



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair

Rep. Ron Amstutz
Speaker Pro Tempore

October 8, 2015

Ohio Statehouse Room 313

Ohio Constitutional Modernization Commission

Co-Chair Sen. Charleta Tavares

Co-Chair Rep. Ron Amstutz

Ms. Janet Abaray

Mr. Herb Asher

Mr. Roger Beckett

Ms. Karla Bell

Ms. Paula Brooks

Rep. Kathleen Clyde

Mr. Douglas Cole

Sen. Bill Coley

Rep. Bob Cupp

Rep. Michael Curtin

Ms. Jo Ann Davidson

Judge Patrick Fischer

Mr. Edward Gilbert

Mr. Jeff Jacobson

Mr. Charles Kurfess

Mr. Larry Macon

Rep. Nathan Manning

Mr. Frederick Mills

Mr. Dennis Mulvihill

Sen. Larry Obhof

Sen. Bob Peterson

Mr. Chad Readler

Mr. Richard Saphire

Sen. Tom Sawyer

Sen. Michael Skindell

Rep. Emilia Sykes

Gov. Robert Taft

Ms. Pierrette Talley

Ms. Kathleen Trafford

Mr. Mark Wagoner

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COMMISSION MEETING

THURSDAY, OCTOBER 8, 2015

1:30 P.M.

OHIO STATEHOUSE ROOM 313

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of September 10, 2015
- IV. Standing Committee Reports
 - Coordinating Committee (Trafford)
 - Public Education and Information Committee (Beckett) and Liaisons with Public Offices Committee (Asher)
 - Organization and Administration Committee (Wagoner)
- V. Subject Matter Committee Reports
 - Education, Public Institutions, and Local Government Committee (Readler)
 - Finance, Taxation, and Economic Development Committee (Cole)
 - Judicial Branch and the Administration of Justice Committee (Abaray)
 - Bill of Rights and Voting Committee (Sapphire)
 - Constitutional Revision and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Mills)

VI. Reports and Recommendations

- Article I, Section 13 (Quartering of Troops)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

- Article I, Section 17 (No Hereditary Privileges)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

VII. Executive Director's Report (Hollon)

VIII. Old Business

IX. New Business

X. Adjourn

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



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

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Senator Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:35 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Co-chair Tavares recognized Commission member Jo Ann Davidson, vice-chair of the Coordinating Committee, for a report of the activities of the committee. Ms. Davidson said the committee had recently approved reports and recommendations from the Bill of Rights and Voting Committee for Article I, Sections 13 (Quartering Troops) and 17 (No Hereditary Privileges). She said the committee also considered what would be the appropriate course of action when outside groups approach the Commission with constitutional amendments to propose. She said the Coordinating Committee discussed with the chairs of the other standing committees what would be the best way to handle such requests. She said the conclusion was that proposals from the public would be routed to staff for assignment to the appropriate committee.

Public Education and Information Committee and Liaisons with Public Offices Committee

Co-chair Tavares recognized Commission member Larry Macon, vice-chair of the Liaisons with Public Offices Committee. Mr. Macon said the group has not met since the last Commission meeting, and deferred to Commission member Herb Asher, chair of the Liaisons with Public Offices Committee, for information about what the committees may be planning.

Mr. Asher said the committee is constructing an agenda for its next meeting, and he expects the committee will want to review the progress of the Commission's communications efforts. He said it will be useful to obtain some data analytics, to find out how many visitors have gone to the website, and to determine if other outreach efforts may be needed. He said the committee is seeking suggestions for its agenda. Mr. Asher continued that he has engaged in an environmental scan of issues that might be emerging to affect state constitutions. He noted a recent article in the Columbus *Dispatch* indicating an effort was underway to utilize state constitutions to defund Iran and to adopt state constitutional provisions to divest certain investments. He noted that Ohio Treasurer Josh Mandel is involved in this effort. He said this effort inspires him to suggest that it might be useful to have a conversation about what is the appropriate use of a constitution. He wondered whether the Commission might have a role in reminding citizens that statutory changes are better.

Organization and Administration Committee

Co-chair Tavares recognized Committee member Mark Wagoner, chair of the Organization and Administration Committee. Mr. Wagoner reported that staff has now been on board for a year, and complimented Executive Director Steven C. Hollon and staff for a work product he said the Commission can be proud of. He said that employee reviews are underway. He said the committee just reviewed and adopted the Commission's budget for the new fiscal year, and that later in the meeting he would be presenting proposed amendments to the Rules for Procedure and Conduct for the Commission's review and approval.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Co-chair Tavares recognized Commission member Chad Readler, chair of the Education, Public Institutions, and Local Government Committee. Mr. Readler complimented Mr. Hollon and staff for their assistance to the committee. He said the committee will meet again in October, when it is expected to approve reports and recommendations for Article VI, Section 1 (Funds for Religious and Educational Purposes), and Section 2 (School Funds). Readler said the committee has had several presentations regarding Article VI, Section 3 (Public School System, Boards of Education) and also will be addressing Section 4, relating to the state board of education.

Finance, Taxation, and Economic Development Committee

Co-chair Tavares recognized Commission member Doug Cole, chair of the Finance, Taxation, and Economic Development Committee. Mr. Cole said the committee has not met since June, but will meet in October, when he expects to get a sense of the committee as to what it plans to do in relation to the public debt and financing provisions in Article VIII. He said once the committee solidifies its plans, he anticipates a draft proposal for addressing those sections.

Judicial Branch and Administration of Justice Committee

Co-chair Tavares recognized Judge Patrick Fischer, vice-chair of the Judicial Branch and Administration of Justice Committee. Judge Fischer reported that the committee has considered the topic of justiciability in the context of advisory opinions and the Ohio Supreme Court's

original action jurisdiction. He said the committee is currently reviewing the use of the grand jury in Ohio, and expects to continue its discussion of that topic at its October meeting.

Bill of Rights and Voting Committee

Co-chair Tavares recognized Commission member Jeff Jacobson, vice-chair of the Bill of Rights and Voting Committee. Mr. Jacobson reported that the committee is continuing to refine its position on the question of voting rights for the mentally incapacitated, the subject of Article V, Section 6. He said the committee has triangulated and parsed through the section, and should be able to have a vote at its next meeting in November. He said the committee is discussing the whole article on voting.

Constitutional Revision and Updating Committee

Co-chair Tavares recognized Commission member Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee. Mr. Mulvihill thanked staff for its work for his committee, specifically mentioning the work done on the anti-monopoly provision that was the subject of recent meetings of the committee. He said the committee is now moving on to consider the statutory initiative process.

Legislative Branch and Executive Branch Committee

Co-chair Tavares recognized Commission member Fred Mills, chair of the Legislative Branch and Executive Branch Committee. Mr. Mills reported that the committee plans to hear presentations about two United States Supreme Court cases, as well as about the one-subject rule contained in Article II, Section 15(D). He said the committee had passed out a report and recommendation about term limits. He added that the committee has a large number of sections it plans to review.

Reports and Recommendations:

Article I, Section 13 (Quartering Troops)

Mr. Jacobson, vice-chair of the Bill of Rights and Voting Committee, presented Article I, Section 13 (Quartering Troops), describing it as a “vestige of the independence movement,” that the committee recommended be retained in its present form. No comment or discussion was offered regarding this report and recommendation.

Article I, Section 17 (No Hereditary Privileges)

Mr. Jacobson then presented Article I, Section 17 (No Hereditary Privileges), which also was being recommended for no change. No comment or discussion was offered about this report and recommendation.

Proposed Amendments to Rules of Procedure and Conduct

Mr. Wagoner, chair of the Organization and Administration Committee, reported on proposed amendments to the Commission's Rules of Procedure and Conduct. Mr. Wagoner said the committee agreed that an amendment to the rules was necessary in order to reflect that, where no change is recommended, a second reading of a report and recommendation may not be required. He said that Senator Michael Skindell had offered a further amendment that clarified the original proposed change. He noted that Sen. Skindell's amendment was being provided as a separate handout, and that the original amendment was in the meeting packets that were provided to Commission members. Mr. Wagoner then invited questions and comments. Mr. Jacobson noted that the rules indicate the use of the phrase "consecutive meeting," wondering if that requirement might be changed in order to expedite the process. Mr. Wagoner and Sen. Skindell both agreed the suggestion was a good one, and asked for a motion. Mr. Jacobson so moved, the motion was seconded by Mr. Wagoner, and Sen. Skindell's amendment was further amended to remove the requirement that the meetings at which reports and recommendations were considered be consecutive.

Mr. Wagoner then moved for the adoption of the amendments to the standing rules and Mr. Cole seconded the motion. Co-chair Tavares called for a roll call vote and the measure was unanimously approved.

Yea – 22
Nay – 0
Absent – 10

Senator Tavares – yea
Representative Amstutz – yea
Herb Asher – yea
Roger Beckett – absent
Karla Bell – absent
Commissioner Brooks – yea
Representative Clyde – yea
Douglas Cole - yea
Senator Coley – absent
Representative Cupp – absent
Representative Curtin – yea
Speaker Davidson – yea
Judge Fischer – yea
Edward Gilbert – absent
Jeff Jacobson – yea
Speaker Kurfess – yea
Dr. Macon – yea
Representative Manning – yea
Fred Mills – yea
Dennis Mulvihill – yea
Senator Obhof – yea
Senator Peterson – yea
Chad Readler – yea
Richard Sapphire – absent

Senator Sawyer – absent
Senator Skindell – yea
Representative Sykes – yea
Petee Talley – absent
Governor Taft – yea
Kathleen Trafford – absent
Mark Wagoner – yea

Executive Director’s Report:

Mr. Hollon reported on the activities of Commission staff. He introduced Erin Oehler, a second year student at the Ohio State University Moritz College of Law, participating in the legislative clinic course. He said Erin was joining staff as an intern this semester and welcomed her.

Mr. Hollon continued that he, along with several Commission members, would be appearing at several metropolitan bar associations around the state to talk about the Commission’s work. He said one appearance had been on September 9, 2015, when he and Mr. Cole, Mr. Mills, and Mr. Readler presented at the Columbus Bar Association. Mr. Hollon said future events were planned in Cincinnati with Commission members Janet Abaray and Judge Fischer, in Dayton with Commission members Governor Bob Taft and Richard Saphire, and in Akron, with Commission member Ed Gilbert and Representative Emilia Sykes. He offered that if other members had knowledge of events in which the Commission could participate, he would be glad to assist in organizing participation.

Mr. Mulvihill asked Mr. Hollon if, once a new version of the Rules of Procedure and Conduct is prepared, a booklet-style copy of the rules could be provided to all Commission members as a reference. Mr. Hollon agreed this would be possible.

Mr. Wagoner raised that Commission member Paula Brooks had expressed a strong interest in having the Commission meet at other locations around the state. Co-chair Tavares agreed that this discussion has been ongoing, and that it was an idea that merited consideration.

Old Business:

There was no old business for consideration.

New Business:

Mr. Macon raised that it might be useful to form a committee of maybe three people to evaluate or review the effectiveness and challenges of the current committees. He said it might be helpful to be able to reformat or redirect some of the committees as necessary, or to move members from one committee to another where their skills might be a better fit. He asked Senior Policy Advisor Steven H. Steinglass if he had any thoughts on such a plan.

Mr. Steinglass said that all organizations should examine their basic structure from time to time. He said individual members have to look at how they are relating to the Commission. He said attendance and quorums have sometimes been a challenge, and the Commission may want to reassess how it is working out.

Mr. Mulvihill asked whether this evaluation is already part of the Coordinating Committee's charge. Mr. Hollon said the Coordinating Committee's charge is broad enough to accommodate that idea. Co-chair Tavares suggested the Coordinating Committee might organize a smaller subgroup to address this idea.

In other new business, Ms. Brooks introduced a guest she had brought to observe the Commission proceedings. She said Awa Moriba Coulibaly, Project Manager with the Prime Minister's office, and a citizen of Cote d'Ivoire, was in the United States participating in a program to allow her to learn about local government, and that Ms. Coulibaly will produce a report on women leaders and youth as a result of her visit. The Commission welcomed Ms. Coulibaly.

Public Comment:

Co-chair Tavares then asked whether any members of the public would like to appear before the Commission for comment. Ray Warrick stepped forward, identifying himself as the chair of the Warren County Republican Party and the chair of a group, "Eight is Enough," that is seeking a constitutional initiative to reduce term limits for state legislators. Mr. Warrick emphasized that polling numbers do not support extending term limits, and urged the Commission not to approve a recommendation that term limits be extended.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:30 p.m.

Approval:

The minutes of the September 10, 2015 meeting of the Commission were approved at the October 8, 2015 meeting of the Commission.

Co-Chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-Chair
Representative Ron Amstutz
Speaker Pro Tempore



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE I, SECTION 13

QUARTERING OF TROOPS

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 13 of the Ohio Constitution concerning the quartering of troops. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article I, Section 13 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 13, reads as follows:

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. The Third Amendment to the U.S. Constitution reads: "No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Adopted as part of the 1851 Ohio Constitution, Article I, Section 13 is virtually identical to its predecessor, Article VIII, Section 22 of the 1802 Constitution, which reads:

That no soldier, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law.

The concept of quartering troops in private homes arose out of English law and custom, and was the byproduct of a military system that had transitioned from reliance upon local citizen militias to standing armies comprised of professional soldiers.¹ Eventually, Parliament's Mutiny Act

protected private British citizens in England from being forced to house and feed British soldiers, requiring compensation to innkeepers and others who supplied traveling armies with food and shelter.² But the anti-quartering section of the Mutiny Act was not extended across the Atlantic, and the forced quartering of troops during the French and Indian War (1754-1763) angered colonists who felt they were being denied protections they understood to be their birthright as Englishmen.³ Attempting to defuse colonial anger, Parliament amended the Mutiny Act to include The Quartering Act of 1765, authorizing British troops to shelter in public houses or vacant structures where barracks were unavailable and clarifying that quartering in private homes was to be avoided.⁴

From the Crown's point of view, standing armies were necessary even after the war to protect British supremacy in North America, including the securing of territorial and trading interests.⁵ From the colonists' point of view, the end of the French and Indian War should have seen a reduction, rather than an increase, in troop numbers.⁶ Eventually, the role of colonial standing armies evolved to that of containing the civil unrest that ensued as the British government imposed unpopular taxes and other restrictions.⁷ Throughout this period, colonial governments were unwilling to concede the need for standing armies, the British control they symbolized, and the expense they represented.⁸

As the situation escalated, Parliament enacted a second Quartering Act in 1774 to require the quartering of troops in private homes.⁹ Citizen outrage followed, based, in part, on the growing conviction that the real purpose of the military presence was to suppress colonists' resistance to British control.¹⁰

Thus, the quartering of troops issue became a symbol of British oppression, and helped to provide justification for the independence movement.¹¹ In fact, "Quartering large bodies of armed troops among us" was one of the rights violations cited in the Declaration of Independence.¹² In the 1800s, some historians characterized the Quartering Acts, along with other parliamentary decrees limiting and controlling economic and personal liberties during colonial times, as "Intolerable Acts," a historiographical term which continues to be used to describe the despotic actions of the British government in the years leading up to the Revolutionary War.¹³

This history inspired several former colonies to include anti-quartering provisions in their state constitutions, and led to adoption of the U.S. Constitution's Third Amendment.¹⁴ It also influenced the drafters of the constitutions of Pennsylvania, Kentucky, and Tennessee, all three of which are recognized as primary sources for much of Ohio's 1802 Constitution.^{15 16}

Amendments, Proposed Amendments, and Other Review

Article I, Section 13 has not been amended since its adoption as part of the 1851 Ohio Constitution.¹⁷ The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.¹⁸

Litigation Involving the Provision

Article I, Section 13 has not been the subject of significant litigation.

The Third Amendment to the United States Constitution has been cited in some litigation, not because it references the quartering of troops *per se*, but for its support of the concept that citizens have a constitutional right to privacy that must be protected from governmental intrusion. *See e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967).

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and June 11, 2015, the committee voted unanimously to adopt a report and recommendation recommending that Article I, Section 13 be retained in its current form on June 11, 2015.

Presentation to the Commission

On September 10, 2015, on behalf of the Bill of Rights and Voting Committee, committee Vice-chair Jeff Jacobson appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article I, Section 13. Vice-chair Jacobson explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 13 in its current form.

Action by the Commission

At the Commission meeting held _____, 2015, _____ moved to adopt the report and recommendation for Article I, Section 13, a motion that was seconded by _____. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of ____ members of the Commission.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article I, Section 13 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on September 10, 2015, and October 8, 2015, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ Fields, William S. and David T. Hardy. *The Third Amendment and the Issue of the Maintenance of Standing Armies: A Legal History*, 35 Am. J. Legal Hist. 393 (1991).

² Rogers, Alan. *Empire and Liberty: American Resistance to British Authority 1755-1763*. Berkeley: Univ. of California Press. 1974. Print. 76.

³ *Id.*, at 83-84.

⁴ *Id.*, at 88.

⁵ Fields & Hardy, *supra*, at 414-415.

⁶ *Id.*, at 416.

⁷ *Id.*

⁸ *Id.*, at 415.

⁹ *Id.*

¹⁰ *Id.*, at 416.

¹¹ Rogers, *supra*, at 89.

¹² Fields & Hardy, at 417-18.

¹³ Bell, J.L. "Intolerable Acts." J. of the Amer. Revolution. Web. 25 June 2013. Available at: <http://allthingsliberty.com/2013/06/intolerable-acts/> (accessed April 24, 2105).

¹⁴ Note, *Does Five Equal Three? Reading the Takings Clause in Light of the Third Amendment's Protection of Houses*, 112 Columbia L.Rev. 112 (2012), 126-27.

¹⁵Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution* New York: Oxford UP (2nd printing), 2011. 21-22. Print.

¹⁶ The 1796 Constitution of Tennessee includes Article 11, Section 27, which reads: “That no Soldier shall in time of peace be quartered in any House without consent of the owner, nor in time of war but in a manner prescribed by Law.” Available at: http://www.tn.gov/tsla/founding_docs/33633_Transcript.pdf (accessed April 24, 2015).

Article IX, Section 23 of the Pennsylvania Constitution of 1790 states: “That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.” Available at: <http://www.duq.edu/academics/gumberg-library/pa-constitution/texts-of-the-constitution/1790> (accessed April 24, 2015).

Article XII, Section 25 of the 1792 Kentucky Constitution provides: “That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.” Available at: <http://www.kyhistory.com/cdm/ref/collection/MS/id/9926> MSS145_1_20 (accessed April 24, 2015).

Only minor differences in punctuation distinguish these three provisions from Article VIII, Section 22 of Ohio’s 1802 Constitution.

For a discussion of the quartering provisions in the Kentucky Constitution, see Ireland, Robert M. *The Kentucky State Constitution*. New York: Oxford UP (2nd Ed.) 2012. Print. A similar discussion regarding the Tennessee Constitution may be found at Laska, Lewis L. *The Tennessee State Constitution*. New York: Oxford UP. 2011. 64. Print.

¹⁷ Steinglass & Scarselli, *supra*, at 112.

¹⁸ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, pp. 36-37. Print. 15 Apr. 1976. Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf> (accessed Sept. 15, 2015).

See also Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix K, pp. 464-65. Print. 30 June 1977. Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (accessed Sept. 15, 2015).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE I, SECTION 17

NO HEREDITARY PRIVILEGES

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article I, Section 17 of the Ohio Constitution concerning the granting or conferring of hereditary privileges. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article I, Section 17 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article I, Section 17, reads as follows:

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

The Bill of Rights as set forth in Article I is a declaration of rights and liberties similar to those contained in the United States Constitution. Article I, Sections 9 and 10 of the U.S. Constitution similarly prohibit the granting of titles of nobility.¹

That hereditary titles and privileges had no place in the emerging egalitarian ideals of the American colonies is a concept reflected in the writings of prominent statesmen, political theorists, and constitutional framers of the time. As observed by Alexander Hamilton, "Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people."²

The prohibition of such titles and distinctions also was seen as necessary to the survival of the young republic, when the hard-won gains of the Revolutionary War were threatened by both British and French trade interference and other acts of aggression in the period leading up to the War of 1812. Out of the fear that foreign influence, bought with hereditary titles and aristocratic privileges, could weaken nationalistic resolve, constitutional framers both at the federal and state levels included prohibitions against such “titles of nobility” in their constitutions.³ Hereditary titles were seen as the antithesis of a societal aspiration that rejected Old World notions of birthright and a fixed social status in favor of liberty, equality, and economic opportunity. As Thomas Jefferson wrote on the occasion of the fiftieth anniversary of the signing of the Declaration of Independence, and near the end of his life:

That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.⁴

Article I, Section 17, adopted as part of the 1851 Ohio Constitution, is virtually identical to Section 24 of Article VIII of the 1802 Constitution, which reads: “That no hereditary emoluments, privileges, or honors shall ever be granted or conferred by this state.”⁵ The record of the 1802 Constitutional Convention does not reflect the provision’s source, but it is identical to the analogous provision in Article II, Section 30 of the Tennessee Constitution of 1796.

Amendments, Proposed Amendments, and Other Review

Article I, Section 17 has not been amended since its adoption as part of the 1851 Ohio Constitution.⁶ The 1970s Ohio Constitutional Revision Commission did not recommend any changes to this section.⁷

Litigation Involving the Provision

Article I, Section 17 has not been the subject of significant litigation.

Presentations and Resources Considered

There were no presentations to the committee on this provision.

Action by the Bill of Rights and Voting Committee

After formal consideration by the Bill of Rights and Voting Committee on April 9, 2015 and June 11, 2015, the committee voted unanimously to adopt a report and recommendation recommending that Article I, Section 17 be retained in its current form on June 11, 2015.

Presentation to the Commission

On September 10, 2015, on behalf of the Bill of Rights and Voting Committee, committee Vice-chair Jeff Jacobson appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article I, Section 17. Vice-chair Jacobson explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article I, Section 17 in its current form.

Action by the Commission

At the Commission meeting held _____, 2015, _____ moved to adopt the report and recommendation for Article I, Section 17, a motion that was seconded by _____. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of ____ members of the Commission.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article I, Section 17 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on September 10, 2015, and October 8, 2015, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Representative Ron Amstutz, Co-Chair

Endnotes

¹ U.S. Const. Art. I, Section 9 reads, in part: "No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state." Section 10 reads, in part: "No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility." Available at: http://www.archives.gov/exhibits/charters/constitution_transcript.html (accessed April 24, 2015).

² The Federalist No. 84 (A. Hamilton). Available at: http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0084 (accessed April 24, 2015).

³ See, e.g., Hart, Gideon M. *The "Original" Thirteenth Amendment: the Misunderstood Titles of Nobility Amendment*, 94 Marq. L. Rev. 311, 335-47 (2010-2011).

⁴ Letter to Roger C. Weightman, June 24, 1826 (Thomas Jefferson), as reprinted in *50 Core American Documents*. Ed. Christopher Burkett. Ashland: Ashland Univ., Ashbrook Press. 2013. 136-37. Print.

⁵ Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 123. Print.

⁶ *Id.*

⁷ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 11, The Bill of Rights, pp. 42-43. 15 Apr. 1976. Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt11%20bill%20of%20rights.pdf> (accessed Sept. 15, 2015).

See also Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Vol. 11, Final Report, Index to Proceedings and Research, Appendix K, pp. 470-71. Print. 30 June 1977. Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (accessed Sept. 15, 2015).

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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