



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
BILL OF RIGHTS AND VOTING COMMITTEE**

**FOR THE MEETING HELD
THURSDAY, MAY 12, 2016**

Call to Order:

Chair Richard Saphire called the meeting to order at 9:37 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the March 10, 2016 meeting of the committee were approved.

Presentations:

Carrie L. Davis
Executive Director
League of Women Voters of Ohio

Chair Saphire commented that the committee would be taking up two new topics, Article V, Section 1 (Qualifications of an Elector), and privacy, specifically whether the Ohio Constitution should include a provision relating to a right to privacy.

In connection with the committee's review of Article V, Section 1, Chair Saphire described that the provision contains several specific requirements for voting in Ohio, including that a qualified elector is a United States citizen who is age 18 or older, a resident of Ohio for certain time, registered to vote for 30 days, and must have voted in at least one election in the previous four-

year period or is no longer considered registered to vote.¹ He noted the last part of the provision, the requirement of voting within a four-year period, is the subject of litigation in the U.S. District Court for the Southern District of Ohio, Eastern Division, and that he is serving as co-counsel for plaintiffs in that case, a fact he felt necessary to disclose to the committee. He said Article V, Section 1 covers several controversial issues that have been the subject of litigation in Ohio and around the country.

Chair Sapphire then introduced Carrie L. Davis, executive director of the League of Women Voters of Ohio (LWVO), who spoke to the committee regarding her organization's recommendations for changes to Article V, Section 1.

Ms. Davis began by noting that the national history of the League of Women Voters derives from the women's suffrage movement, but now has broadened its mission to engaging all eligible voters in the democratic process. She said the group's policy positions include promoting representative government, citizens' voting rights, and uniform election procedures throughout the country.

She commented that, at the state level, LWVO has adopted a policy position that supports the Ohio Constitution as a "clearly stated body of fundamental principles" that provides for the "flexible operation of government and [is] logically organized and internally consistent." She emphasized that her organization's recommendation for laws relating to voting is that voting be "free, fair, and accessible."

Ms. Davis first recommended that any revision to Article V, Section 1 include an acknowledgement that voting is a fundamental right of all citizens, and indicating that anyone meeting the qualifications of an elector has a fundamental right to vote.

She further described recent litigation involving the question of whether 17 year-olds who will be age 18 by the general election may vote to nominate candidates to appear on the general election ballot. She said the committee may wish to consider whether to incorporate language in Article V, Section 1 on that topic, such as "of the age of eighteen years on or before the general election."

Ms. Davis also noted the provision's residency requirements, suggesting alternative language that would define a qualified voter as someone "who is currently a resident of the state, county, township, or ward."

She said LWVO also recommends eliminating the phrase "and has been registered to vote for thirty days," replacing it with "and is registered to vote as may be provided by law." She commented that this change would retain the general principle that an elector must be lawfully registered in order to vote, but would provide greater flexibility for the legislature to modernize

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."

the voter registration process. She said such a change would allow statutory change that would accommodate voting for persons who move to Ohio within 30 days of an election.

Ms. Davis said her organization also supports voting reforms such as same-day registration and automatic voter registration, noting that while Ohio lawmakers currently do not favor these concepts, the positive experiences of other states that have adopted these measures may make them more appealing in the future. She said the newest trend is automatic voter registration, with four states now using it for citizens who meet specific criteria. She said in those states, the registration is tied to bureau of motor vehicle records, and that other states are watching to see if that procedure has a positive impact on voter turnout.

Thus, she said, refining the language in the constitution to allow “current registration as may be provided by law” allows flexibility for the legislature to modernize the state process as new technology and best practices become viable.

Describing the National Voter Registration Act (NVRA or “motor voter”) that was signed into law in 1993, Ms. Davis said Article V, Section 1’s requirement that voters who do not vote at least once in a four-year period are removed from the rolls is a practice that does not correspond to the procedures set forth in the NVRA. She said LWVO “strongly recommends” that the provision be amended to reflect current federal law, noting that “the legislative history of the NVRA and the text of the act and related regulations make clear that voters should only be removed from the rolls based on eligibility (i.e., they cease to be eligible) and that proper safeguards must be in place to ensure no one is removed in error.”

Finally, Ms. Davis said the LWVO supports adding language that would make voter registration permanent and portable within the state. She said the preferred procedure allows registered voters who move within the state to remain registered, with the move requiring only a simple update to their records. She said the General Assembly has recently adopted statutory changes that make it easier for registered voters to file a change of address, and to do so online. She said incorporating this concept in the constitution would ensure that registration reforms would not be eliminated by future lawmakers or secretaries of state.

Ms. Davis having concluded her remarks, Chair Sapphire asked whether she is aware of any state that uses a birth certificate as the basis for automatically registering a voter. Ms. Davis answered negatively but said that is one option that could be used. She said one concern with automatic registration and online registration is that a lot of early adopters have relied on bureau of motor vehicle records but not everyone has a driver’s license or state identification card. She said there has to be a safety net provision, and that a birth certificate may be one option but there may be other governmental records that would qualify.

Mr. Jacobson asked about voters who move to Ohio within 30 days of an election, specifically wondering if the LWVO supports the removal from voting rolls of Ohio residents who move to other states and register there. Ms. Davis answered that state and federal law already provides for that situation. She said there should be adequate safeguards, so that voters who register in the new state must give notice they want to cancel their registration in their prior state so that cancellations do not happen in error. She said the idea is that, 90 percent of the time, voters will

register to vote in the new state and not use the registration in the old state. But, she observed, it is important to be sure “snowbirds” are not disenfranchised. Voters who spend part of the year in another state need to decide where their permanent residence is. She said the NVRA has procedures for these situations.

Chair Sapphire said if a voter moves and files a change of address form with the post office, the secretary of state gets notice, but that information does not indicate that the person has registered in the new state. He said it would be important that the change of address notice not be used to automatically cancel the voter’s registration in the old state.

Ms. Davis said the NVRA, as well as Ohio law, spells out that when someone moves, the prior state of residence gets a notification. She said, currently, the Ohio secretary of state, or board of elections, is supposed to send a postcard verifying whether the person wants to cancel Ohio registration.

Commission member Karla Bell asked whether the notice of a change of address triggers removal from the rolls. Ms. Davis said that does not occur immediately, rather, once election officials receive notice that a voter has moved, they are supposed to contact the voter to see if the voter wants to maintain that registration. She said she is not sure, but she thinks the notice may be sent to the voter’s registered address, with it being forwarded by the post office to the new address.

Chair Sapphire noted the system in Ohio is an amalgam of constitutional provisions, statutes, and secretary of state directives, asking whether LWVO advocates or Ms. Davis is aware of a model state constitutional provision that would cover these issues. Alternately, he asked whether there is another state that handles these issues better than Ohio.

Ms. Davis said she does not have a model now but she would be interested to research the question. Chair Sapphire requested that Ms. Davis submit, in writing, her advice as to what statutory framework would be better than Ohio’s current law, and Ms. Davis agreed to do so.

Committee member Ed Gilbert asked how removing the 30-day registration requirement from the section and allowing the General Assembly to enact related law would solve the problem. He also asked whether Ms. Davis would advocate a broader list of documents that would provide proof of identity and residence.

Ms. Davis said the goal is to remove the 30-day requirement, allowing more flexibility in the statutory law to provide for same-day or automatic registration. She said, right now, 30 days is the maximum time allowed under federal law, and that Ohio is the outlier because other states have a shorter time period. She said, originally, the rationale for having the early deadline was the time that it took to process and verify, and before computers that made sense. But now, she said, because it is easier to process information online and same-day and automatic registration are becoming common.

Regarding sources of voter identification, Ms. Davis said the model is the Help America Vote Act (HAVA), which describes a list of documents that may be used. She said Ohio’s voter

identification law, enacted in 2005, almost exactly mirrors the HAVA language, allowing use of a driver's license, state identification card, military identification card, other government document, the last four digits of the social security number, utility bills, pay stubs, and bank statements.

Representative Kathleen Clyde commented that, as a legislator, she has been frustrated by a focus on voter fraud problems such as double voting and voter impersonation when the evidence of these problems is lacking. She noted the fear of voter fraud has brought about legislation that has made voting harder, such as shortened early voting or requirements for voters to complete more steps. She asked Ms. Davis what she sees as the biggest problem in Ohio elections, wondering what lawmakers should be focusing on to make voting easier.

Ms. Davis said the fundamental hurdle is perception. She said some people view voting as an absolutely fundamental right, while others view it as a privilege or responsibility. The question becomes where the onus is placed: is it on the government to provide a free, fair, and accessible process that empowers everyone who is eligible, or is it on the voter who should have to take steps to overcome obstacles?

Ms. Bell asked whether Ms. Davis is aware of any actual instance of voter fraud in the last ten years. Ms. Davis said voter fraud is often mentioned but is extremely rare. She said it is also important to note that there is a process to prevent it, and to punish it if it happens. She said the most common problems are not in casting ballots but in the registration process. She said there is a difference between voter registration fraud and in-person election fraud, observing there are requirements along the way and many opportunities to verify information that minimize the risk of fraud.

Mr. Jacobson commented that Ms. Davis is advocating that those protections be eliminated. Ms. Davis said there are rare occurrences of fraud, with the most common fraud occurring when someone helps another complete an absentee ballot, but that doing so is a statutory offense. She said the secretary of state has widely publicized its investigations into election irregularities, but only a tiny percentage lead to legal action. She said the number "is not an absolute zero but it is very small." She noted a handful of states offer Election Day registration, and they do not have higher risk or incidence of fraud.

Rep. Clyde said she is concerned about the startlingly low voter turnout, noting that less than 40 percent of the voting age population participates in elections. She asked what can be done to increase voter turnout. Ms. Davis agreed that voter turnout is a problem, but said constantly changing election laws and adding more red tape discourages voters. Instead, she said it would be important to consider inviting people to participate in the process, and that changes that make it harder to cast a provisional ballot, require more forms, eliminate "Golden Week," and adopt the longest registration deadline in the country do not make it easy for voters. She said "voters cue into these changes that say we don't want you to participate."

Representative Alicia Reece
House District 33

Chair Sapphire introduced Representative Alicia Reece, noting that she appeared before the committee in November 2013 to advocate for a voter's bill of rights, and would be giving an update on that effort in connection with the committee's consideration of Article V, Section 1.

Rep. Reece noted that, in 2000, there was a bipartisan effort that resulted in laws to improve voter access and election procedures, but that, since that time, this progress has been eroded. She said that, since 2013, she has seen some of the problems caused by voter suppression bills. For example, in her district, voters had to sue to get their votes counted. She said, during the last general election, in Hamilton County there were problems with electronic poll books, with several locations being subjected to problems that required an injunction to be filed to keep the polls open so that everyone could vote. She said there is now pending a bill that will require the posting of a bond to keep the polls open. She said she has seen thousands of votes go uncounted. She noted a recent absentee ballot postmark issue that resulted in votes not being counted.

She said she is again bringing a voter's bill of rights to the committee's attention, describing that the document is a list of rights prepared by two election law attorneys, Paul DeMarco and Don McTigue. She said the bill of rights memorializes concepts that were agreed to after the 2000 election, but those reforms did not last because they were not put in the constitution. She emphasized the view that voters should have a chance to vote on voting rights, and that "if they are intelligent enough to vote on elected officials, they are intelligent enough to vote on voting rights."

Rep. Reece described voting as a fundamental right, and said placing a voter's bill of rights in the constitution ensures the General Assembly cannot reduce opportunities to vote. She said a constitutional initiative effort is underway, with the proposed language having been approved by the attorney general and the ballot board as a single issue. She said the effort has been slowed by the organizers' lack of funds, but that members of many organizations have volunteered their time to help get petition signatures.

She said the voter's bill of rights provides flexibility to the General Assembly to update voting procedures, while at the same time creating a binding document of protection, and voters should have an opportunity to vote on it. She noted that the bill of rights also would protect against election lawsuits that cost the state and citizens many thousands of dollars.

Chair Sapphire asked about Rep. Reece's statement that the content of the voter's bill of rights derived from prior enacted law. Rep. Reece said those laws had been part of a bipartisan legislation package, and that these are not new ideas. She said at least 90 percent of the voter's bill of rights was previously enacted law.

Mr. Jacobson disagreed, stating one provision in her proposal would allow felons in prison to vote, which has never been part of Ohio law. Rep. Reece answered that her proposal allows voting for felons who have done their time, but nothing allows felons to vote from jail. Mr.

Jacobson continued that the proposal is so broad that it would trump any state law that would say otherwise.

Ms. Bell asked about the pending legislation that would impose a bond requirement for someone seeking an injunction to keep the polls open. Rep. Reece said that bill, if enacted, would require the posting of a \$58,000 bond by a person who seeks an injunction to keep the polls open.

Senator Bob Peterson, speaking as a member of the Senate, clarified that the bond requirement bill just passed the Senate, and said, under the bill, board of elections actions to keep polls open would still be allowed. He described that, in the last primary election, despite there being nothing filed with the court, a federal judge ordered the board of elections to extend hours in two counties. He said, in that instance, in one Congressional district some counties extended voting hours and some did not. He said, under the bill, each board of elections has to certify what a cost per hour is for keeping the polls open, and that the purpose of the bill is to prevent frivolous law suits. He said the proponent of the bill, Senator Bill Seitz, listed five circumstances in which this law would have made a difference, and in none of those examples was the lawsuit filed by individuals, but by a political party. Sen. Peterson also noted that, under the bill, a judge has the authority to waive the bond requirement if there is a reason to believe that the expense is too much. Thus, he asserted, the interests of the indigent have been met.

Mr. Gilbert asked Rep. Reece about the status of the initiative effort. Rep. Reece said they are continuing to work on bringing organizations together on this topic. She said her group cannot wait to pursue a ballot issue because too many events are occurring, with no protection in the constitution, with many lawsuits, and continued efforts by the General Assembly to enact laws that impede voting.

Chair Sapphire thanked Rep. Reece for her testimony, asking for further comment from the committee. There being none, he proposed at the next meeting the committee would be taking up the privacy issue in addition to continuing its consideration of Article V, Section 1.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:02 a.m.

Approval:

These minutes of the May 12, 2016 meeting of the Bill of Rights and Voting Committee were approved at the July 14, 2016 meeting of the committee.

/s/ Richard B. Sapphire
Richard B. Sapphire, Chair

/s/ Jeff Jacobson
Jeff Jacobson, Vice-chair