



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Legislative Branch and Executive Branch Committee

Frederick E. Mills, Chair
Hon. Paula Brooks, Vice-chair

October 8, 2015

Ohio Statehouse
Room 017

OCMC Legislative Branch and Executive Branch Committee

Chair	Mr. Fred Mills
Vice-chair	Ms. Paula Brooks
	Mr. Herb Asher
	Sen. Bill Coley
	Rep. Michael Curtin
	Ms. Jo Ann Davidson
	Rep. Nathan Manning
	Gov. Bob Taft
	Ms. Pierrette Talley
	Sen. Charleta Tavares
	Ms. Kathleen Trafford

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

THURSDAY, OCTOBER 8, 2015
12:30 P.M.
OHIO STATEHOUSE ROOM 017

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of September 10, 2015
 - [Draft Minutes – attached]*
- IV. Reports and Recommendations
 - None scheduled
- V. Presentations
 - “SJR 2 – Congressional Redistricting”
 - Senator Frank LaRose
 - Senate District 27

 - Senator Tom Sawyer
 - Senate District 28
 - [Copy of SJR 2– attached]*
 - [Copy of HJR 2– attached]*

VI. Committee Discussion

- SJR 2 and HJR 2 – Congressional Redistricting

The chair will lead discussion regarding the interest of the committee in preparing a report and recommendation regarding Congressional redistricting.

VII. Next Steps

- Committee discussion regarding the next steps it wishes to take in preparing for upcoming meetings.

[Planning Worksheet – attached]

[Memorandum by Steven H. Steinglass title “Article II Issues,” dated May 7, 2015 – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:48 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Curtin, Davidson, Taft, and Tavares in attendance.

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Presentations:

"Arizona State Legislature v. Arizona Independent Redistricting Commission"

Steven H. Steinglass
Senior Policy Advisor

The committee first heard a presentation from Senior Policy Advisor Steven H. Steinglass regarding the recently-decided United States Supreme Court case of *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S.Ct. 2652 (2015).

Mr. Steinglass said the Supreme Court's decision in *Arizona State Legislature* focuses primarily on the procedural issue of whether the initiative may be used to adopt a commission-based process for drawing congressional district lines. He said the decision makes clear that commissions may be used to draw lines for congressional districts. As to the significance of the decision, Mr. Steinglass said it removes an obstacle to the adoption of a commission-based method for drawing congressional district lines, so that the Ohio proposed joint resolutions

delegating responsibility for drawing congressional district lines to a commission, SJR 2 & HJR 2 (131st GA), would seem to pass constitutional muster.

Chair Mills thanked Mr. Steinglass for the review, commenting that the Court had rendered a 5-4 decision. Referencing the discussions the committee has had about congressional redistricting, Senator Charleta Tavares asked Mr. Steinglass if he could confirm there is nothing in the *Arizona State Legislature* decision that would prohibit Ohio from moving forward on proposals related to both legislative and congressional redistricting. Mr. Steinglass agreed that the decision indicates there would be no barrier to this.

Chair Mills noted that there are now two proposals in the General Assembly, one by Representative Michael Curtin and Representative Kathleen Clyde in the House, and one by Senator Frank LaRose and Senator Tom Sawyer in the Senate. He said both Sen. LaRose and Sen. Sawyer were invited to attend the committee meeting to discuss their joint resolution, but they were not available. He said it is his understanding that there is a difference in the two proposals because of the triggering mechanism in Rep. Curtin's proposal. He asked whether staff should prepare an analysis of the differences.

Rep. Curtin said there are slight differences in the two versions. He said those differences cannot be termed substantive, in his view. Rep. Curtin said both proposals mirror the Issue 1 framework on the ballot, referencing the legislative redistricting resolution that will be voted on in November 2015. He said the difference is that the Curtin-Clyde plan and the Sawyer-LaRose plan make proper accommodations for federal law, specifically population deviations and other factors.

Mr. Steinglass said one of the significant features of the *Arizona State Legislature* case is that it basically allows the state constitution and the initiative to adopt changes in the voting process. He said the legislature no longer has the final word on issues that had been assigned to the constitution. He noted other committees of the Commission also will be interested in this topic.

"Use of the Decennial Census for Drawing State Legislative Districts"

Steven H. Steinglass
Senior Policy Advisor

Mr. Steinglass then turned to a review of the use of the decennial census information in a case the United States Supreme Court has accepted for review in the next term, *Evenwel v. Abbott*, 135 S.Ct. 2349 (2015), *noting prob. juris. to Evenwel v. Perry*, 2014 WL 5780507 (W.D. Tex. Nov. 5, 2014). He indicated that, in *Evenwel*, the Court will review a three-judge district court decision that held that the "one-person, one-vote" principle under the Equal Protection Clause allows states to rely exclusively on total population and does not require the use of voter population when drawing state legislative districts. He said that most states follow the same policy as the one under review in the case, but that this is the first time for the Court to directly address whether the use of census-based population numbers must be supplemented with other population measurements such as the total number of registered voters.

Regarding the *Evenwel* issue's impact on Ohio, Steinglass concluded that Article XI, Section 2 of the Ohio Constitution relies on the federal decennial census for drawing district lines for the General Assembly, as does HJR 12 (130th GA), which will be on the November 2015 ballot, and, further, that the two joint resolutions that are pending in the 131st General Assembly, SJR 2 (131st GA) & HJR 2 (131st GA), also use the federal decennial census for congressional redistricting. He concluded that if the Supreme Court requires the use of voter registration to supplement the use of the decennial census, both the current and the proposed methods for drawing legislative district lines in Ohio based on the decennial census could be used initially, but would have to be supplemented by voter registration data.

"Ohio Supreme Court Jurisprudence Relating to the One Subject Rule"

Shari L. O'Neill

Counsel to the Commission

Shari L. O'Neill, Counsel to the Commission, presented to the committee on Ohio Supreme Court case precedent interpreting the one-subject rule found in Article II, Section 15(D). Ms. O'Neill began by mentioning and defining key terms that come up frequently in relation to the rule, including "logrolling," "riders," "directory versus mandatory," and the idea of "plurality of topics" being acceptable while "disunity of subjects" is not.

Ms. O'Neill said that, over the years, the court has moved from interpreting the one-subject rule as being merely directory to now being mandatory, saying that where there is a "manifestly gross and fraudulent violation of the rule," an enactment can be stricken as unconstitutional. She said a one-subject rule violation is frequently argued in the context of general appropriations bills, in which thousands of pages of text can include provisions that create substantive changes in the law. Summarizing the court's jurisprudence in this area, she said that the earmarks of an unconstitutional enactment are that it lacks a common purpose or relationship between specific topics, has no discernible practical, rational, or legitimate basis for the combination, and is a manifestly gross and fraudulent violation. She added that a substantive program created in an appropriations bill is not immune from a one-subject-rule challenge just because funds are also appropriated for that program; and that where there is no rational connection between the specific provision and the broader enactment, with no commonality of subject matters, an enactment would be unconstitutional.

Ms. O'Neill went on to describe the case of *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2013-Ohio-4505, 2 N.E.3d 304 (10th Dist.), now pending in the Ohio Supreme Court. She said the case involves the inclusion in a large appropriations bill of an enactment that privatized some state prisons and otherwise changed state law with regard to prison operations. When the union sued on behalf of prison employees, the court of appeals reversed the trial court decision that had ruled for the state, finding the court should have conducted an evidentiary review. Ms. O'Neill said the Ohio Supreme Court heard oral argument on May 20, 2015, at which the state argued that the prison privatization provisions did not constitute a substantive change in the law, and that the appropriate question is whether the enactment had an irrational effect on the state budget.

Ms. O'Neill said a decision from the court is pending, and said staff would update the committee once that decision is released.

Chair Mills thanked Ms. O'Neill for the review and asked if the committee had any questions. There being none, Chair Mills indicated that Attorney John Kulewicz, who has written a law review article about the one-subject rule, plans to present to the committee at its next meeting to talk about the history of the provision. Mr. Steinglass commented regarding the one-subject rule that the big question that flows through the litigation is what is the remedy if the rule is violated. Chair Mills said the one-subject provision will be part of the discussion at the next meeting.

Next Steps:

Chair Mills then turned to the planning document provided in the meeting packet to assist the committee in planning what topics to cover next. He asked the committee to think about what it would like to discuss, and whether the committee would like to proceed section by section or if some sections can be combined. He also noted that staff had provided a reference guide to the relevant sections of Article II that will be helpful to the committee in doing its homework.

Executive Director Steven C. Hollon said that the planning worksheet will be in every packet moving forward to help the committee's review and as a way of helping staff try to "tee things up" for future meetings.

Vice-chair Paula Brooks raised that there are three months left in the year in which the committee could meet, and said she wants the committee to discuss congressional redistricting and move it forward.

Governor Bob Taft said that voters will be voting in November on Issue 1, legislative redistricting. He said if the committee waits to see how that goes, the election result will give some insight about what to expect regarding congressional redistricting.

Ms. Brooks asked whether Rep. Curtin and Sen. LaRose could talk to the committee about their respective resolutions, so that the committee could have something prepared for the November meeting.

Mr. Hollon said Sen. LaRose was invited to come and speak at this meeting, but was unavailable. He said the November meeting is already on Sen. LaRose's schedule.

Rep. Curtin said the committee's next regularly scheduled meeting will be November 12, which is nine days after the election. He said the committee will have abundant analysis as to what the vote was. He said that would be a better time to talk about next steps.

Ms. Brooks said her preference would be for the committee to come prepared to take action in November. Chair Mills said he is not sure the committee will be prepared to do so. He said he believes the committee would be ready to discuss the issue, but not necessarily to take action.

Sen. Tavares said the committee had delayed action until the outcome of the *Arizona State Legislature* case, as some members believed that case would affect the legislative redistricting issue. She said she doesn't know why there would be a hesitation to discuss and conclude a review of the issue because the topic is not new to the committee.

Committee member Herb Asher asked whether, if the committee had an October meeting with informational presentations, it might be ready in November for recommendations. Chair Mills pointed out that the committee is not scheduled to meet in October. Gov. Taft said he has no objection to an October meeting.

Chair Mills then asked Mr. Hollon if he could try to accommodate a meeting in October for the committee. Chair Mills pointed out to the committee that it creates logistics difficulties for staff because there are other committees scheduled to meet that day, and could have to meet at the same time.

Rep. Curtin said he agrees with Ms. Brooks and Sen. Tavares that there is urgency regarding congressional redistricting, but that he also agrees with Gov. Taft that if the committee knows how the vote goes on Issue 1, the idea of moving forward will be so much greater in November than in October.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

These minutes of the September 10, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the October 8, 2015 meeting of the committee.

Frederick E. Mills, Chair

Paula Brooks, Vice-chair

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As Introduced

131st General Assembly
Regular Session
2015-2016

S. J. R. No. 2

Senators LaRose, Sawyer

Cosponsors: Senators Burke, Hite, Jones, Schiavoni, Yuko, Tavares,
Williams

A JOINT RESOLUTION

Proposing to enact Sections 1, 2, 3, 4, 5, 6, 7, and 1
8*of Article XIX of the Constitution of the State 2
of Ohio to revise the redistricting process for 3
congressional districts. 4

Be it resolved by the General Assembly of the State of 5
Ohio, three-fifths of the members elected to each house 6
concurring herein, that there shall be submitted to the 7
electors of the state, in the manner prescribed by law at the 8
general election to be held on March 15, 2016, a proposal to 9
enact Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Article XIX of 10
the Constitution of the State of Ohio to read as follows: 11

ARTICLE XIX 12

Section 1. (A) The Ohio redistricting commission shall 13
be responsible for the redistricting of this state for 14
congress. The commission shall consist of the following 15
seven members: 16

(1) The governor; 17

<u>(2) The auditor of state;</u>	18
<u>(3) The secretary of state;</u>	19
<u>(4) One person appointed by the speaker of the house of representatives;</u>	20 21
<u>(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;</u>	22 23 24 25
<u>(6) One person appointed by the president of the senate; and</u>	26 27
<u>(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.</u>	28 29 30
<u>No appointed member of the commission shall be a current member of congress.</u>	31 32
<u>The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.</u>	33 34 35 36 37
<u>(B) (1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.</u>	38 39 40
<u>(2) (a) Except as otherwise provided in division (B) (2) (b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do</u>	41 42 43 44 45

any of the following: 46

(i) Adopt rules of the commission; 47

(ii) Hire staff for the commission; 48

(iii) Expend funds. 49

(b) If the commission is unable to agree, by the vote 50
required under division (B) (2) (a) of this section, on the 51
manner in which funds should be expended, each co- 52
chairperson of the commission shall have the authority to 53
expend one-half of the funds that have been appropriated to 54
the commission. 55

(3) The affirmative vote of four members of the 56
commission, including at least two members of the commission 57
who represent each of the two largest political parties 58
represented in the general assembly, shall be required to 59
adopt any congressional district plan. For the purpose of 60
this division, a member of the commission shall be 61
considered to represent a political party if the member was 62
appointed to the commission by a member of that political 63
party or if, in the case of the governor, the auditor of 64
state, or the secretary of state, the member is a member of 65
that political party. 66

(C) At the first meeting of the commission, which the 67
governor shall convene only in a year ending in the numeral 68
one, except as provided in Sections 6 and 7 of this article, 69
the commission shall set a schedule for the adoption of 70
procedural rules for the operation of the commission. 71

The commission shall release to the public a proposed 72
congressional district plan for the boundaries for the 73
prescribed number of congressional districts as apportioned 74

to the state pursuant to Section 2 of Article I of the 75
Constitution of the United States. The commission shall 76
draft the proposed plan in the manner prescribed in this 77
article. Before adopting, but after introducing, a proposed 78
plan, the commission shall conduct a minimum of three public 79
hearings across the state to present the proposed plan and 80
shall seek public input regarding the proposed plan. All 81
meetings of the commission shall be open to the public. 82
Meetings shall be broadcast by electronic means of 83
transmission using a medium readily accessible by the 84
general public. 85

The commission shall adopt a final congressional 86
district plan not later than the first day of September of a 87
year ending in the numeral one. After the commission adopts 88
a final plan, the commission shall promptly file the plan 89
with the secretary of state. Upon filing with the secretary 90
of state, the plan shall become effective. 91

Four weeks after the adoption of a congressional 92
district plan, the commission shall be automatically 93
dissolved. 94

(D) The general assembly shall be responsible for 95
making the appropriations it determines necessary in order 96
for the commission to perform its duties under this article. 97

(E) If Article XI of this constitution is amended to 98
create the Ohio redistricting commission and make the 99
commission responsible for the redistricting of this state 100
for the general assembly, all of the following shall apply: 101

(1) The Ohio redistricting commission, as described in 102
this article, is the commission described in Article XI of 103
this constitution that is responsible for the redistricting 104

of this state for the general assembly. 105

(2) No appointed member of the Ohio redistricting 106
commission shall be a current member of congress. 107

(3) The Ohio redistricting commission shall be 108
automatically dissolved four weeks after the adoption of a 109
final congressional district plan or a final general 110
assembly district plan, whichever is later. 111

Section 2. Each congressional district shall be 112
entitled to a single representative in the United States 113
house of representatives in each congress. 114

Section 3. (A) The whole population of the state, as 115
determined by the federal decennial census or, if such is 116
unavailable, such other basis as the general assembly may 117
direct, shall be divided by the number of congressional 118
districts apportioned to the state pursuant to Section 2 of 119
Article I of the Constitution of the United States, and the 120
quotient shall be the congressional ratio of representation 121
for ten years next succeeding such redistricting. 122

(B) A congressional district plan shall comply with all 123
of the requirements of division (B) of this section. 124

(1) The commission shall minimize the extent to which 125
each congressional district's population differs from the 126
congressional ratio of representation, as is practicable, 127
while taking into account other legitimate state objectives 128
in the creation of congressional districts. The commission 129
may include in a congressional district plan an explanation 130
of the reason that any district contains a population that 131
is not equal to the congressional ratio of representation. 132

(2) Any congressional district plan adopted by the 133

commission shall comply with all applicable provisions of 134
the constitutions of Ohio and the United States and of 135
federal law. 136

(3) Every congressional district shall be composed of 137
contiguous territory, and the boundary of each district 138
shall be a single nonintersecting continuous line. 139

(C) Congressional districts shall be created and 140
numbered in the following order of priority, to the extent 141
that such order is consistent with the foregoing standards: 142

(1) Proceeding in succession from the largest to the 143
smallest, each county containing population greater than one 144
congressional ratio of representation shall be divided into 145
as many congressional districts as it has whole ratios of 146
representation. Any fraction of the population in excess of 147
a whole ratio shall be a part of only one adjoining 148
congressional district. 149

(2) Each county containing population equal to one 150
congressional ratio of representation shall be designated a 151
congressional district. 152

(3) The remaining territory of the state shall be 153
divided into congressional districts by combining the areas 154
of whole counties, municipal corporations, and townships. 155

(D) (1) (a) Except as otherwise provided in divisions (D) 156
(1)(b) and (c) of this section, a county, municipal 157
corporation, or township is considered to be split if any 158
contiguous portion of its territory is not contained 159
entirely within one district. 160

(b) If a municipal corporation or township has 161
territory in more than one county, the contiguous portion of 162

that municipal corporation or township that lies in each 163
county shall be considered to be a separate municipal 164
corporation or township for the purposes of this section. 165

(c) If a municipal corporation or township that is 166
located in a county that contains a municipal corporation or 167
township that has a population of more than one ratio of 168
representation is split for the purpose of complying with 169
division (E) (1) (a) of this section, each portion of that 170
municipal corporation or township shall be considered to be 171
a separate municipal corporation or township for the 172
purposes of this section. 173

(2) Congressional districts shall be drawn so as to 174
split the smallest possible number of municipal corporations 175
and townships whose contiguous portions contain a population 176
of more than fifty per cent, but less than one hundred per 177
cent, of one ratio of representation. 178

(3) Where the requirements of divisions (B), (C), and 179
(D) of this section cannot feasibly be attained by forming a 180
congressional district from whole counties, municipal 181
corporations, and townships, not more than one county and 182
not more than one municipal corporation or township may be 183
split per congressional district. 184

(E) (1) If it is not possible for the commission to 185
comply with all of the requirements of divisions (B), (C), 186
and (D) of this section in drawing a particular 187
congressional district, the commission shall take the first 188
action listed below that makes it possible for the 189
commission to draw that district: 190

(a) Notwithstanding division (D) (3) of this section, 191
the commission shall create the district by splitting two 192

municipal corporations or townships. If the commission must
choose between more than two municipal corporations or
townships, the commission shall split the municipal
corporations or townships having the smallest populations.

(b) Notwithstanding division (D) (3) of this section,
the commission shall create the district by splitting two
counties.

(c) Notwithstanding division (C) (2) of this section,
the commission shall create the district by splitting, once,
a single county that contains a population equal to the
congressional ratio of representation.

(d) Notwithstanding division (C) (1) of this section,
the commission shall create the district by including in two
districts portions of the territory that remains after a
county that contains a population equal to more than one
congressional ratio of representation has been divided into
as many congressional districts as it has whole ratios of
representation.

(2) If it is not possible for the commission to comply
with division (E) (1) of this section in drawing a particular
congressional district, the commission shall take the first
action listed below that makes it possible for the
commission to draw that district:

(a) The commission shall create the district by taking
two of the actions described in divisions (E) (1) (a) to (d)
of this section.

(b) The commission shall create the district by taking
three of the actions described in divisions (E) (1) (a) to (d)
of this section.

(c) The commission shall create the district by taking 222
all four of the actions described in divisions (E) (1) (a) to 223
(d) of this section. 224

(3) If the commission draws a congressional district in 225
accordance with division (E) (1) or (2) of this section, the 226
commission shall include in the congressional district plan 227
a statement explaining the action or actions the commission 228
took and the reason the commission did so. 229

(4) If the commission complies with divisions (E) (1), 230
(2), and (3) of this section in drawing a district, the 231
commission shall not be considered to have violated division 232
(C) (1), (C) (2), or (D) (3) of this section, as applicable, in 233
drawing that district, for the purpose of an analysis under 234
division (C) of Section 7 of this article. 235

Section 4. The Ohio redistricting commission shall 236
attempt to draw a congressional district plan that meets all 237
of the following standards: 238

(A) No congressional district plan shall be drawn 239
primarily to favor or disfavor a political party. 240

(B) The statewide proportion of districts whose voters, 241
based on statewide state and federal partisan general 242
election results during the last ten years, favor each 243
political party shall correspond closely to the statewide 244
preferences of the voters of Ohio. 245

(C) Congressional districts shall be compact. 246

Nothing in this section permits the commission to 247
violate the district standards described in Section 2, 3, or 248
5 of this article. 249

Section 5. Notwithstanding the fact that boundaries of 250
counties, municipal corporations, and townships within a 251
district may be changed, district boundaries shall be 252
created by using the boundaries of counties, municipal 253
corporations, and townships as they exist at the time of the 254
federal decennial census on which the redistricting is 255
based, or, if unavailable, on such other basis as the 256
general assembly has directed. 257

Section 6. (A) (1) If the Ohio redistricting commission 258
fails to adopt a final congressional district plan not later 259
than the first day of September of a year ending in the 260
numeral one, in accordance with Section 1 of this article, 261
the commission shall introduce a proposed congressional 262
district plan by a simple majority vote of the commission. 263

(2) After introducing a proposed congressional district 264
plan under division (A) (1) of this section, the commission 265
shall hold a public hearing concerning the proposed plan, at 266
which the public may offer testimony and at which the 267
commission may adopt amendments to the proposed plan. 268
Members of the commission should attend the hearing; 269
however, only a quorum of the members of the commission is 270
required to conduct the hearing. 271

(3) After the hearing described in division (A) (2) of 272
this section is held, and not later than the fifteenth day 273
of September of a year ending in the numeral one, the 274
commission shall adopt a final congressional district plan, 275
either by the vote required to adopt a plan under division 276
(B) (3) of Section 1 of this article or by a simple majority 277
vote of the commission. 278

(B) If the commission adopts a final congressional 279

district plan in accordance with division (A) (3) of this 280
section by the vote required to adopt a plan under division 281
(B) (3) of Section 1 of this article, the plan shall take 282
effect upon filing with the secretary of state and shall 283
remain effective until the next year ending in the numeral 284
one, except as provided in Section 7 of this article. 285

(C) (1) (a) Except as otherwise provided in division (C) 286
(1) (b) of this section, if the commission adopts a final 287
congressional district plan in accordance with division (A) 288
(3) of this section by a simple majority vote of the 289
commission, and not by the vote required to adopt a plan 290
under division (B) (3) of Section 1 of this article, the plan 291
shall take effect upon filing with the secretary of state 292
and shall remain effective until two general elections for 293
the United States house of representatives have occurred 294
under the plan. 295

(b) If the commission adopts a final congressional 296
district plan in accordance with division (A) (3) of this 297
section by a simple majority vote of the commission, and not 298
by the vote required to adopt a plan under division (B) of 299
Section 1 of this article, and that plan is adopted to 300
replace a plan that ceased to be effective under division 301
(C) (1) (a) of this section before a year ending in the 302
numeral one, the plan adopted under this division shall take 303
effect upon filing with the secretary of state and shall 304
remain effective until a year ending in the numeral one, 305
except as provided in Section 7 of this article. 306

(2) A final congressional district plan adopted under 307
division (C) (1) (a) or (b) of this section shall include a 308
statement explaining what the commission determined to be 309
the statewide preferences of the voters of Ohio and the 310

manner in which the statewide proportion of districts in the 311
plan whose voters, based on statewide state and federal 312
partisan general election results during the last ten years, 313
favor each political party corresponds closely to those 314
preferences, as described in division (B) of Section 4 of 315
this article. At the time the plan is adopted, a member of 316
the commission who does not vote in favor of the plan may 317
submit a declaration of the member's opinion concerning the 318
statement included with the plan. 319

(D) After a congressional district plan adopted under 320
division (C) (1) (a) of this section ceases to be effective, 321
and not earlier than the first day of July of the year 322
following the year in which the plan ceased to be effective, 323
the commission shall be reconstituted as provided in Section 324
1 of this article, convene, and adopt a new congressional 325
district plan in accordance with this article, to be used 326
until the next time for redistricting under this article. 327
The commission shall draw the new congressional district 328
plan using the same population and county, municipal 329
corporation, and township boundary data as were used to draw 330
the previous plan adopted under division (C) of this 331
section. 332

Section 7. (A) The supreme court of Ohio shall have 333
exclusive, original jurisdiction in all cases arising under 334
this article. 335

(B) In the event that any section of this constitution 336
relating to redistricting, any congressional district plan 337
made by the Ohio redistricting commission, or any district 338
is determined to be invalid by an unappealed final order of 339
a court of competent jurisdiction then, notwithstanding any 340
other provisions of this constitution, the commission shall 341

be reconstituted as provided in Section 1 of this article, 342
convene, and ascertain and determine a congressional 343
district plan in conformity with such provisions of this 344
constitution as are then valid, to be used until the next 345
time for redistricting under this article in conformity with 346
such provisions of this constitution as are then valid. 347

(C) (1) No court shall order, in any circumstance, the 348
implementation or enforcement of any congressional district 349
plan that has not been approved by the commission in the 350
manner prescribed by this article. 351

(2) No court shall order the commission to adopt a 352
particular congressional district plan or to draw a 353
particular district. 354

(3) If the supreme court of Ohio determines that a 355
congressional district plan adopted by the commission does 356
not comply with the requirements of Section 2, 3, or 5 of 357
this article, the available remedies shall be as follows: 358

(a) If the court finds that the plan contains one or 359
more isolated violations of those requirements, the court 360
shall order the commission to amend the plan to correct the 361
violation. 362

(b) If the court finds that it is necessary to amend 363
not fewer than two congressional districts to correct 364
violations of those requirements, the court shall declare 365
the plan invalid and shall order the commission to adopt a 366
new congressional district plan in accordance with this 367
article. 368

(c) If, in considering a plan adopted under division 369
(C) of Section 6 of this article, the court determines that 370

both of the following are true, the court shall order the 371
commission to adopt a new congressional district plan in 372
accordance with this article: 373

(i) The plan significantly violates those requirements 374
in a manner that materially affects the ability of the plan 375
to contain districts whose voters favor political parties in 376
an overall proportion that corresponds closely to the 377
statewide political party preferences of the voters of Ohio, 378
as described in division (B) of Section 4 of this article. 379

(ii) The statewide proportion of districts in the plan 380
whose voters, based on statewide state and federal partisan 381
general election results during the last ten years, favor 382
each political party does not correspond closely to the 383
statewide preferences of the voters of Ohio. 384

Section 8. The various provisions of this article are 385
intended to be severable, and the invalidity of one or more 386
of such provisions shall not affect the validity of the 387
remaining provisions. 388

EFFECTIVE DATE 389

If adopted by a majority of the electors voting on this 390
proposal, Sections 1, 2, 3, 4, 5, 6, 7, and 8*of Article XIX 391
of the Constitution of the State of Ohio enacted by this 392
proposal take effect January 1, 2021. 393

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. J. R. No. 2

Representatives Clyde, Curtin

**Cosponsors: Representatives Antonio, Smith, K., Stinziano, Leland, Driehaus,
Bishoff, Johnson, G., Celebrezze, Ashford, Fedor, Lepore-Hagan, Sheehy**

AJOINT RESOLUTION

Proposing to enact Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9
of Article XIX of the Constitution of the State of
Ohio to revise the redistricting process for
congressional districts.

Be it resolved by the General Assembly of the State of
Ohio, three-fifths of the members elected to each house
concurring herein, that there shall be submitted to the electors
of the state, in the manner prescribed by law at the general
election to be held on November 3, 2015, a proposal to enact
Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Article XIX of the
Constitution of the State of Ohio to read as follows:

ARTICLE XIX

Section 1. (A) The Ohio redistricting commission shall be
responsible for the redistricting of this state for congress.
The commission shall consist of the following seven members:

(1) The governor;

(2) The auditor of state;

<u>(3) The secretary of state;</u>	18
<u>(4) One person appointed by the speaker of the house of representatives;</u>	19 20
<u>(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;</u>	21 22 23
<u>(6) One person appointed by the president of the senate;</u> <u>and</u>	24 25
<u>(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.</u>	26 27 28
<u>The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.</u>	29 30 31 32 33
<u>(B) (1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.</u>	34 35 36
<u>(2) (a) Except as otherwise provided in division (B) (2) (b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do any of the following:</u>	37 38 39 40 41 42
<u>(i) Adopt rules of the commission;</u>	43
<u>(ii) Hire staff for the commission;</u>	44
<u>(iii) Expend funds.</u>	45

(b) If the commission is unable to agree, by the vote 46
required under division (B) (2) (a) of this section, on the manner 47
in which funds should be expended, each co-chairperson of the 48
commission shall have the authority to expend one-half of the 49
funds that have been appropriated to the commission. 50

(3) The affirmative vote of four members of the 51
commission, including at least two members of the commission who 52
represent each of the two largest political parties represented 53
in the general assembly, shall be required to adopt any 54
congressional district plan. For the purpose of this division, a 55
member of the commission shall be considered to represent a 56
political party if the member was appointed to the commission by 57
a member of that political party or if, in the case of the 58
governor, the auditor of state, or the secretary of state, the 59
member is a member of that political party. 60

(C) At the first meeting of the commission, which the 61
governor shall convene only in a year ending in the numeral one, 62
except as provided in Sections 6 and 7 of this article, the 63
commission shall set a schedule for the adoption of procedural 64
rules for the operation of the commission. 65

The commission shall release to the public a proposed 66
congressional district plan for the boundaries for the 67
prescribed number of congressional districts as apportioned to 68
the state pursuant to Section 2 of Article I of the Constitution 69
of the United States. The commission shall draft the proposed 70
plan in the manner prescribed in this article. Before adopting, 71
but after introducing, a proposed plan, the commission shall 72
conduct a minimum of three public hearings across the state to 73
present the proposed plan and shall seek public input regarding 74
the proposed plan. All meetings of the commission shall be open 75
to the public. Meetings shall be broadcast by electronic means 76

of transmission using a medium readily accessible by the general 77
public. 78

The commission shall adopt a final congressional district 79
plan not later than the first day of September of a year ending 80
in the numeral one. After the commission adopts a final plan, 81
the commission shall promptly file the plan with the secretary 82
of state. Upon filing with the secretary of state, the plan 83
shall become effective. 84

Four weeks after the adoption of a congressional district 85
plan, the commission shall be automatically dissolved. 86

(D) The general assembly shall be responsible for making 87
the appropriations it determines necessary in order for the 88
commission to perform its duties under this article.* 89

Section 2. Each congressional district shall be entitled 90
to a single representative in the United States house of 91
representatives in each congress. 92

Section 3. (A) The whole population of the state, as 93
determined by the federal decennial census or, if such is 94
unavailable, such other basis as the general assembly may 95
direct, shall be divided by the number of congressional 96
districts apportioned to the state pursuant to Section 2 of 97
Article I of the Constitution of the United States, and the 98
quotient shall be the congressional ratio of representation for 99
ten years next succeeding such redistricting. 100

(B) A congressional district plan shall comply with all of 101
the requirements of division (B) of this section. 102

(1) The population of each congressional district shall be 103
as equal to the congressional ratio of representation as 104
practicable. 105

(2) Any congressional district plan adopted by the 106
commission shall comply with all applicable provisions of the 107
constitutions of Ohio and the United States and of federal law. 108

(3) Every congressional district shall be composed of 109
contiguous territory, and the boundary of each district shall be 110
a single nonintersecting continuous line. 111

(C) Congressional districts shall be created and numbered 112
in the following order of priority, to the extent that such 113
order is consistent with the foregoing standards: 114

(1) Proceeding in succession from the largest to the 115
smallest, each county containing population greater than one 116
congressional ratio of representation shall be divided into as 117
many congressional districts as it has whole ratios of 118
representation. Any fraction of the population in excess of a 119
whole ratio shall be a part of only one adjoining congressional 120
district. 121

(2) Each county containing population equal to the 122
congressional ratio of representation shall be designated a 123
congressional district. 124

(3) The remaining territory of the state shall be divided 125
into congressional districts by combining the areas of*counties, 126
municipal corporations, and townships. Where feasible, no county 127
shall be split more than once. 128

(D) (1) A county, municipal corporation, or township is 129
considered to be split if any contiguous portion of its 130
territory is not contained entirely within one district. 131

INSERT

(2) Where the requirements of divisions (B) and (C) of 132
this section cannot feasibly be attained by forming a 133
congressional district from*whole municipal corporations and 134

townships, the district shall be formed by splitting not more 135
than one municipal corporation or township. If the commission 136
must choose between multiple municipal corporations or townships 137
for the purpose of splitting a municipal corporation or township 138
under this division, the municipal corporation or township with 139
the smallest population shall be split. 140

(E) (1) If it is not possible for the commission to comply 141
with all of the requirements of divisions (B), (C), and (D) of 142
this section in drawing a particular congressional district, the 143
commission shall take the first action listed below that makes 144
it possible for the commission to draw that district: 145

(a) Notwithstanding division (D) (2) of this section, the 146
commission shall create the district by splitting two municipal 147
corporations or townships. If the commission must choose between 148
more than two municipal corporations or townships for the 149
purpose of splitting municipal corporations and townships under 150
this division, the municipal corporations or townships shall be 151
split in order of population, proceeding from the smallest to 152
the largest. 153

(b) Notwithstanding division (C) (2) of this section, the 154
commission shall create the district by splitting, once, a 155
single county that contains a population equal to the 156
congressional ratio of representation. 157

(c) Notwithstanding division (C) (1) of this section, the 158
commission shall create the district by including in two 159
districts portions of the territory that remain after a county 160
that contains a population of more than one congressional ratio 161
of representation has been divided into as many congressional 162
districts as it has whole ratios of representation. 163

(2) If the commission takes an action under division (E) 164

(1) of this section, the commission shall include in the 165
congressional district plan a statement explaining which action 166
the commission took under that division and the reason the 167
commission took that action. 168

(3) If the commission complies with divisions (E) (1) and 169
(2) of this section in drawing a district, the commission shall 170
not be considered to have violated division (C) (1), (C) (2), or 171
(D) (2) of this section, as applicable, in drawing that district, 172
for the purpose of an analysis under division (D) of Section 7 173
of this article. 174

Section 4. The Ohio redistricting commission shall attempt 175
to draw a congressional district plan that meets all of the 176
following standards: 177

(A) No congressional district plan shall be drawn 178
primarily to favor or disfavor a political party. 179

(B) The statewide proportion of districts whose voters, 180
based on statewide state and federal partisan general election 181
results during the last ten years, favor each political party 182
shall correspond closely to the statewide preferences of the 183
voters of Ohio. 184

(C) Congressional districts shall be compact. 185

Nothing in this section permits the commission to violate 186
the district standards described in Section 2, 3, or 5 of this 187
article. 188

Section 5. Notwithstanding the fact that boundaries of 189
counties, municipal corporations, and townships within a 190
district may be changed, district boundaries shall be created by 191
using the boundaries of counties, municipal corporations, and 192
townships as they exist at the time of the federal decennial 193

census on which the redistricting is based, or, if unavailable,
on such other basis as the general assembly has directed.

Section 6. (A) (1) If the Ohio redistricting commission
fails to adopt a final congressional district plan not later
than the first day of September of a year ending in the numeral
one, in accordance with Section 1 of this article, the
commission shall introduce a proposed congressional district
plan by a simple majority vote of the commission.

(2) After introducing a proposed congressional district
plan under division (A) (1) of this section, the commission shall
hold a public hearing concerning the proposed plan, at which the
public may offer testimony and at which the commission may adopt
amendments to the proposed plan. Members of the commission
should attend the hearing; however, only a quorum of the members
of the commission is required to conduct the hearing.

(3) After the hearing described in division (A) (2) of this
section is held, and not later than the fifteenth day of
September of a year ending in the numeral one, the commission
shall adopt a final congressional district plan, either by the
vote required to adopt a plan under division (B) (3) of Section 1
of this article or by a simple majority vote of the commission.

(B) If the commission adopts a final congressional district
plan in accordance with division (A) (3) of this section by the
vote required to adopt a plan under division (B) (3) of Section 1
of this article, the plan shall take effect upon filing with the
secretary of state and shall remain effective until the next
year ending in the numeral one, except as provided in Section 7
of this article.

(C) (1) (a) Except as otherwise provided in division (C) (1)
(b) of this section, if the commission adopts a final

congressional district plan in accordance with division (A) (3) 224
of this section by a simple majority vote of the commission, and 225
not by the vote required to adopt a plan under division (B) (3) 226
of Section 1 of this article, the plan shall take effect upon 227
filing with the secretary of state and shall remain effective 228
until two general elections for the United States house of 229
representatives have occurred under the plan. 230

(b) If the commission adopts a final congressional district 231
plan in accordance with division (A) (3) of this section by a 232
simple majority vote of the commission, and not by the vote 233
required to adopt a plan under division (B) of Section 1 of this 234
article, and that plan is adopted to replace a plan that ceased 235
to be effective under division (C) (1) (a) of this section before 236
a year ending in the numeral one, the plan adopted under this 237
division shall take effect upon filing with the secretary of 238
state and shall remain effective until a year ending in the 239
numeral one, except as provided in Section 7 of this article. 240

(2) A final congressional district plan adopted under 241
division (C) (1) (a) or (b) of this section shall include a 242
statement explaining what the commission determined to be the 243
statewide preferences of the voters of Ohio and the manner in 244
which the statewide proportion of districts in the plan whose 245
voters, based on statewide state and federal partisan general 246
election results during the last ten years, favor each political 247
party corresponds closely to those preferences, as described in 248
division (B) of Section 4 of this article. At the time the plan 249
is adopted, a member of the commission who does not vote in 250
favor of the plan may submit a declaration of the member's 251
opinion concerning the statement included with the plan. 252

(D) After a congressional district plan adopted under 253
division (C) (1) (a) of this section ceases to be effective, and 254

not earlier than the first day of July of the year following the
year in which the plan ceased to be effective, the commission
shall be reconstituted as provided in Section 1 of this article,
convene, and adopt a new congressional district plan in
accordance with this article, to be used until the next time for
redistricting under this article. The commission shall draw the
new congressional district plan using the same population and
county, municipal corporation, and township boundary data as
were used to draw the previous plan adopted under division (C)
of this section.

Section 7. (A) The supreme court of Ohio shall have
exclusive, original jurisdiction in all cases arising under this
article.

(B) In the event that any section of this constitution
relating to redistricting, any congressional district plan made
by the Ohio redistricting commission, or any district is
determined to be invalid by an unappealed final order of a court
of competent jurisdiction then, notwithstanding any other
provisions of this constitution, the commission shall be
reconstituted as provided in Section 1 of this article, convene,
and ascertain and determine a congressional district plan in
conformity with such provisions of this constitution as are then
valid, to be used until the next time for redistricting under
this article in conformity with such provisions of this
constitution as are then valid.

(C) (1) No court shall order, in any circumstance, the
implementation or enforcement of any congressional district plan
that has not been approved by the commission in the manner
prescribed by this article.

(2) No court shall order the commission to adopt a

particular congressional district plan or to draw a particular 285
district. 286

(3) If the supreme court of Ohio determines that a 287
congressional district plan adopted by the commission does not 288
comply with the requirements of Section 2, 3, or 5 of this 289
article, the available remedies shall be as follows: 290

(a) If the court finds that the plan contains one or more 291
isolated violations of those requirements, the court shall order 292
the commission to amend the plan to correct the violation. 293

(b) If, in considering a plan adopted under division (C) 294
of Section 6 of this article, the court determines that both of 295
the following are true, the court shall order the commission to 296
adopt a new congressional district plan in accordance with this 297
article: 298

(i) The plan significantly violates those requirements in 299
a manner that materially affects the ability of the plan to 300
contain districts whose voters favor political parties in an 301
overall proportion that corresponds closely to the statewide 302
political party preferences of the voters of Ohio, as described 303
in division (B) of Section 4 of this article. 304

(ii) The statewide proportion of districts in the plan 305
whose voters, based on statewide state and federal partisan 306
general election results during the last ten years, favor each 307
political party does not correspond closely to the statewide 308
preferences of the voters of Ohio. 309

Section 8. If a court of competent jurisdiction issues an 310
unappealed final order that the general assembly must be 311
responsible for the redistricting of this state for congress, 312
all of the following shall apply: 313

(A) The general assembly shall adopt a final congressional 314
district plan not later than the first day of September of a 315
year ending in the numeral one. 316

(B) The congressional district plan shall comply with the 317
requirements of Sections 2, 3, and 5 of this article. 318

(C) The general assembly shall attempt to comply with the 319
standards described in Section 4 of this article in drawing the 320
congressional district plan. 321

(D) Section 7 of this article shall apply to a 322
congressional district plan adopted by the general assembly. 323

Section 9. The various provisions of this article are 324
intended to be severable, and the invalidity of one or more of 325
such provisions shall not affect the validity of the remaining 326
provisions. 327

EFFECTIVE DATE 328

If adopted by a majority of the electors voting on this 329
proposal, Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Article XIX 330
of the Constitution of the State of Ohio enacted by this 331
proposal take effect January 1, 2021. 332

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Article II - Legislative	
Sec. 2	Election and term of state legislators (1967, am. 1992)
Notes:	Report and recommendation approved by committee (04.09.2015)
Sec. 3	Residence requirements for state legislators (1851, am. 1967)
Notes:	
Sec. 4	Dual office and conflict of interest prohibited (1851, am. 1973)
Notes:	
Sec. 5	Who shall not hold office (1851)
Notes:	
Sec. 6	Powers of each house (1851, am. 1973)
Notes:	
Sec. 7	Organization of each house of the General Assembly (1851, am. 1973)
Notes:	
Sec. 8	Sessions of the General Assembly (1973)
Notes:	
Sec. 9	House and Senate Journals (yeas and nays) (1851, am. 1973)
Notes:	
Sec. 10	Rights of members to protest (1851)
Notes:	
Sec. 11	Filling vacancy in House or Senate (1851, am. 1961, 1968, 1973)
Notes:	
Sec. 12	Privilege of members from arrest, and of speech (1851)
Notes:	
Sec. 13	Legislative sessions to be public; exceptions (1851)
Notes:	
Sec. 14	Power of adjournment (1851, am. 1973)
Notes:	
Sec. 15	How bill shall be passed (1973)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Sec. 16	Bills to be signed by governor; veto (1851, am. 1903, 1912, 1973)
Notes:	
Sec. 17	Signing of all bills and joint resolutions by the presiding officer of each house (1851)
Notes:	Repealed (1973)
Sec. 18	Style of laws (1851)
Notes:	Repealed (1973)
Sec. 19	Exclusion of senators and representatives from appointment to any civil office of this state (1851)
Notes:	Repealed (1973)
Sec. 20	Term of office, and compensation of officers in certain cases (1851)
Notes:	
Sec. 21	Contested elections (1851)
Notes:	
Sec. 22	Appropriations (1851)
Notes:	
Sec. 23	Impeachments; how instituted and conducted (1851)
Notes:	
Sec. 24	Officers liable to impeachment; consequences (1851)
Notes:	
Sec. 25	When sessions commence (1851)
Notes:	Repealed (1973)
Sec. 26	Laws to have a uniform operation (1851)
Notes:	
Sec. 27	Election and appointment of officers; filling vacancies (1851, am. 1953)
Notes:	
Sec. 28	Retroactive laws (1851)
Notes:	
Sec. 29	No extra compensation; exceptions (1851)
Notes:	
Sec. 30	New counties (1851)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Sec. 31	Compensation of members and officers of the General Assembly (1851)
Notes:	
Sec. 32	Divorces and judicial power (1851)
Notes:	
Sec. 33	Mechanics' and contractors' liens (1912)
Notes:	
Sec. 34	Welfare of employees (1912)
Notes:	
Sec. 34a	Minimum Wage (2006)
Notes:	
Sec. 35	Workers' compensation (1912, am. 1923)
Notes:	
Sec. 36	Conservation of natural resources (1912, am. 1973)
Notes:	
Sec. 37	Workday and workweek on public projects (1912)
Notes:	
Sec. 38	Removal of officials for misconduct (1912)
Notes:	
Sec. 39	Regulating expert testimony in criminal trials (1912)
Notes:	
Sec. 40	Registering and warranting land titles (1912)
Notes:	
Sec. 41	Prison labor (1912, am. 1978)
Notes:	
Sec. 42	Continuity of government operations in emergencies caused by enemy attack (1961)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Article III - Executive	
Sec. 1	Executive department; key state officers (1851, am. 1885)
Notes:	
Sec. 1a	Joint vote cast for governor and lieutenant (1976)
Notes:	
Sec. 1b	Lieutenant governor duties assigned by governor (1976)
Notes:	
Sec. 2	Term of office of key state officers (1851, am. 1954, 1992)
Notes:	
Sec. 3	Counting votes for key state officers (1851, am. 1976)
Notes:	
Sec. 4	Returns of election made to the secretary of state when there is no session of the General Assembly in January after an election (1851)
Notes:	Repealed (1976)
Sec. 5	Executive power vested in governor (1851)
Notes:	
Sec. 6	Governor to see that laws executed; may require written information (1851)
Notes:	
Sec. 7	Governor's annual message to General Assembly; recommendations for legislators (1851)
Notes:	
Sec. 8	Governor may convene special session of legislature with limited purposes (1851, am. 1912)
Notes:	
Sec. 9	When he may adjourn the legislature (1851)
Notes:	
Sec. 10	Governor is commander-in-chief of militia (1851)
Notes:	
Sec. 11	Governor may grant reprieves, commutations and pardons (1851, am. 1995)
Notes:	
Sec. 12	Seal of the state, and by whom kept (1851)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Sec. 13	How grants and commissions issued (1851)
Notes:	
Sec. 14	Who is ineligible for governor (1851)
Notes:	
Sec. 15	Succession in case of vacancy in office of governor (1976)
Notes:	
Sec. 16	Duties of Lieutenant Governor (1851)
Notes:	Repealed (1976)
Sec. 17	If a vacancy shall occur while executing the office of governor, who shall act (1976)
Notes:	
Sec. 17a	Filling a vacancy in the office of lieutenant governor (1989)
Notes:	
Sec. 18	Governor to fill vacancies in key state offices (1851, am. 1969)
Notes:	
Sec. 19	Compensation of key state officers (1851)
Notes:	
Sec. 20	Annual report of executive officers (1851)
Notes:	
Sec. 21	Appointments to office; advice and consent of Senate (1961)
Notes:	
Sec. 22	Supreme Court to determine disability of governor or governor elect; succession (1976)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Article IX - Militia	
Sec. 1	Who shall perform military duty (1851, am. 1953, 1961)
Notes:	
Sec. 2	Election of certain officers (1851)
Notes:	Repealed (1953)
Sec. 3	Appointment of militia officers (1851, am. 1961)
Notes:	
Sec. 4	Power of governor to call forth militia (1851, am. 1961)
Notes:	
Sec. 5	Public arms; arsenals (1851)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Article XI - Apportionment	
Sec. 1	Persons responsible for apportionment of state for members of General Assembly (1967)
Notes:	
Sec. 2	Ratio of representation in house and senate (1967)
Notes:	
Sec. 3	Population of each House of Representatives district (1967)
Notes:	
Sec. 4	Population of each Senate district (1967)
Notes:	
Sec. 5	Representation for each house and senate district (1967)
Notes:	
Sec. 6	Creation of district boundaries; change at end of decennial period (1967)
Notes:	
Sec. 6a	Additional senators for districts with a ratio of representation greater than one (1956)
Notes:	Repealed (1967)
Sec. 7	Boundary lines of House and Representatives districts (1967)
Notes:	
Sec. 8	Determination of number of House of Representatives districts within each county (1967)
Notes:	
Sec. 9	When population of county is fraction of ratio of representation (1967)
Notes:	
Sec. 10	Division of state into house districts; standards (1967)
Notes:	
Sec. 11	Senate districts; formation (1967)
Notes:	
Sec. 12	Term of senators on change of district boundaries of Senate (1967)
Notes:	
Sec. 13	Jurisdiction of Supreme Court, effect of determination of unconstitutionality; apportionment (1967)
Notes:	

Legislative Branch and Executive Branch Committee

Planning Worksheet (September 2015)

Sec. 14	Continuation of present district boundaries (1967)
Notes:	
Sec. 15	Severability provision (1967)
Notes:	

Article XIV - Ohio Livestock Care Standards Board

Sec. 1	Ohio Livestock Care Standards Board (2009)
Notes:	
	Prior article XIV: Jurisprudence, §1 – 3, Repealed – provided for the appointment of three commissioners by the General Assembly to revise the practice, pleadings, forms and proceedings of the courts of record of the state and to provide a uniform mode of proceeding (1851, rep. 1953)
Notes:	



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

TO: Chair Frederick E. Mills, Vice Chair Paula Brooks, and
Members of the Legislative Branch and Executive Branch Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

RE: Article II Issues

DATE: May 7, 2015

At the December 11, 2014 meeting of the Legislative Branch and Executive Branch Committee, I provided a general overview of the provisions contained in Article II of the Ohio Constitution and identified issues that might merit further consideration by the committee. This memorandum builds on that presentation and provides additional information about Article II issues that the committee might wish to review. Attached to this memorandum is a summary of the highlights of my December 11, 2014 presentation.

This memorandum will not address issues already considered or being considered by the committee, including congressional redistricting, term limits, and the creation of a public office compensation commission.

1970s Review of Article II

One of the major accomplishments of the 1970s Ohio Constitutional Revision Commission ("1970s Commission") was its thorough review of Article II and the recommendations that it made concerning approximately 10 sections of this Article. The committee may wish to learn more about not only what was accomplished as a result of this legislative review, but also which proposals did not make it out of the Commission and which recommendations, if any, never made it to the ballot.

Sections 1 and 1a to 1g - Plenary Power, Initiative and Referendum

These sections were assigned to the Constitutional Revision and Updating Committee.

Section 2 - Length of Legislative Terms

The committee recently has approved a report and recommendation that would extend the existing term limits for state legislators from eight years to twelve years.

Section 3 - Residency Requirements for State Legislators

The one-year residency requirement adopted in 1851 permitted legislators to live outside their district as long as they lived within the county in which their district was located. The 1973 amendment required legislators to live in their districts.

Section 4 - Dual Office and Conflict of Interest Prohibited

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 5 - Embezzlers Holding Public Office

This provision that has not changed since its adoption in 1851 prohibits persons convicted of embezzlement from holding public office. This provision was the subject of two attempted repeals in the 1970s. A recommendation by the 1970s Commission to repeal this provision was part of a three-issue joint resolution the Ohio Supreme Court removed from the ballot in 1972 for violating the "one amendment" rule of Article XVI, Section 1. A stand-alone proposal to repeal Article II, Section 5 was rejected by the voters on May 8, 1973, by a vote of 848,743 to 530,232.

The constitution has two related provisions on the ability of those convicted of felonies to hold public office. Under Article XV, Section 4, "no person shall be elected or appointed unless possessed of the qualifications of an elector." Article V, Section 1 establishes the qualifications of an elector, and Article V, Section 4 gives the General Assembly the power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony." Thus, with the exception of the special provision for "embezzlers," the right to serve in the General Assembly (and in other public offices) tracks the right to vote.

The committee may want to review the continued presence in the constitution of a provision specifically barring only those convicted of embezzlement from holding "any office in this state." The committee may also want to examine the relationship of the embezzlement provisions with other provisions dealing with eligibility for service in public office.

Section 6 - Powers of Each House

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 7 - Organization of each House of the General Assembly

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 8 - Annual Sessions and Special Sessions

Under the 1802 constitution, sessions of the General Assembly were annual, but the 1851 constitution sought to reduce the power of the General Assembly by creating biennial sessions. By 1857, however, the General Assembly was again meeting in annual sessions through a parliamentary device; they would “recess” at the end of the regular session and a second session would be held in “adjournment” during the second year. This practice continued until 1973, when this section was amended to conform the constitution to the prevailing practice. Under the new section, the General Assembly is able to have annual sessions by convening the first regular session in odd-numbered years and a second regular session in the following year.

The second part of this section defines special sessions of the General Assembly. Before 1973, only the governor (in accordance with Article III, Section 8) could call special sessions of the legislature. The 1973 amendment to this section allows either the governor or the presiding officers of both houses, acting jointly, to convene special sessions. The proclamation convening special sessions under this section may, but need not, limit the purpose of the session. The delegation to the General Assembly of the power to convene special sessions came largely in response to a report of the Citizens Conference on State Legislatures in the early 1970’s. The report ranked Ohio forty out of the fifty states in the control the legislature had over its own activities and in its independence from the other branches of government. One of the reasons given in the report was the General Assembly’s lack of power to call special sessions.

Section 9 - House and Senate Journals

This provision was revised as a result of the 1970s Commission’s review of Article II.

Section 10 - Rights of Members to Protest

Adopted in 1851, this provision gives any member of either house the right to protest against any act or resolution and to have the protest and the reasons for it entered without alteration in the journal.

Section 11 - Filling Vacancy in House or Senate Seat

This provision was revised as a result of the 1970s Commission’s review of Article II.

Section 12 - Privilege of Member from Arrest

Adopted in 1851, this provision provides that members of the General Assembly are privileged from arrest while going to and from the General Assembly.

Section 13 - Legislative Sessions to Be Public

Adopted in 1851, this provision requires legislative sessions to be public unless two-thirds of those present conclude that secrecy is required.

Section 14 - Power of Adjournment

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 15 - How Bills Shall Be Passed

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 15(D) - One-Subject Requirement

Article II, Section 15(D) provides that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.” This provision has been the subject of much litigation during the last 35 years, including an important case now pending before the Ohio Supreme Court. *See State ex rel. Ohio Civil Service Employees Association v. State*, No. 2014-0319 (accepting discretionary appeal and cross appeal of a Tenth District Court of Appeals decision holding that a claim that prison privatization provisions in the budget bill stated a claim for a violation of the “one subject” rule and remanding the case for further proceedings and a determination of the appropriate relief) (to be argued May 20, 2015). *See State ex rel. Ohio Civil Service Employees Association v. State*, 2 N.E.3d 304, 2013-Ohio-4505 (2013).

Section 16 - Bills to Be Signed by Governor; Veto

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 17, 18 & 19- Signing of Bills; Style of Laws; Appointment to Civil Office

These provisions were repealed as a result of the 1970s Commission's review of Article II.

Section 20 - Term of Office and Compensation

Adopted in 1851, this provision gives the General Assembly the power to fix the compensation of officers, but bars any change during the term of office.

Section 21 - Contested Elections

Adopted in 1851, this provision gives the General Assembly the authority to determine how the trial of contested elections shall be conducted.

Section 22 - Appropriations

Adopted in 1851, this provision requires an appropriation to draw money from the treasury and bars appropriations for longer than two years.

Sections 23, 24, and 38 - Impeachment and Removal of Officers for Misconduct

Section 23, and its companion Section 24, gives the House sole power of impeachment of state officials, with the Senate responsible for impeachment trials and impeachment and removal of public officials. In addition, Section 38 permits the General Assembly to pass laws providing for the prompt removal of state officials for “any misconduct involving moral turpitude or for other causes.” In addition, under Article IV, Section 17 both judges may be removed with notice and an opportunity to be heard by concurrent resolution of supported by two-thirds of the members of both houses of the General Assembly.

Section 25 - When Sessions Commence

This provision was repealed as a result of the 1970s Commission’s review of Article II.

Section 26 - Legislative Submissions/Referenda

Article II, Section 26, which is best known as the provision that requires the uniform operation of laws throughout the state, also contains a provision by which, in limited circumstances involving education, the General Assembly may submit proposed statutes to the voters for their approval. The text of Section 26, with the legislative submission italicized, is as follows:

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

As far as I have been able to determine, this referendum procedure has only been used on one occasion. In 1998, the General Assembly, in response to the Ohio Supreme Court’s decision in *DeRolph v. State*, 78 Ohio St.3d 193, 677 N.E.2d 733 (1997), presented the voters with a proposal to increase the sales tax and other taxes to support education. The court upheld this use of a legislative submission/referendum, *see State ex rel. Taft v. Franklin County Court of Common Pleas*, 81 Ohio St.3d 480, 482, 692 N.E.2d 560, 562 (1998) (“[T]he general prohibition in Section 26, Article II against enactment of legislation whose effectiveness is dependent upon approval of another authority does not apply to legislation relating to public schools.”), but the voters rejected the proposal by a substantial margin. Unlike Ohio, some states, especially California and Washington, have broad provisions for submitting proposed legislation to the voters and make frequent use of this procedure.

Section 27 - Election and Appointment of Officers; Filling Vacancies

This provision addresses the power of the General Assembly to determine the manner for the appointment of officers (not otherwise provided for in the constitution), but denies the General Assembly the power to make appointments itself.

Section 28 - Retroactive Laws

Adopted in 1851, this provision has been the subject of much litigation. Unlike the prohibition on ex post facto criminal laws, this provision broadly bars the adoption of civil laws including but not limited to retroactive laws that impair contracts.

Section 29 - No Extra Compensation

Adopted in 1851, this provision limits the circumstances in which extra compensation may be made after the services have been rendered.

Section 30 - New Counties

Adopted in 1851, this provision outlines the procedures for creating new counties, none of which may contain less than 400 square miles of territory.

Section 31 - Compensation of Members and Officers of the General Assembly

Adopted in 1851, this provision addresses the compensation for members of the General Assembly.

Section 32 - Divorces and Judicial Power

Adopted in 1851, this provision prohibits the General Assembly from granting divorces; it also bars the General Assembly from exercising the judicial power.

Section 34a - Minimum Wage

Adopted in 2006 by initiative, this provision establishes a state minimum wage and provides for an automatic annual increase

Section 36 - Conservation of Natural Resources

In addition to authorizing the passage of laws to encourage forestry and agriculture, this provision permits non-uniform taxation of land devoted exclusively to agricultural use.

Constitutional Overrides of Supreme Court Decisions

Several provisions of Article II have their origin in the efforts of the 1912 Constitutional Convention to override decisions of the Ohio Supreme Court (or to avoid future decisions that the delegates feared would be forthcoming). Most of these decisions called into question the power of the General Assembly to adopt social or employee welfare legislation. Typically, these provisions only authorized the General Assembly to do that which it could do under its plenary power.

These provisions include:

Section 33	Mechanics' and Contractor's Liens
Section 34	Welfare of Employees
Section 35	Workers' Compensation
Section 37	Workday and Workweek on Public Projects
Section 39	Regulating Expert Testimony in Criminal Trials
Section 40	Registering and Warranting Land Titles
Section 41	Prison Labor

Two of these provisions, Section 33, and Section 34, have supremacy clauses that immunize statutes enacted under their authority from all state constitutional requirements. *E.g.*, “No other provision of the constitution shall impair or limit this power.”

Section 42 - Continuity of Government Operations in Emergencies Caused by Enemy Attack

Adopted in 1961, this provision requires the General Assembly to pass laws to provide for the continuation of government in the event of an enemy attack.

Unicameralism

Only one of the 50 states, Nebraska, has rejected the use of a bicameral legislature. This issue did not arise during the 1970s Commission proceedings, and to date no member of the current Commission has expressed interest in considering the abandonment of a bicameral legislature. A leading authority on state constitutional law has observed that the “contemporary case for bicameralism, in the wake of *Reynolds v. Sims* [the one-man, one-vote case], is weaker than it has been in the past.” *See* Alan Tarr, *Bicameralism or Unicameralism?* (Testimony before the Majority Policy Committee, Pennsylvania Legislature) (April 2010). Nonetheless, there has been little interest throughout the country, and voters in Montana and North Dakota defeated proposals for unicameral legislatures. *Id.*

ATTACHMENT

SUMMARY OF DECEMBER 11, 2014, PRESENTATION

OVERVIEW OF ARTICLE II AND ITS HISTORY

SUMMARY OF DECEMBER PRESENTATION

This summary is an expansion of my December 11, 2014 presentation.

Plenary Power

In adopting a constitution, the people of Ohio delegated all legislative power to the General Assembly subject only to other constitutional limitations. This grant of legislative power differs fundamentally from the grant of legislative power to Congress under the federal constitution. Unlike the U.S. Constitution, which grants Congress specific, enumerated powers, the Ohio Constitution “is primarily a limitation on the legislative power of the General Assembly.” *See State v. Warner*, 55 Ohio St.3d 31, 564 N.E.2d 18 (1990). Thus, the General Assembly may enact any law not prohibited by the state or federal constitutions, and a law passed by the General Assembly is presumed constitutional unless it is incapable of a fair reconciliation with the constitution.

Separation of Powers

Ohio does not have a constitutional provision expressly regulating the separation of powers among the branches of government, and is one of a minority of states without such a provision. Nonetheless, the Ohio Supreme Court has held that the doctrine of separation of powers “is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of government.”

History of Article II

1802 Ohio Constitution

- The Legislative Article was Article I, reflecting the importance of the General Assembly
- General Assembly appointed judges as well as the secretary of state, the treasurer, the auditor, and the chief military officers
- Almost no limitations on the power of the General Assembly
- General Assembly operated primarily through special legislation/private bills
- Governor did not have the veto power

1851 Ohio Constitution

- General Assembly lost the power of appointment
- Voters were given the right to elect judges and other statewide officials (auditor, attorney general, secretary of state, treasurer)
- Governor still lacked the veto power
- Introduced limitations on the power of the General Assembly

Post-1851 Amendments

- 1903 Governor given the veto
- 1912 Direct democracy proposals from the 1912 Constitutional Convention gave the people the power of the initiative and referendum
- 1973 Major review and re-organization as a result of the work of the 1970s Ohio Constitutional Revision Commission
-

Overview of Changes in Article II of the 1851 Constitution

- Article II is one of the most frequently amended Articles of the Ohio Constitution
- Originally, Article II had 32 sections
- 15 of the original sections have never been amended
- 5 of the original sections were amended in 1973 as part of the legislative reorganization that resulted from the recommendations of the 1970s Commission
- 4 of the original sections were amended (apart from the 1973 reorganization) some multiple times
- 4 of the original sections were repealed in 1973 as part of the legislative reorganization that resulted from the recommendations of the 1970s Commission
- 6 new sections that were adopted as a result of the recommendations of the 1912 Constitutional Convention have never been amended
- 4 new sections that were adopted as a result of the recommendations of the 1912 Constitutional Convention were subsequently amended

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Remaining 2015 Meeting Dates

November 12

December 10

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