Chapter 1: The Constitutional Framework of Ohio State Government

A constitution is the fundamental law of a state or nation. It is a written document agreed to by the people and thus derives its authority from those it governs. A constitution establishes the nature and character of the state or national government. It organizes government into various branches, prescribes their powers, and specifies the extent to which these powers may be exercised.

The Ohio Constitution is the fundamental law of Ohio and is subject only to the restrictions of the United States Constitution, acts of Congress, and international treaties to which the United States is a party. It may be changed only by voter approval of proposed amendments.

Like the United States Constitution, the Ohio Constitution organizes government into three separate branches: the legislative, the executive, and the judicial. Each branch is independent of the other two and has defined powers and responsibilities. All laws enacted by the legislative branch must comply with the Constitution’s provisions; those that do not are unenforceable.

Ohio’s first constitution was approved by Congress in 1802 as a first step to Ohio’s admission to the Union as a state. Ohio’s second constitution, the Constitution of 1851, as subsequently amended, is today’s fundamental law of Ohio.

History of the Ohio Constitution

The Northwest Ordinance

Before Ohio achieved statehood in 1803, it was part of the Northwest Territory, the area bounded on the east by Pennsylvania, on the south by the Ohio River, on the west by the Mississippi River, and on the north by Canada. On July 13, 1787, Congress enacted the Northwest Ordinance, also known as the Ordinance of 1787, to establish a government for the Northwest Territory and eventually to divide that area into "not less than three nor more than five States.” In addition to organizing the government of the Northwest Territory, the Ordinance contained six "articles of compact” that guaranteed certain individual liberties.

The Constitution of 1802

On April 30, 1802, President Thomas Jefferson signed into law an enabling act that authorized "the inhabitants of the eastern division of the territory northwest of the river Ohio” to initiate the procedures necessary to be admitted to the Union as a state. The act fixed a date for a constitutional convention and established terms for voting for delegates to the convention. The convention adopted the first Constitution of Ohio on November 29, 1802. Congress accepted the Constitution and President Jefferson approved it on February 19, 1803, after which Ohio was admitted to the Union as a state.
The Constitution of 1802 limited the aggregate state debt to $750,000 and required all money arising from the creation of the state debt to be applied to the purpose for which the debt was created or to repay the debt. It banned poll taxes and mandated that all classes of property be taxed by "uniform rule" (at the same rate) according to value. Every law imposing a tax had to state the purpose of the tax, and funds raised by a tax could be used only for the stated purpose.

Ohio’s fundamental law today is the Constitution of 1851, as subsequently amended. It substantially revised the relationships among the three branches of government.

The Constitution also authorized either house of the General Assembly to propose amendments to the Constitution. If three-fifths of the members of each house agreed to a proposed amendment, the amendment had to be submitted to the voters for approval or rejection. In addition, whenever two-thirds of the members of each house thought it necessary to call a constitutional convention, that question had to be presented to the voters for approval or rejection. Finally, the Constitution required that the question of whether to hold a constitutional convention be submitted to the voters every 20 years. The next submission of the question will be in 2032.

All of the foregoing provisions remain in effect, although some have been modified by constitutional amendment.

Under the Constitution of 1851, proposed amendments to the Constitution that are agreed to by three-fifths of the members of each house of the General Assembly are submitted to the voters for approval or rejection. Amendments may also be proposed by initiative petition and constitutional convention.

The 1873 Constitutional Convention

In October 1871, in accordance with the Constitution of 1851’s requirement to submit the question to the voters at least once every 20
Amendments Since 1912

The Constitution has been amended often since 1912. Many of the amendments have authorized the issuance of state bonds for various purposes such as veterans' bonuses, highway and school construction, economic development, and environmental cleanup. Other amendments have dealt with such disparate issues as the classification of property for tax purposes, the organization of the judiciary, the Governor's power to grant pardons and commutations, term limits for legislators, and casino gaming.

Ohio Constitutional Modernization Commission

The Ohio Constitutional Modernization Commission was established in 2011 and is scheduled to remain in operation until January 1, 2018. The Commission is charged with studying the Constitution of Ohio, promoting an exchange of experiences and suggestions respecting desired changes in the Constitution, considering the problems pertaining to the amendment of the Constitution, and making recommendations from time to time to the General Assembly for the amendment of the Constitution.

In the event of a call for a constitutional convention, the Commission must report to the General Assembly its recommendations with respect to the organization of a convention, and must report to the convention its recommendations with respect to amendment of the Constitution.

Structure of the Ohio Constitution

Like other state constitutions, the Ohio Constitution is more inclusive than the United States Constitution. It contains provisions pertaining to elections, local government, finance and taxation, public education, and many other subjects mentioned barely or not at all in the United States Constitution. Generally, the Ohio Constitution limits state governmental authority while the United States Constitution delegates authority to the national government.
Separation of Powers

It has been said that the principle of separation of powers is the chief contribution of the United States to the art of government. The principle makes each branch of government – legislative, executive, and judicial – independent of the other two. Each branch has its own exclusive powers and its own personnel to exercise them. A person in one branch cannot exercise powers vested in another branch. For example, a judge in the judicial branch cannot exercise a legislative power any more than a Senator or Representative in the legislative branch can exercise a judicial power.

Separation of powers means that the powers of government are allocated to three separate and distinct branches, each with its own personnel.

Many state constitutions contain an express declaration that the state government is divided into three separate and distinct branches. The Ohio Constitution does not make such a declaration. Rather, separation of powers is implied in the Ohio Constitution from the structure of the document. The Constitution of 1851 confers the three powers of government (legislative, executive, and judicial) upon three separate and distinct governmental entities (the General Assembly, the Governor, and the Judiciary) in Articles II, III, and IV.

Checks and Balances

Separation of powers is not absolute. The principle of checks and balances authorizes one branch of government to act as a restraint on another branch. For example, the Governor may restrain the General Assembly by vetoing legislation. The General Assembly, in turn, may override a veto by a three-fifths vote of each house. The courts make law, known as common law, as they decide cases, but the General Assembly may check this law-making power by enacting legislation that modifies the common law. (See Appendix C.) On the other hand, the courts may restrain the General Assembly by declaring legislation unenforceable if it violates the state or federal constitution.

The Ohio Constitution, like other state constitutions, contains much more detail with respect to the structure and operation of government than does the United States Constitution.

The Ohio Constitution is organized into numbered "articles," each of which is divided into numbered "sections." The Constitution begins with a Preamble. Article I contains the state Bill of Rights. Articles II, III, and IV establish the three branches of government (legislative, executive, and judicial). Articles V through XVIII contain provisions relating to the administration of government and subjects of substantive law. The Constitution concludes with a schedule of provisions relating to effective dates and the transition from the original constitution. Excerpts from the Constitution appear in Appendix A.
In addition to these checks and balances that are part of the everyday business of government, the General Assembly has certain special powers over the other branches of government. For example, the House of Representatives can impeach the Governor, other executive officers, and state judges.

The principle of checks and balances prevents power from being concentrated in or abused by one branch of government.

Impeachments are tried by the Senate. The General Assembly also has authority to change the number of justices on the Supreme Court, to define the jurisdiction of the courts of appeals and courts of common pleas, to create new courts inferior to the Supreme Court, to prescribe the mode of election of state judges, and to fix the compensation of state judges, the Governor, and other executive officers.