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Ohio Constitutional Modernization Commission

The Ohio Constitution: An Historical Review

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I. A BRIEF HISTORY OF THE OHIO CONSTITUTION

A. Ordinance of 1787 (Northwest Ordinance)

1. Rights Guaranteed

- religious freedom
- habeas corpus
- trial by jury
- due process
- reasonable bail (except in capital cases)
- prohibition of excessive fines and cruel and unusual punishment
- protection of the obligation of contracts
- education
- respect and fair treatment of Indians
- prohibition of slavery and involuntary servitude

2. Path to Statehood

- Population threshold for statehood—60,000 “free inhabitants”

- April 30, 1802—President Jefferson signed Enabling Act despite population shortfall
- The Enabling Act had passed Congress by an almost strict party vote with Republicans seeing statehood as a way to get rid of the Federalist Territorial Governor Arthur St. Clair and as a way of increasing their votes in the Electoral College
- The Act defined the boundaries of the new state and set up the process for the election of delegates who would determine “whether it be or be not expedient at that time to form a constitution and State government for the people within the said territory” and, if expedient, “form a constitution and State government”
- Ohio was the first of five states carved out of the Northwest Territory
- Ohio became the 17th state admitted to the Union (after the original 13 followed by Vermont, Kentucky, and Tennessee)
- Admission to the Union, per the requirements of the Ordinance of 1787, was on an “equal footing with the original States”

B. 1802 Constitution

1. Adoption

- 35 delegates elected from nine counties were elected on October 3, 1802, pursuant to the Enabling Act of 1802. The following counties were represented (with the number of delegates noted):
 - Adams 3
 - Belmont 2
 - Clermont 2
 - Fairfield 2
 - Hamilton 10
 - Jefferson 5
 - Ross 5
 - Trumbull 2
 - Washington 4

- The most important issue in the election of delegates was statehood with the issue of slavery also being addressed in some counties
- The Convention was dominated by Jeffersonian Republicans many of whom came from then-neighboring Virginia
- Convened on November 1, 1802, in Chillicothe and adjourned on November 29, 1802
- No transcript of debates exists, though there is a journal of proceedings
- The 35 delegates voted unanimously to ratify the 1802 Constitution, which was not submitted to the voters for their approval
- Preamble and eight articles

2. **Highlights—Primary influences**

- Pennsylvania Constitution (1790)
- Tennessee Constitution (1796)
- Kentucky Constitution (1799)

3. **Governmental Structure**

a. **The Supreme Legislature**

- Bicameral legislature
- Representatives elected for one-year terms; senators for two-year terms
- Broad power of appointment, including the secretary of state, the state treasurer, the state auditor, and all judges except justices of the peace
- Plenary legislative power with few limitations
- Virtually unrestricted power to apportion seats in the General Assembly, and broad power to fix the number of seats in the House and Senate
- Virtually unrestricted power to create new counties

b. **The Weak Executive**

- Two-year term
- Term limit—six years in any eight-year period
- No veto power

- Power of appointment limited to appointing adjutant general and filling vacancies when the General Assembly was in recess
 - Commander-in-chief of the militia
 - Power to grant pardons and reprieves
- c. The Troubled Judiciary**
- Supreme Court and courts of common pleas judges appointed by a joint ballot of both Houses of the General Assembly for seven-year terms
 - Justices of the peace elected by township voters for three-year terms
 - Supreme Court obligated to hold court annually in each county
- 4. The Electorate**
- Right to vote limited to “white males inhabitants above the age of twenty-one years, having resided in the State one year next preceding the the election” and who paid or were charged a state or county tax or who were “compelled to labor on the roads of their respective townships or counties”
- 5. Bill of Rights—Article VIII**
- 28 sections
 - Included all the protections contained in the federal Bill of Rights and in the Northwest Ordinance
 - Included additional rights:
 - prohibition of poll (or head) taxes
 - right to redress in the courts “by due course of law”
 - “open and free [printing presses] . . . to examine the proceedings of any branch of government”
 - truth as a defense in libel prosecutions
- 6. Experience under the 1802 Constitution**
- a. Legislative Abuses**
- Special legislation for corporations and municipalities
 - Logrolling and gerrymandering
 - New forms of taxation

- No limits on public expenditures or on state borrowing
- Heavy borrowing and expenditures for public works
- Special tax breaks for banks and canal, turnpike, and railroad companies
- Panic of 1837—widespread defaults by banks
- Loan Act of 1837 (also known as the “Plunder Law”) permitted the subsidy of private transportation companies, many of which went bankrupt

b. The Judiciary

- Circuit-riding responsibility of Supreme Court
- Heavy caseloads resulting in backlogs

c. Constitutional Revision—Convention Call

- Only by holding a new constitutional convention, the convening of which had to have been proposed by a two-thirds vote of the General Assembly and approved by a majority of the voters who voted for members of the House of Representatives.
- In 1818, the voters overwhelmingly defeated a convention call by greater than a 4:1 margin.

d. A Constitution NOT Designed to Endure

- Population
 - 1800 45,365
 - 1810 230,760
 - 1850 1,980,329
- Number of Counties
 - 1800 6 [9 counties by end of 1800]
 - 1810 36
 - 1850 87

C. 1851 Constitution

1. **Strong Support.** In 1849, the voters overwhelmingly supported a call for a convention by a vote of 145,698 to 51,167.

2. Delegates

- 108 delegates
- Convened in Columbus on May 6, 1850, and adjourned on March 10, 1851
- 64 Democrats, 41 Whigs, and 3 Free-Soilers
- More than half of the delegates had served as Ohio legislators
- 11 had served in Congress
- 15 had served as judges

3. Highlights

- Expanded the list of elected state officials to include the lieutenant governor, the auditor, the secretary of state, the treasurer, and the attorney general
- Provided for an elected judiciary
- Expanded power of appointment by governor
- Still no gubernatorial veto
- Limitations on legislative power
- Limitations on state indebtedness
- Amendments may be proposed by General Assembly by a two-thirds vote of the members of each House
- Mandatory vote on holding a convention every 20 years

4. Electoral Approval

- Voters approved the constitution by a vote of 125,564 to 109,276
- On a separate vote on licensing traffic in intoxicating liquor, the vote was 104,255 yes and 113,237 no, but under the odd wording of this proposition this resulted in the adoption of a constitutional provision prohibiting the granting of licenses to traffic in intoxicating liquors

5. Experience

- Still difficult to amend—Ratification required a majority of all voters at the election and not simply a majority of those voting on the proposed amendment
- Continued problems with judicial backlogs

D. The Rejected Constitution of 1874

- 105 delegates
- Convened in Columbus on May 13, 1873, and, continuing in Cincinnati, adjourned on May 15, 1874
- Convention needed because of judicial backlogs and because of the continued difficulty in amending the constitution. The voters did not approve any of the seven constitutional amendments proposed between 1851 and 1871 even though six of them received more yes than no votes. None of the six, however, received the requisite majority of all votes cast at the election.
- Constitution presented to the voters with three separate amendments—aid to railroads, minority party representation on the Supreme Court, and prohibition on granting licenses for traffic in liquor
- Strategy backfired as opponents of the separate proposals urged rejection of the constitution to assure defeat of the separate proposals they opposed
- Constitution overwhelmingly rejected by vote of 250,619 to 102,885

E. 1912 Constitutional Convention

1. Background—Supporters of a Convention

- Direct Legislation League
- Progressives
- Labor
- Municipal home rule supporters
- Ohio State Board of Commerce
- Liquor interests
- Women's suffrage advocates

2. The Convention

- Strong support for convention by major political parties, and the voters approved the convention call by a 10:1 margin
- 119 delegates elected from districts on a partisan ballot
- Hotly contested; the Direct Legislation League organized extensively to get pro-direct democracy delegates selected

- 62 Democrats, 52 Republicans, 3 Independents, and 2 Socialists
- Convened on January 8, 1912, in Columbus, and adjourned on August 26, 1912
- 42 separate proposals submitted to the voters, including one unnumbered proposal concerning liquor
- 34 of 42 proposals approved

3. Approved Proposals

- Initiative/Petition
- Other liberalizations of the amendment process
- Reduction in the vote required by the legislature to overturn a veto from two-thirds to three-fifths (the veto having been approved in 1903)
- Direct primary elections for most public officials
- Establishment of a Superintendent of Public Instruction
- Permitting prosecutors to comment on exercises of privilege against self-incrimination
- Permitting three-fourths civil jury verdicts
- Prohibiting limitations on wrongful death damages
- Home rule
- Employee rights
- Overturning at least seven Ohio Supreme Court decisions on social legislation and other matters
- Permitting licenses to traffic in intoxicating liquor
- Expanded membership of the Ohio Supreme Court to seven and provided for the election of the Chief Justice
- Required a super-majority of six of the seven members of the Ohio Supreme Court to overturn a decision of the court of appeals and declare a law unconstitutional [provision repealed by the Modern Courts Amendment (1968)]

4. Rejected Proposals

- Woman's suffrage
- Deletion of "white" from voting qualifications
- Ban on capital punishment
- Use of voting machines
- Regulation of outdoor advertisement

- Limitations on the use of injunctions in labor disputes

E. Ad Hoc Constitutional Revision—1913-2011

Since 1912, there have been 120 amendments to the Ohio Constitution, but only 18 of them have been proposed by initiative.

1. The Numbers—Constitutional Revision in Ohio

1913-2012

	Initiative-Petition	General Assembly	Total
Approved	18	102	120
Rejected	50	48	98
Total	68	150	218

F. Initiated Constitutional Amendments

The Attorney General’s website summarizes the process for initiated amendments as follows:

Petitioners may begin the initiative process by forming a committee, drafting their initiative and summary, and collecting at least 1,000 signatures of registered voters. (The process is outlined in greater detail in R.C. Chapter 3519, as well as the Secretary of State's website.) Once petitioners meet the signature requirement, they must submit all materials to the Attorney General's Office. The office works on two tracks, simultaneously working with boards of election to get signatures verified and evaluating the submitted summary to determine whether it is a fair and truthful representation of the proposed initiative.

* * *

If the Attorney General determines that the summary is fair and truthful, he will certify that fact to the Secretary of State. The Attorney General has ten calendar days to make this

determination in the case of initiatives This is the first step in the process of getting an initiative on a statewide ballot.

Since the November 2011 election, the Attorney General has certified the following six items as being “fair and truthful representation(s) of the proposed initiative(s).”

- Freedom to Marry and Religious Freedom (Resubmission) (certified April 3, 2012)
- Ohio Citizens Independent Redistricting Commission Amendment (certified March 29, 2012)
- The Ohio Clean Energy Initiative (certified February 21, 2012)
- Freedom to choose whether to participate in a labor organization (certified February 1, 2012)
- Ohio Medical Cannabis (certified January 20, 2012)
- Personhood Ohio (certified December 31, 2012)

The only one of these initiatives to reach the ballot was the proposal to create the Ohio Citizens Independent Redistricting Commission Amendment, which the voters rejected on November 6, 2012.

For a more complete list of petitions presented to the Attorney General with links to the proposed amendments, see the Attorney General’s website:

<http://www.ohioattorneygeneral.gov/Legal/Ballot-Initiatives>

G. Mandatory Votes on Calling a Convention, Art. XVI, §3

Ohio is one of 14 states that periodically ask voters whether they want to hold a constitutional convention. This question is posed to Ohio voters every twenty years. On November 6, 2012, by a 2:1 margin Ohio voters rejected the convention call as they had done in 1932, 1952, 1972, and 1992.

OHIO VOTES ON CALLS FOR CONSTITUTIONAL CONVENTIONS

1819-1992

1802 Constitution	Result		
10-12-1819	Failed	6,987	29,315
10-9-1849	Passed	145,698	51,167
1851 Constitution			
10-10- 1871	Passed	267,618	104,231
11-3-1891	Failed	99,789	161,722
11-8-1910	Passed	693,263	67,718
11-8-1932	Failed	853,619	1,056,855
11-4-1952	Failed	1,020,235	1,977,313
11-7-1972	Failed	1,291,267	2,142,534
11-3-1992	Failed	1,672,373	2,660,270
11-6-2012	Failed	1,523,239	3,248,142

F. Ohio Constitutional Revision Commission

1. Background

- Created by legislation enacted by the General Assembly in late 1969, but began its work in earnest in early 1971
- Composed of 32 members; 12 legislative members and 20 public members
- Proposed amendments to the General Assembly by a two-thirds vote;
- By the requisite three-fifths vote, the General Assembly proposed 20 amendments to the voters that had their origins in Commission recommendations
- Chaired by a non-legislator, Richard H. Carter, who served in that capacity for the life of the Commission

- Got off to a slow start because of time taken to organize Commission and because the Ohio Supreme Court removed the initial proposed amendment from the ballot for having violated the “one amendment” rule of Art. XVI, sec. 1. *See State ex rel. Roahrig v. Brown*, 30 Ohio St.2d 82, 282 N.E.2d 584 (1972)
- Completed its work and submitted its final report on May 1, 1977, more than two years ahead of the July 1, 1979, statutory deadline
- Between 1973 and 1978, the voters approved 16 of the 20 proposed amendments that had their origins in recommendations of the Commission.

2. Results

- **Approved Amendments.** Ohio voters approved 16 amendments that had their origins in recommendations made to the General Assembly by the Commission.
 - Reorganization of the legislative article, including revisions to the procedures governing the House and Senate (May 1973)
 - Preparation of ballot language and information for voters about proposed constitutional amendments (May 1974)
 - Repeal of the requirement that the Governor appoint the Public Works Superintendent for a one-year term (November 1974)
 - Expansion the purposes for which the state may issue industrial development bonds (November 1974)
 - Repeal of the requirement for perfect rotation of candidates’ names on the ballot but giving the General Assembly flexibility for devising methods for giving candidates “reasonably equal treatment” by name rotation or otherwise (November 1975)
 - Joint election of the governor and the lieutenant governor and revision of lieutenant governor’s duties (June 1976)
 - Various changes in voting requirements, including reduction of voting age to 18 and repeal of unconstitutional durational residency requirement (June 1976)
 - Changes in elections, terms of office, and vacancies (June 1976)
 - Technical changes in the provision requiring that not less than 50% of the income, inheritance and estate taxes be returned to political subdivisions (June 1976)

- Consolidating provisions for imposing taxes and clarification of language (June 1976)
 - Changes in succession in case of disability or vacancy in office of governor or lieutenant governor (November 1976)
 - Repeal of obsolete provisions on public printing, dueling and Bureau of Statistics (November 1976)
 - Requiring declaration of election results at next regular of General Assembly session (November 1976)
 - Creating the Ohio Ballot Board to prepare ballot language for proposed constitutional amendments, giving the Ohio Supreme Court exclusive, original jurisdiction in cases challenging the adoption or submission of proposed amendments, and adopting provisions concerning proposed constitutional amendments (June 1978)
 - Modification of procedures for adopting, amending, and repealing county charters (November 1978)
 - Permitting General Assembly to regulate prison labor and removing restrictions on sale of prison-made goods (November 1978)
- **Rejected Amendments.** Ohio voters rejected four amendments that had their origins in recommendations made to the General Assembly by the Commission.
 - Repeal of Art. II, sec. 5, disqualifying persons convicted of embezzling public funds from holding public office (May 1973)
 - Repeal of Art. IV, sec. 22, an 1875 provision that allowed the General Assembly to appoint a commission to assist the Supreme Court in disposing cases (May 1973)
 - Revision of the indirect debt limit on political subdivisions (June 1976)
 - Repealing the \$750,000 limitation on state indebtedness and permitting the General Assembly to a three-fifth vote to contract debt for capital improvements (November 1977)\
- **Recommendations Not Presented to the Voters.** Despite Commission recommendations, the General Assembly did not propose constitutional amendments to the voters on the following:
 - Repealing a provision permitting courts and juries to consider the failure of an accused to testify in a criminal

case and further permitting prosecutors to comment on the failure to testify

- Proposing revisions concerning alternatives to the grand jury, the expansion of rights of persons called before grand juries, and requiring presentation of exculpatory evidence
- Requiring that members of the General Assembly “receive an allowance for reasonable and necessary expenses related to the performance of their duties”
- Removing a provision making members of the General Assembly ineligible for appointment to public offices created or the compensation of which was increased during the term to which the legislator was elected and for one year thereafter
- Revising a section to permit the General Assembly to reduce the number of counties, subject to the approval of the voters in the affected counties
- Retaining the direct constitutional initiative, the indirect statutory initiative, and the referendum, but moving provisions to a new article and making various changes in the procedure; eliminating the requirement that the requisite signatures come from at least half of the state’s counties
- Permitting General Assembly to provide for worker compensation through a state fund or private insurance
- Repealing provision requiring no more than an eight hour day or a 48-hour work week on the construction of public works carried out or aided by the state or any political subdivision
- Consolidating trial courts and various other items affecting the organization of the courts
- Requiring a two-thirds legislative majority to increase or decrease the number of judges and to establish courts
- Repealing a provision denying the right to vote to any “idiot, or insane” person
- Various changes concerning counties and county charters, including county home rule
- Revising sections on corporations and removal of unnecessary provisions
- Removing provision that jury to try corporation right-of-way cases must be “of twelve men”

- Revising various section relating to county and township government and municipal corporations
 - Repealing requirement that a person appointed to office be an elector when appointed but requiring a person so appointed to become a resident of the state when assuming the office
 - Recommending various changes concerning municipal charters, the issuance of municipal utility bonds, and the consolidation of cities and villages
- **No Commission Recommendations.** The Commission considered the following issues but did not make recommendations to the General Assembly on them:
 - A divided Commission did not make a recommendation permitting the increase in salaries of state and local public officials during their existing terms.
 - The Commission did not make any recommendations concerning Article VI (Education)
 - A divided Commission did not make a recommendation to expand the rights of the handicapped and disabled.
 - A closely divided Commission did not make a proposal to change Art. XI concerning apportionment of the General Assembly

G. Ohio Constitutional Modernization Commission

- Created in 2011, 129th General Assembly, Am. H.B. 188, as amended by S.B. 208
- Modeled after 1970s Ohio Constitutional Revision Commission
- 12 legislative members have been appointed
- 20 public members were appointed on September 13, 2012
- Commission has until July 1, 2021, to complete its work, although it may finish earlier
- Ohio Constitutional Modernization Commission website
 - <http://www.ocmc.ohio.gov/ocmc/about;jsessionid=db1fea11737aac2370bd4fb0110d?0>
- Colloquium on Ohio Constitutional Modernization Commission (March 22, 2012) (Report Available)
 - http://www.ocmc.ohio.gov/ocmc/docs/colloquium_materials_3-22.pdf

II. INITIATED CONSTITUTIONAL AMENDMENTS APPROVED BY OHIO VOTERS

1913-2012

Date	Subject	Const. Provision	Vote
11-3-1914	Home rule re: liquor	XV:9a	559,872 to 547,254
11-5-1918	Referendum; voters may approve/reject action of legislature ratifying any proposed amendment to US Constitution	II:1	508,282 to 315,030
11-5-1918	Prohibit manufacture and sale of alcoholic beverages	XV:9	463,354 to 437,895
11-5-1918	General Assembly to classify property for taxation	XII:2	336,616 to 304,399
11-7-1933	10-mill limit on unvoted real estate taxes	XII:2	979,061 to 661,151
11-7-1933	Home rule for counties	IV:16; X:1, 2, 3, 4, 5, 6, 7	846,594 to 742,925
11-3-1936	Prohibit sales tax on food for consumption off premises	XII:12	1,585,327 to 719,966
11-4-1947	Limit use of motor vehicle license and fuel taxes for road and related purposes	XII:5a	1,037,650 to 669,718
11-8-1949	Adopt office-type ballot	V:2a	1,007,693 to 750,206
11-8-1977	Person entitled to vote if registered for 30 days; elector failing to vote at least once in 4 years must re-register	V:1	1,964,361 to 1,225,852
11-3-1992	Term limits for state senators and representatives	II:2; V:9	2,982,285 to 1,378,009
11-31992	Term limits for state executive branch officers other than governor	III:2; V:9	3,028,288 to 1,349,244
11-3-1992	Term limits for US senators and representatives	V:8;V:9	2,897,123 to 1,476,461

11-8-1994	Repeal soft drink excise tax	XII:13	2,228,874 to 1,126,728
11-4-2004	Ban on same-sex marriage; civil unions	XV:11	3,249,157 to 2,011,168
11-7-2006	Raise the state minimum wage	II:34a	2,205,850 to 1,687,996
11-3-2009	To allow one casino in Cincinnati, Cleveland, Columbus, and Toledo and distribute to all Ohio counties a tax on the casinos	XV:6	1,713,255 to 1,519,605
11-8-2011	Freedom to choose healthcare	I;21	2,268,470 to 1,190,385