state undertook measures to institute reforms, the case again came before the court on the same question of whether the constitutional requirement that the state provide a “thorough and efficient system of common schools” had been met. Noting the complexity of the state’s educational system, a majority of the court observed that setting a per-pupil funding amount, or otherwise providing some specific funding scheme, would violate the separation of powers doctrine; thus, the court left the specific remedy to the General Assembly. *DeRolph v. State*, 89 Ohio St.3d 1, 6, 11-12, 2000-Ohio-437, 728 N.E.2d 993, 998, 1002-03 (*DeRolph II*). While recognizing that the General Assembly’s creation of the Ohio School Facilities Commission, as well as its enactment of other remedial legislation, had constituted a “good faith attempt to comply with the constitutional requirements” and had improved conditions around the state, the court nevertheless concluded that the state defendants needed more time to institute reforms before the court could declare the state had met its obligation to provide a “thorough and efficient system of common schools.”¹¹ *Id.*, 78 Ohio St.3d at 35-36, 728 N.E.2d at 1020.

In 2001, the court continued its review of the reforms adopted by the General Assembly, finding further measures were needed to conform with Article VI, Section 2. Specifically, the court ordered the state to modify its base cost formula, by which the state calculated the per-pupil cost of providing an adequate education; to accelerate the phase-in of a parity aid program that was designed to provide additional funding to poorer districts; and to consider alternative means of funding school buildings and facilities. *DeRolph v. State*, 93 Ohio St.3d 309, 324-25, 2001-Ohio-1343, 754 N.E.2d 1184, 1200-01 (*DeRolph III*).

In 2002, upon reconsideration of its decision in *DeRolph III*, a divided court agreed to vacate the judgment. However, despite this action, a majority of the court maintained that Ohio’s school funding system continued to be unconstitutional because the General Assembly, despite enacting reforms, had not performed “ ‘a complete systematic overhaul’ of the school-funding system.” *DeRolph v. State*, 97 Ohio St.3d 434, 435, 2002-Ohio-6750, 780 N.E.2d 529, 530 (*DeRolph IV*), quoting from *DeRolph I*. Commenting during a presentation before the committee about the impact of *DeRolph*, Justice Paul E. Pfeifer indicated that the consensus of the court in *DeRolph IV* was to release jurisdiction because litigation was not proving to be the answer to the problem, and because, by that time, reforms had resulted in school facility improvement.¹²

In May 2003, the Ohio Supreme Court granted a peremptory writ of prohibition, preventing the trial court from exercising further jurisdiction over *DeRolph*. *State ex rel. State v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195. In so deciding, the court clarified that its mandate in *DeRolph IV* was not for the trial court to conduct further proceedings, and determined that allowing the trial court to take further action would be an improper attempt to require judicial approval for proposed remedies. *Id.*, 99 Ohio St.3d at 103, 789 N.E.2d at 202. Thus, the court ended further litigation in *DeRolph*. *Id.*, 99 Ohio St.3d at 104, 789 N.E.2d at 202.¹³

Although the *DeRolph* litigation ended without there being a judicial determination that the state had complied with the constitutional mandate, *DeRolph* did bring to light school funding insufficiencies, and resulted in the adoption of changes that were intended to improve school facilities and other educational resources.¹⁴

Presentations and Resources Considered

DeMaria Presentation

Paolo DeMaria of Education First presented to the committee on August 8, 2013. His presentation focused on the importance of education to the public good, the role of government, the elements of an excellent education, the governance of education at the state and local level, the variety of local educational structures, and funding. He also identified emerging issues, including: standards, assessments, educating all students, early childhood education, accountability, teacher/leader quality, technology, data, school operational improvement, competency-based education, finances, and the relationship between education policy and tax policy. Finally, he concluded with a brief review of state and local support for K-12 education, observing that more spending does not result in better student outcomes.

Lewis Presentation

Richard C. Lewis, Executive Director of the Ohio School Boards Association, also appeared before the committee on August 8, 2013, focusing on the constitutional structure of education in Ohio; the importance of local control; the importance of reliable and equitable funding; the spectrum of urban, suburban, and rural districts; the impact of privatization; the importance of balancing the traditional and the innovative; and accountability. He also provided the committee with some detailed materials on the elements of a model school funding formula.

Wilson Presentation

Charles Wilson, professor emeritus of the Ohio State University Moritz College of Law, provided a broad overview of Article VI at his November 14, 2013, presentation to the committee. Subsequently, he submitted two alternative proposals. Both alternatives retain the “thorough and efficient” language and expressly characterize education as a “fundamental right.” One proposal requires the General Assembly to provide for and fund an “efficient, safe, secure, thorough, equitable, and high quality education.” Another alternative requires the General Assembly to fund and provide a “uniformly high quality educational system designed to prepare Ohio’s people to function effectively as citizens,” as well as an early childhood educational system.

Phillis Presentation

William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, presented to the committee on December 12, 2013, and on March 13, 2014. Mr. Phillis provided the committee with information on public education, relevant methodologies for determining the cost of public education, and information on the impact of charter schools. He also provided drafts of specific amendments for the committee’s consideration.

Mr. Phillis recommended that the “thorough and efficient” clause be maintained. He also provided the committee with the text of three proposed amendments to Article VI. Under his proposal, a new Section 2a would provide state officials with direction in determining what

constitutes a “thorough and efficient” education. Mr. Phillis proposed a second provision that would require the institution of early childhood educational programs to all children beginning at three years of age. Mr. Phillis’ third proposed amendment concerns the state board of education and provides that “[s]tate board of education members shall be elected, one from each congressional district.”

Pittner Presentation

Nicholas A. Pittner, the lead attorney in the *DeRolph* litigation, appeared with William L. Phillis on December 12, 2013, and summarized the history of the *DeRolph* cases. Mr. Pittner opined that Ohio’s educational funding system remains inadequate because the current system is still over-reliant on local property taxes. According to Mr. Pittner, “Section 2, Article VI of the Ohio Constitution is clear and needs no revision. What is needed are specific standards by which compliance with the mandates of Section 2, Article VI can be measured and enforced.” Mr. Pittner expressed his support for a proposed amendment, submitted by Mr. Phillis, that would provide additional constitutional direction.

Dyer Presentation

On June 12, 2014, Stephen Dyer, the Education Policy Fellow at Innovation, Ohio, presented to the committee on the financing of education in Ohio, specifically, his concerns about the level of state support and the disparity in the ability of districts to support education. With respect to the “thorough and efficient” requirement, he urged that if the requirement is to be replaced it should be replaced with language that is even stronger. He pointed to provisions in the Florida and Montana Constitutions, and he provided the committee with proposed changes to Article VI, Section 2 that included a requirement that Ohio residents receive a “world-class education,” which the legislature would be responsible for funding.

Reedy Presentation

Maureen Reedy, co-founder of Ohio Friends of Public Education and a former grade school and special education teacher, presented to the committee on June 12, 2014. Her remarks emphasized the importance of public schools and expressed alarm at the possible removal of the “thorough and efficient” requirement from the constitution.

Alt Presentation

Robert Alt, President and CEO of the Buckeye Institute for Public Policy, appeared before the committee on September 11, 2014. In his comments, Mr. Alt gave an overview of the history of educational policy issues in Ohio, emphasizing that it is the role of the legislature, not the courts, to define the contours of education. Mr. Alt was critical of judicial intervention in education, and expressed concern that broad or generalized language in the constitution could invite improper judicial intervention. Criticizing some of the proposals being considered by the committee as being vague and too aspirational, Mr. Alt said he did not like the “thorough and efficient” phrase, but did not believe it should be repealed. Mr. Alt declined to suggest new

language because of his position that the General Assembly should have primary responsibility for education issues.

Pfeifer Presentation

Hon. Paul E. Pfeifer, Justice of the Ohio Supreme Court, presented to the committee on November 13, 2014. His talk focused upon the *DeRolph* decisions, specifically referencing his concurring opinions in two of the four *DeRolph* decisions. Justice Pfeifer, who is the only current justice to have participated in all four *DeRolph* decisions, provided background on the litigation. He expressed the view that not all decisions regarding education should be left to the legislature, but he observed that the court in *DeRolph* did not intend to tell the legislature what to do. Justice Pfeifer expressed the view that “thorough and efficient” served a worthy purpose, and he did not advocate removing it from the constitution. He did comment that he would not be opposed to more modern language to replace “thorough and efficient.”

Morales Presentation

Stephanie Morales, a member of the Board of the Cleveland Municipal School District, a graduate of the Cleveland public schools, and the parent of three children currently in the Cleveland public schools, made a presentation on January 15, 2015. Ms. Morales described the challenges faced by the school district, the efforts made by the district to support its mission, and the importance of state funds to the district. She acknowledged the substantial support provided to the district through the Ohio Facilities Construction Commission. With respect to the “thorough and efficient” requirement, she urged the committee to not take any action that might be interpreted as weakening the state’s duty to provide a quality education for all of Ohio’s children.

Middleton Presentation

Dr. Renee A. Middleton, Dean of the Patton College of Education at Ohio University, appeared before the committee on January 15, 2015. Dr. Middleton stressed the history of public education in Ohio and its importance in ensuring an educated citizenry and in safeguarding democracy. She urged that public education be fair and equitable, she expressed support for maintaining judicial oversight, and she advised the committee not to turn its back on “thorough and efficient.” She emphasized the importance of determining and funding a high-quality education without an overreliance on property taxes, as well as the importance of adequate funding to promote essential educational opportunities for all.

Johnson Presentation

On March 12, 2015, Darold Johnson, Director of Legislative and Political Action for the Ohio Federation of Teachers, appeared before the committee to express his organization’s position that the current language in Article VI, Section 2, be retained. He said that the Ohio Supreme Court in the *DeRolph* cases defined “thorough and efficient,” and that changing the provision would result in more litigation in order to provide clarity about whatever replacement language might signify. Mr. Johnson indicated that because civil rights already exist in federal law, and in

federal constitutional amendments, and because case law in this area is settled, the Ohio Constitution should only be changed in order to correct problems for which there are no other options. Mr. Johnson said that “through and efficient” is better than “equitable” or “equal” because *DeRolph* has defined the phrase and is a benchmark. He stressed that removing “thorough and efficient” would cause a bigger loss than would be gained from including the word “equitable.”

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted on October 8, 2015 to issue a report and recommendation recommending that Article VI, Section 2 be retained in its current form.

Presentation to the Commission

On November 12, 2015, on behalf of the Education, Public Institutions, and Local Government Committee, committee Chair Chad A. Readler appeared before the Commission to present the committee’s report and recommendation, by which it recommended retention of Article VI, Section 2. Chair Readler explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article VI, Section 2 in its current form.

Action by the Commission

At the Commission meeting held December 10, 2015, _____ moved to adopt the report and recommendation for Article VI, Section 2, a motion that was seconded by _____. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of ____ members of the Commission.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VI, Section 2 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on November 12, 2015, and December 10, 2015, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ See, e.g., Jeremy J. Neff, *A Thorough and Efficient Definition of “Thorough and Efficient”: The Starting Point for Meaningful School Funding Reform*, 33:1 J. of Educ. Fin. 69 (2007).

² C.E. Stowe, *Report on Elementary Public Instruction in Europe, Made to the Thirty-Sixth General Assembly of the State of Ohio* (1837).

³ A history of the concept and implementation of a “system of common schools” in Ohio may be found in Molly O’Brien & Amanda Woodrum, *The Constitutional Common School*, 51 Clev.St.L.Rev. 581 (2004).

⁴ See, e.g., Frank Forest Bunker, *Reorganization of the Public School System*, Department of the Interior, Bureau of Education Bulletin No. 8, 24 (1916).

⁵ William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 Educ. L. Rep. 19, note 10 at 23-24, as cited in O’Brien & Woodrum, *supra*, at 584, note 14.

⁶ Paul L. Tractenberg, Paul L. “Education,” in *State Constitutions for the Twenty-First Century*, 241-42 (Alan G. Tarr & Robert F. Williams, eds., 2006).

⁷ Ohio Constitutional Revision Commission (1970-77), *Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research*, 65-66 (June 30, 1977), <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 5, 2015).

⁸ See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

⁹ A comprehensive overview of the *DeRolph* litigation may be found in Larry J. Obhof, *DeRolph v. State and Ohio’s Long Road to an Adequate Education*, 2005 B.Y.U. Educ. & L.J. 83 (2005).

¹⁰ Summarizing the comments of delegates to the Constitutional Convention of 1850-51 in the fourth, and final, *DeRolph* decision, Justice Paul Pfeifer emphasized that the purpose of the provision is to express the state’s commitment to education for all:

James Taylor, a delegate from Erie County, stated, “I think it must be clear to every reflecting mind that the true policy of the statesman is to provide the means of education, and consequent moral improvement, to every child in the State, the offspring of the black man equally with that of the white man, the children of the poor equally with the rich.” [citation omitted.] Samuel Quigley, a delegate from Columbiana County, stated, “The report directs the Legislature to make full and ample provision for securing a thorough and efficient system of common school education, free to all the children in the State. The language of this section is expressive of the liberality worthy a great State, and a great people. There is no stopping place here short of a common school education to all children in the State.” [citation omitted.] The delegates knew what they wanted, what the people wanted, and that it was necessary to use the Constitution to achieve what they wanted.

DeRolph IV, supra, 97 Ohio St.3d at 436, 2002-Ohio-6750, 780 N.E.2d at 531.

¹² Ohio Constitutional Modernization Commission, November 13, 2014, Meeting Minutes of the Education, Public Institutions, and Local Government Committee, http://ocmc.ohio.gov/ocmc/committees/educ_pubinst_misc_localgovt;jsessionid=b957049e1ac01b4e1baacea4fc97 (last visited Apr. 30, 2015).

¹³ In October 2003, the United States Supreme Court denied a petition for a writ of certiorari. *DeRolph v. Ohio*, 540 U.S. 966 (2003).

¹⁴ *See* Obhof, *supra*, at 145-49.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2015

ANNUAL REPORT

Issued December 10, 2015

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I. INTRODUCTION

This 2015 Annual Report (“Report”) of the Ohio Constitutional Modernization Commission (“Commission”) is issued as a supplement to the even-numbered-year biennial reports required by R.C. 103.66. Previously, two biennial reports on the work of the Commission were issued in December 2012 and December 2014.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the Ohio General Assembly.

Under R.C. 103.61, the Commission is charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

Under Rule 10.3 of the Rules of Procedure and Conduct, a Commission recommendation to retain an existing section of the Ohio Constitution, without change, requires the affirmative vote of 17 Commission members. A Commission recommendation to amend an existing section or adopt a new section requires the affirmative vote of 22 Commission members.

Under Amended Substitute House Bill 64, consisting of the Main Operating Budget for Fiscal Years 2016-2017, with an effective date of July 1, 2015, the Commission shall complete its work on or before January 1, 2018 and shall cease to exist at that time.

The statutory language governing the Commission is available here:
<http://ocmc.ohio.gov/ocmc/about>.

II. MEMBERSHIP

Under R.C. 103.63 there are to be 32 members of the Commission. Twelve members of the Commission are to be appointed from the General Assembly, with three members appointed by the president of the Senate, three members appointed by the minority leader of the Senate, three members appointed by the speaker of the House of Representatives, and three members appointed by the minority leader of the House of Representatives.

In early 2015, the Commission welcomed three new legislative members to its rolls. Rep. Robert R. Cupp, Rep. Nathan H. Manning, and Rep. Emilia Strong Sykes were selected by their legislative caucuses to serve on the Commission. They were selected to replace House Speaker William G. Batchelder, Rep. Matt Huffman, and Rep. Vernon Sykes, who left the General Assembly at the end of 2014 due to term limitations. In November, Rep. Robert McColley was named to replace Rep. Manning on the Commission.

R.C. 103.63 requires that, at the beginning of each even numbered year, the twelve members shall meet, elect a co-chair from each house of the General Assembly, and appoint 20 members who are not members of the General Assembly. Due to the departure of Speaker Batchelder at the end of 2014, the members of the General Assembly elected Speaker Pro Tempore Ron Amstutz to serve as one of the Commission's co-chairs. Sen. Charleta B. Tavares continued her service as the other co-chair.

The following individuals served on the Commission during 2015:

Janet Gilligan Abaray	Frederick E. Mills
Rep. Ron Amstutz	Dennis P. Mulvihill
Herb Asher	Sen. Larry Obhof
Roger L. Beckett	Sen. Bob Peterson
Karla L. Bell	Chad A. Readler
Paula Brooks	Richard B. Saphire
Rep. Kathleen Clyde	Sen. Tom Sawyer
Douglas R. Cole	Sen. Michael Skindell
Sen. Bill Coley	Rep. Emilia Strong Sykes
Rep. Robert R. Cupp	Bob Taft
Rep. Michael F. Curtin	Pierrette Talley
Jo Ann Davidson	Sen. Charleta B. Tavares
Patrick F. Fischer	Kathleen M. Trafford
Edward L. Gilbert	Mark Wagoner
Jeff Jacobson	
Charles F. Kurfess	

Larry L. Macon
Rep. Nathan H. Manning
Rep. Robert McColley

III. STAFF

The summer of 2015 concluded the first full year that Executive Director Steven C. Hollon, Counsel to the Commission Shari L. O'Neill, Communications Director Shaunte S. Russell, and Administrative Assistant Jennie Long, assisted the Commission in its work. In addition, the Commission continued to rely on the guidance of Steven H. Steinglass, dean emeritus and professor emeritus at the Cleveland-Marshall College of Law, who served as the senior policy advisor to the Commission.

The Commission also received assistance in 2015 from Frank Strigari, legal counsel for the Senate Majority Caucus, Bethany E. Sanders, deputy legal counsel and policy advisor for the Senate Minority Caucus, and Sarah A. Cherry, legal counsel for the House Minority Caucus. In addition, the Commission was assisted by legislative aides during committee meetings including Jenna Beadle, Antwan Booker, Rachael Carl, James Carmean, Nick Derksen, Maria Haberman, Stephanie Megas, Brianna Miller, Jenna Saponaro, Ali Simon, Chris Smith, and Sheila Willamowski. The Commission also benefited from legal research from interns Hailey Akah, Stacia Rapp, and Elizabeth Erin Oehler from the Legislation Clinic at the Ohio State University Moritz College of Law, as well as Moritz College of Law summer interns Alex Benson, Bryan Becker, and Joyce Gray.

IV. AMENDMENTS TO RULES OF PROCEDURE AND CONDUCT

After formally adopting Rules of Procedure and Conduct at its meeting on September 11, 2014, the Organization and Administration Committee determined on September 10, 2015 that the Commission could benefit from some slight revisions to the procedure for approving reports and recommendations. Specifically, the committee recommended that, in the instance where no change to a constitutional provision is being recommended by a committee, a vote could be taken in the committee on whether to issue a report and recommendation after only one reading. The Commission adopted this recommendation, further voting that, where an additional reading might be necessary, the reading need not occur at the next consecutive meeting, but could take place at a subsequent meeting, whenever that might take place.

A complete copy of the amended Rules is available at:

<http://ocmc.ohio.gov/ocmc/docs/OCMCRulesofProcedureandConduct.pdf>.

V. SUBJECT MATTER COMMITTEES

Following the structure adopted by the Commission in the last biennium, and following the Rules of Procedure and Conduct adopted by the Commission in September 2014, the Commission uses six subject matter committees for the purpose of completing its work. The six subject matter committees have been divided into two groups which are informally known as the gray committees and the green committees.

The gray committees are the Education, Public Institutions, and Local Government Committee; the Finance, Taxation, and Economic Development Committee; and the Judicial Branch and Administration of Justice Committee. The green committees are the Bill of Rights and Voting Committee; the Constitutional Revision and Updating Committee; and the Legislative Branch and Executive Branch Committee.

Education, Public Institutions, and Local Government Committee

Charge

The Education, Public Institutions, and Local Government Committee is charged generally with reviewing Article VI (Education), Article VII (Public Institutions), Article X (County and Township Organization), Article XV (Miscellaneous), and Article XVIII (Municipal Corporations), and in particular with topics related to school funding, home rule, and adjoining regionalization and economic development.

Committee Members

Chad A. Readler chaired the committee in 2015, with Edward L. Gilbert serving as vice-chair.

Committee members who served at various times during the year included Roger L. Beckett, Paula Brooks, Rep. Kathleen Clyde, Sen. Bill Coley, Rep. Robert R. Cupp, Rep. Michael F. Curtin, Larry L. Macon, Sen. Tom Sawyer, Bob Taft, and Pierrette Talley.

Topics Reviewed

In 2015, the committee concluded its consideration of Article VI, Section 2, relating to the requirement that the General Assembly “secure a thorough and efficient system of common schools throughout the state.” Three speakers appeared before the committee to discuss this provision. In January, the committee heard from Stephanie Morales, a member of the Cleveland Municipal School District, and Dr. Renee Middleton, dean of the Patton College of Education and Human Services at Ohio University, who described their experiences and views relating to the maintenance of a thorough and efficient public school system. Then, in March, Darold Johnson, legislative director for the Ohio Federation of Teachers, discussed with the committee his view that Article VI, Section 2 should be retained in its current form because a body of law has been build up around the provision such that the public has an understanding of the meaning of the words “thorough and efficient.”

After considering the views of these speakers, as well as the opinions expressed by the other speakers who had appeared before the committee prior to 2015, the committee voted to retain Article VI, Section 2 in its current form.

After a presentation in 2014 by Robert R. Cupp, in his prior position as chief legal counsel for the Ohio Auditor of State, on the topic of Article VI, Section 1, dealing with funds for religious and educational purposes, the committee determined that the provision still served a useful purpose and should be retained in its current form.

In May, the committee began a review of Article VI, Section 3, relating to local boards of education. Wishing to consider the experiences of board members from both a large city school district and a smaller rural district, the committee heard presentations by Gary L. Baker, II, president of the Columbus Board of Education, as well as Eric Germann, member of the board of education of Lincolnview Local Schools. The committee also heard presentations by vocational school board member Sue Steele of the Great Oaks Institute of Technology and Career Development, and by Al Haberstroh, a board member from the Trumbull County Educational Service Center. These presentations assisted the committee's decision to recommend that Article VI, Section 3 be retained in its current form.

In October, the committee began a review of Article VI, Section 4, providing for a state board of education as well as a superintendent of public instruction. William Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, presented to the committee on the "Evolution of the State Board of Education," advocating that the state board return to an all-elected membership instead of the current format in which some board members are elected and some are appointed by the governor.

Reports and Recommendations

By December, the Education, Public Institutions, and Local Government Committee had issued reports and recommendations for no change to Article VI, Section 1 (Funds for Religious and Educational Purposes), and Section 2 (School Funds). The committee also heard the first presentation of a report and recommendation recommending no change to Article VI, Section 3 (Public School System, Boards of Education).

Finance, Taxation, and Economic Development Committee

Charge

The Finance, Taxation, and Economic Development Committee is charged with reviewing Article VIII (Public Debt and Public Works), Article XII (Finance and Taxation), and Article XIII (Corporations), and with topics related to tax reform, and statewide economic development.

Committee Members

Douglas R. Cole chaired the committee in 2015, with Karla L. Bell serving as vice-chair.

Individuals who served on the committee during the year included Rep. Ron Amstutz, Herb Asher, Rep. Kathleen Clyde, Jo Ann Davidson, Frederick E. Mills, Sen. Bob Peterson, Sen. Tom Sawyer, Sen. Charleta B. Tavares, and Kathleen M. Trafford.

Topics Reviewed

During the year, the committee continued its consideration of how the state addresses debt. The committee heard from Seth Metcalf, general counsel to the Ohio Treasurer, as well as from Professor Richard Briffault of the Columbia University Law School, both of whom presented ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future. The committee also heard a presentation by Timothy S. Keen, director of the Ohio Office of Budget and Management, who suggested several ways in which the state's debt provisions in Article VIII could be modernized.

Reports and Recommendations

The Finance, Taxation, and Economic Development Committee did not forward any reports and recommendations to the Commission in 2015, but expects to present a comprehensive plan for revising and revitalizing Article VIII before concluding its work on the topic of state finance.

Judicial Branch and Administration of Justice Committee

Charge

The Judicial Branch and Administration of Justice Committee is charged with reviewing Article IV (Judicial); Article I, Sections 5, 8-10a, 12, 14, 15, 16, and 19a (sections relating to Rights Under Justice); and topics related to judicial organization, the criminal and civil justice system, and the rights of the criminally accused.

Committee Members

Janet Gilligan Abaray chaired the committee during 2015, with Patrick F. Fischer serving as vice-chair.

Members of the committee during the year included Rep. Michael F. Curtin, Jeff Jacobson, Charles F. Kurfess, Dennis P. Mulvihill, Rep. Nathan H. Manning, Rep. Robert McColley, Sen. Larry Obhof, Richard B. Saphire, Sen. Michael Skindell, Rep. Emilia Strong Sykes, and Mark Wagoner.

Topics Reviewed

After concluding that Article IV, Section 19 (Courts of Conciliation) and Section 22 (Supreme Court Commission) were obsolete provisions and should be repealed, the Judicial Branch and Administration of Justice Committee considered a proposal by Ohio Supreme Court Justice Paul E. Pfeifer to allow the Ohio Supreme Court to take original jurisdiction over actions for declaratory judgment in cases of public or great general interest. In July, the committee took up

the question of whether Ohio's grand jury system for procuring criminal indictments was in need of revision.

Presentations to the committee included Ohio Supreme Court Chief Justice Maureen O'Connor's presentation regarding the evaluation of judicial elections and candidates, and a review of the legal concepts of standing and justiciability by Professor Michael E. Solimine of the University of Cincinnati College of Law. On the topic of the grand jury procedure, the committee heard from Sen. Sandra Williams, a member of the Governor's Task Force on Community-Police Relations, on recommending changes to Ohio's grand jury process. The committee also heard a presentation about grand juries by Professor Gregory M. Gilchrist of the University of Toledo College of Law.

Reports and Recommendations

The Judicial Branch and the Administration of Justice Committee issued a report and recommendation that recommended repeal of Article IV, Section 19 (Courts of Conciliation), and Section 22 (Supreme Court Commission). These recommendations were forwarded to the Commission, which adopted both reports and recommendations for presentation to the General Assembly.

Bill of Rights and Voting Committee

Charge

The Bill of Rights and Voting Committee is charged with reviewing those sections of Article I involving the rights of all, including Sections 1 (Inalienable Rights); 2 (Right to Alter, Reform, or Abolish Government); 3 (Right to Assemble); 4 (Bearing Arms, Standing Armies, and Military Power); 6 (Slavery and Involuntary Servitude); 7 (Rights of Conscience, Education, the Necessity of Religion and Knowledge); 11 (Freedom of Speech, of the Press, of Libels); 13 (Quarterming Troops); 17 (No Hereditary Privileges); 18 (Suspension of Laws); 19 (Eminent Domain); 19b (Protect Private Property Rights in Ground Water, Lakes and Other Watercourses); 20 (Powers Reserved to the People); and 21 (Preservation of the Freedom to Choose Health Care and Health Care Coverage). In addition, the committee is charged with reviewing the provisions of the Ohio Constitution dealing with voting rights, including all sections of Article V (Elective Franchise) and Article XVII (Elections).

Committee Members

Richard B. Saphire chaired the committee in 2015, with Jeff Jacobson serving as vice-chair.

Individuals who served on the committee during 2015 were Rep. Ron Amstutz, Karla L. Bell, Rep. Kathleen Clyde, Douglas R. Cole, Patrick F. Fischer, Edward L. Gilbert, Sen. Bob Peterson, and Sen. Michael Skindell.

Topics Reviewed

The Bill of Rights and Voting Committee spent much of 2015 considering what changes to recommend to Article V, Section 6, which addresses the disenfranchisement of mentally incapacitated individuals. While members of the committee agreed that the provision's current description of such persons as being "idiots and insane persons" was outdated and derogatory, the committee debated what would be the appropriate substitute phrasing, as well as whether a new provision should include a requirement of an adjudication, a mandate for action by the General Assembly in enacting statutory law relating to the issue, and language that would appropriately describe voting as a right, a privilege, or both.

Relating to this issue, the committee heard on several occasions from Michael Kirkman, executive director of the advocacy group Disability Rights Ohio, who discussed with the committee the considerations and problems inherent in evaluating mental incapacity for the purposes of voting, and suggested approaches the committee might use in changing the objectionable language. The committee also heard a presentation by Wilson R. Huhn, professor emeritus at the University of Akron School of Law, on behalf of the American Civil Liberties Union of Ohio, in which he advocated removal or revision of Article V, Section 6.

Reports and Recommendations

Based upon its previous decisions to recommend retention of several constitutional provisions in their current form, the committee issued reports and recommendations for Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges); Section 3 (Right to Assemble); Section 4 (Bearing Arms, Standing Armies, and Military Power); Section 13 (Quartering Troops); Section 17 (No Hereditary Privileges); and Section 20 (Powers Reserved to the People). The committee also issued a report and recommendation for Article V, Section 4 (Exclusion from Franchise for Felony Conviction).

The committee considered a report and recommendation for Article V, Section 6 (Mental Capacity to Vote), and expects, in early 2016, to issue a report and recommendation recommending a change to this provision that would remove the outdated language referring to persons of diminished mental capacity.

Constitutional Revision and Updating Committee

Charge

The Constitutional Revision and Updating Committee is charged with reviewing Article II, Section 1, which provides the initiative process, by which citizens may propose to the General Assembly laws and amendments to the Ohio Constitution, and the referendum process, by which citizens may adopt or reject laws and amendments adopted by the General Assembly. The committee also is charged with reviewing Article XVI, Sections 1, 2, and 3, governing the process by which the General Assembly proposes amendments to the Ohio Constitution as well as the process for holding a constitutional convention in order to revise, amend, or change the Ohio Constitution. Under R.C. 103.61(C), the committee's express purpose is to carry out the

statutory directive that the Commission consider “the problems pertaining to the amendment of the constitution.”

Committee Members

Dennis P. Mulvihill chaired the committee in 2015, with Charles F. Kurfess serving as vice-chair.

Individuals who served on the committee during the year included Janet Gilligan Abaray, Roger L. Beckett, Rep. Robert R. Cupp, Rep. Michael F. Curtin, Larry L. Macon, Sen. Larry Obhof, Chad A. Readler, Sen. Tom Sawyer, Rep. Emilia Strong Sykes, and Mark Wagoner.

Topics Reviewed

The Constitutional Revision and Updating Committee continued its consideration of whether the existing constitutional provisions regarding initiative and referendum should be retained, or whether they should be modified in favor of a system that would encourage members of the public wishing to effect change to pursue the enactment of statutory law rather than the adoption of constitutional amendments.

Significantly, the committee focused on ways to prevent persons seeking an economic advantage from using the initiative process to create a monopoly under the constitution. These discussions were beneficial to a General Assembly effort to place an issue on the ballot asking voters to approve a constitutional provision preventing the initiative process from being used in this manner. Thus, “Issue 2” was approved by voters on November 3, 2015, resulting in an amendment to Article II, Section 1e.

In November, the committee continued its ongoing consideration of potential changes to the indirect statutory initiative. As a preliminary step toward issuing a report and recommendation addressing the statutory initiative process, the committee considered whether a revision of the relevant sections should include language eliminating the supplemental petition requirement, keeping the statutory initiative, and indicating that, if the General Assembly passes something different or refuses to act, the proponents of the initiative can go directly to the voters. The committee also considered a “safe harbor” provision preventing the General Assembly from acting on an initiated statute for five years absent a two-thirds vote, and raising the petition signature requirement from three percent to five percent.

Reports and Recommendations

The committee will continue to discuss potential changes to the existing constitutional provisions governing the initiative and referendum process, and expects to issue a report and recommendation in early 2016.

Legislative Branch and Executive Branch Committee

Charge

The Legislative Branch and Executive Branch Committee is charged with reviewing Article II (Legislative), Article III (Executive), Article IX (Militia), Article XI (Apportionment), Article XIV (Livestock Care Standards Board), as well as all provisions relating to term limits, redistricting and apportionment, and global, interstate, and regional economic development.

Committee Members

Frederick E. Mills chaired the committee in 2015, while Paula Brooks served as vice-chair.

Committee members during the year included Herb Asher, Sen. Bill Coley, Rep. Michael F. Curtin, Jo Ann Davidson, Rep. Nathan H. Manning, Larry L. Macon, Rep. Robert McColley, Bob Taft, Pierrette Talley, Sen. Charleta B. Tavares, and Kathleen M. Trafford.

Topics Reviewed

In 2015, the committee considered whether to recommend a change to Article II, Section 2, relating to term limits for state legislators. The committee concluded that term limits for state representatives should be lengthened from the current limit of four two-year terms to six two-year terms, with term limits for state senators to be extended from the current limit of two four-year terms to three four-year terms. The committee decided to allow the full Commission to decide whether the extension should apply to sitting legislators.

Speakers who appeared before the committee to discuss term limits included Tony Seegers, director of state policy for the Ohio Farm Bureau Federation, Ray Warrick, who heads “Eight is Enough,” an organization lobbying to keep term limits at eight years, and Phillip Blumel of U.S. Term Limits, a national organization advocating the use of term limits.

In February, the committee considered a proposal to create a public official pay commission, and on this topic heard from Frank Strigari, legal counsel to the Senate Majority Caucus.

With the assistance of discussions in the Legislative Branch and Executive Branch Committee, at the conclusion of 2014, the 130th General Assembly adopted a resolution to create a redistricting commission to draw the state legislative districts. The resolution appeared as Issue 1 on the November 2015 ballot, and was approved by voters by a wide margin. As a result, Article XI was amended, with Sections 1 through 15 being repealed, and new Sections 1 through 10 being enacted. The effective date of the new sections is January 1, 2021.

Based on the success of the bipartisan effort to reform the legislative redistricting process, in the fall of 2015 the committee reviewed and discussed two pending General Assembly resolutions that, if adopted, would ask voters to approve the creation of a similar commission to draw Congressional districts. The committee heard presentations by Rep. Kathleen Clyde and Rep. Michael F. Curtin, who presented on their sponsored resolution, H.J.R. 2, as well as from Sen.

Frank LaRose and Sen. Tom Sawyer, who presented on their sponsored resolution, S.J.R. 2. In November, Rep. Clyde and Rep. Curtin returned to the podium to discuss with the committee a draft of a new proposed resolution combining features of both the House and Senate resolutions. Throughout its review and discussion of the topic of legislative and Congressional redistricting, the committee heard presentations by Richard Gunther, professor emeritus of The Ohio State University, Ann Henkener of the League of Women Voters of Ohio, Catherine Turcer of Common Cause Ohio, and Carrie Wimbish of the Ohio Voter Rights Coalition, all of whom advocated for redistricting reform.

The fall of 2015 also saw the committee begin its review of Article II, Section 15(D), the “one subject rule” that restricts legislative enactments to a single subject. After hearing a summary of Ohio Supreme Court decisions interpreting the rule by Commission Counsel O’Neill, the committee also heard a presentation on the history of the one-subject rule by Attorney John Kulewicz.

Reports and Recommendations

The committee issued two separate reports and recommendations for Article II, Section 2 (Term Limits). One version recommends extending term limits from eight years to 12 years, but only allowing newly-elected legislators to take advantage of the extension. The other version recommends extending the limits for all legislators.

VI. STANDING COMMITTEES

The Commission also has four standing committees including the Organization and Administration Committee, the Coordinating Committee, the Public Education and Information Committee, and the Liaisons with Public Offices Committee.

Organization and Administration Committee

Charge

Under Rule 5.3 of the Rules of Procedure and Conduct, the Organization and Administration Committee is charged with making recommendations to the Commission and staff regarding budget, staffing, ethics, and rules.

Committee Members

Mark Wagoner served as chair in 2015, with Edward L. Gilbert serving as vice-chair.

Individuals who served on the committee during the year were Paula Brooks, Rep. Kathleen Clyde, Douglas R. Cole, Rep. Robert R. Cupp, Charles F. Kurfess, and Sen. Michael Skindell.

Topics Reviewed

In July 2015, the Organization and Administration Committee met to receive an update on the budget for the 2015 fiscal year, as well as to consider recommended changes to the Rules of Procedure and Conduct for the Commission. In September, the committee issued revisions to the rules that allow the committees to issue a recommendation for no change after only one presentation, rather than two presentations as the rules previously required. This revision was then presented to the Commission, which adopted it by a unanimous roll call vote. The Commission additionally adopted a modification to the rules that removed the requirement that the meetings at which a change is considered be consecutively held.

Coordinating Committee

Charge

Under Rule 5.6 of the Rules of Procedure and Conduct, the Coordinating Committee is charged with coordinating the study of the Ohio Constitution by each subject matter committee.

Committee Members

Kathleen M. Trafford served as chair in 2015, with Jo Ann Davidson serving as vice-chair.

Committee members during the year included Janet Gilligan Abaray, Sen. Bill Coley, Patrick F. Fischer, Dennis P. Mulvihill, Sen. Larry Obhof, and Rep. Emilia Strong Sykes.

Topics Reviewed

The Coordinating Committee approved ___ reports and recommendations for presentation to the full Commission. These included:

- Article IV, Section 19 (Courts of Conciliation);
- Article IV, Section 22 (Supreme Court Commission);
- Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges);
- Article I, Section 3 (Right to Assemble);
- Article I, Section 4 (Bearing Arms, Standing Armies, and Military Power); Section 13 (Quartering Troops);
- Article I, Section 17 (No Hereditary Privileges);
- Article VI, Section 1 (Funds for Religious and Educational Purposes);
- Article VI, Section 2 (School Funding)

Article I, Section 20 (Powers Reserved to the People);

Article V, Section 4 (Exclusion from Franchise for Felony Conviction)

Article II, Section 2 (Term Limits)

The committee also was responsible for working with staff in preparing this 2015 Annual Report.

In addition, in November, the Coordinating Committee took on the role of reviewing the progress of the subject matter committees, and, in that capacity, began the process of hearing status reports from the chairs of the subject matter committees. In November, the committee heard updates from Chad A. Readler, chair of the Education, Public Institutions, and Local Government Committee, and from Frederick E. Mills, chair of the Legislative Branch and Executive Branch Committee.

Public Education and Information Committee

Charge

Under Rule 5.4 of the Rules of Procedure and Conduct, the Public Education and Information Committee is charged with making recommendations to the Commission and staff on how best to disseminate information to the public regarding the Commission and its operation, educate the citizens of Ohio regarding the Commission's proposals, and receive input from the public.

Committee Members

Roger L. Beckett chaired this committee in 2015, with Larry L. Macon serving as vice-chair.

Committee members included Rep. Michael F. Curtin, Jeff Jacobson, Sen. Bob Peterson, Chad A. Readler, Richard B. Saphire, and Sen. Tom Sawyer.

Topics Reviewed

The Public Education and Information Committee worked with Communications Director Russell in formulating and reviewing a communications plan for publicizing the work of the Commission. As a part of the plan, in 2015 the Commission's website was redesigned and updated to provide a more attractive look, to include more information, and to better facilitate public use. The website was modified in November to include a page facilitating access to reports and recommendations that have been adopted by the Commission.

The committee's meetings were held in joint sessions with the Liaisons with Public Offices Committee.

Liaisons with Public Offices Committee

Charge

Under Rule 5.5 of the Rules of Procedure and Conduct, the Liaisons with Public Offices Committee is charged with providing information and maintaining relations with all public offices reasonably affected by any proposal or action of the committee.

Committee Members

Herb Asher served as chair in 2015, with Governor Bob Taft serving as vice-chair.

Committee members were: Rep. Ron Amstutz, Karla L. Bell, Rep. Nathan H. Manning, Rep. Robert McColley, Frederick E. Mills, Pierrette Talley, and Sen. Charleta B. Tavares.

Topics Reviewed

The Liaisons with Public Offices Committee worked and met jointly with the Public Education and Information Committee in developing a communications plan for the Commission.

VII. PROCEEDINGS OF THE FULL COMMISSION

Several topics discussed by the various committees were subject to additional consideration by the full Commission. One of these topics, originally discussed in the Legislative Branch and Executive Branch Committee, was what, if any, role the Commission should play with regard to ballot issues embracing topics that had been the subject of Commission review. The question arose specifically with regard to House Joint Resolution 12 (state legislative redistricting) from the 130th General Assembly, which was placed on the November 2015 ballot as “Issue 1.” Commission members expressed that, even where a ballot issue directly derives from a recommendation of the Commission, it could be problematic for the Commission to take an official position or to recommend how individuals should vote, as this might exceed the statutory charge of the Commission.

The Commission also discussed the topic of the use of the initiative and referendum process to create a monopoly or cartel in favor of persons or groups seeking an economic advantage. The problems suggested by this use of the constitution had been discussed by the Constitutional Revision and Updating Committee in several meetings. Ultimately, House Joint Resolution 4, passed by the 131st General Assembly and placed on the November 2015 ballot as “Issue 2,” asked voters to approve an amendment that would prohibit the use of the constitution to create a monopoly. Although some members expressed the view that it was unnecessary or unwise to limit the initiative and referendum process, others commented that the protection provided in the proposed amendment was necessary in order to prevent special interests from gaining an advantage through the use of the state’s foundational document.

In accordance with the Commission’s statutory charge, the terms of all public members of the Commission are scheduled to conclude at the end of 2015, although members may be re-appointed to the Commission for another term. To facilitate this process, at the request of Director Hollon, in November public members completed a survey designed to gauge their interest in continuing on the Commission, and to determine whether they would like to be reassigned to a different committee.

VIII. RECOMMENDATIONS TO THE GENERAL ASSEMBLY

By December 2015, the Commission had made the following recommendations to the General Assembly.

The Commission recommended that the following sections of the Ohio Constitution be repealed as obsolete:

- Article IV, Section 19 (Courts of Conciliation);
- Article IV, Section 22 (Supreme Court Commission).

The Commission recommended that the following sections of the Ohio Constitution be retained in their current form:

- Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges);
- Article I, Section 3 (Right to Assemble);
- Article I, Section 4 (Bearing Arms, Standing Armies, and Military Power);
- Article I, Section 13 (Quartering Troops);
- Article I, Section 17 (No Hereditary Privileges);
- Article VI, Section 1 (Funds for Religious and Educational Purposes);
- Article VI, Section 2 (School Funding);
- Article I, Section 20 (Powers Reserved to the People); and
- Article V, Section 4 (Exclusion from Franchise for Felony Conviction).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates (Tentative)

January 14

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8