



## MEMORANDUM

To: The Ohio Constitutional Modernization Commission  
From: Michael Kirkman, Executive Director  
Re: Article V, Section 6 and Article VII, Section 1 of the Ohio Constitution  
Date: June 7, 2017

Disability Rights Ohio, on behalf of itself and its clients, people with disabilities in Ohio, wishes to express our deep appreciation for the work of the Commission to address existing provisions of the 1851 Ohio Constitution that impact on the lives of people with disabilities in Ohio. In particular, we acknowledge the efforts of the Bill of Rights and Voting Committee regarding Article VI, Section 6, which disqualifies an entire class of voters with disabilities; and the Education, Public Institutions, and Local Government Committee for its work to revise and modernize Article VII, Section 1 requiring the state to “foster” services to people with disabilities.

Regarding Article VII, Section 1, the committee has proposed language that will receive its second reading at the next meeting. This proposal:

1. Modernizes the language in the Constitution, removing antiquated, discriminatory and stereotyping language, and replaces it with language that is inclusive of all people with disabilities who need care or treatment;
2. Continues to assign to the General Assembly a wholly appropriate function to “prescribe” the scope and types of services the state will provide, allowing Ohio to make appropriate changes as understanding of services to people with disabilities evolves; and
3. Eliminates the limitation implicit in the word “institutions” by using the terms “facilities for and services to,” which is required by the federal constitution, statutes, regulations, and case law.

We greatly appreciate that the committee was careful and deliberate in the process, and especially that they took the time to solicit and receive significant input from experts in disability policy and law. We strongly encourage the Commission to favorably consider this recommendation.

We also recognize the efforts of the Bill of Rights and Voting Committee. This committee also sought input and received testimony from numerous experts on disability and constitutional law, disability policy, and voting rights. It is important to

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note that the Committee quickly reached a consensus that the existing language in Article V, section 6, (the only categorical disqualification of voters in the Ohio Constitution) should be removed, as it is both antiquated and discriminatory, and without a doubt is unconstitutional. Once that decision was made, the Committee vigorously debated what should be its next step. Ultimately, the committee presented the Commission with a compromise proposal that was not acceptable to the necessary supermajority of the members.

In light of that vote, we suggest that the Commission should turn its attention to the original consensus of that committee, i.e. that the current offensive, discriminatory, exclusion language should be removed. Ample evidence was presented to the Committee that removal of this language was necessary for a host of legal and policy reasons. As noted above, categorical exclusions based on disability are unconstitutional. Testimony also recognized that removal of the provision would not create a void in which exploitation of voters with disabilities could occur, as the General Assembly has inherent power to regulate elections and prevent voter fraud (a significant concern of some). The question of “capacity to vote” (which to date has left researchers largely confounded – voting is often based on more emotional than rational decision-making) is far too granular to be dealt with in the state constitution. Resolving this question under federal law requires consideration of the need to provide individualized supports and effective communication to the voter with a disability.

All of these considerations support removal of the current Article V, section 6. The full Commission may wish to explore its options under the rules to proceed on this without further committee deliberation; it may decide to consider it based on the original consensus of the committee; or, at a minimum, it may want to pass a resolution encouraging the General Assembly to take up this issue on its own initiative.

It has been a great honor to be engaged with the Commission and its committees on this formidable exercise in democracy. Thank you all for your hard work, and Ohioans with disabilities appreciate your thoughtful consideration of these issues.