

Pennsylvania Bar Association CONSTITUTIONAL REVIEW COMMISSION

Executive Summary of Recommendationsⁱ

STRUCTURE OF THE GENERAL ASSEMBLY

ARTICLE II – THE LEGISLATURE

SECTION 3: Terms of Members

Commission Recommendation:

The Commission recommends that Article II, Section 3 be amended as follows:

- a) Term lengths for Senators should be increased to 6 years;
- b) Term lengths for members of the House should be increased to 4 years;
- c) Staggered terms, so that 50% of the House is running at any given time; and,
- d) Term limits, permitting three consecutive terms.

Recommendations a), b) and c) were adopted by a vote of 18 in favor and 1 opposed. Recommendation d) was adopted by a vote of 14 in favor and 5 opposed.

Commission Recommendation Not Requiring Constitutional Amendment:

The Commission recognizes that limiting the number of terms and the length of terms should result in a measure of de facto campaign finance reform. Given the constitutional limitations placed by the U.S. Supreme Court, limits on spending and contributions are not part of the Commission recommendations. The Commission believes that full disclosure of contributions should be required in a timely fashion. The Commission believes that there should be a time period prior to the opening of the polls on Election Day during which contributions are precluded. The Commission believes that appropriate sanctions should be enacted for failure to comply with any existing statutes addressing these issues.

This recommendation was adopted by the Commission by a vote of 13 in favor and 6 opposed.

SECTION 4: Sessions

Commission Recommendation:

The Commission recommends that Article II, Section 4 be amended to state that the General Assembly session shall conclude on or before October 31 in the year of a general election.

This recommendation was adopted unanimously by the Commission.

SECTION 8: Compensation

Commission Recommendation:

The Commission recommends that Article II, Section 8 be amended as follows:

- a) Expenses shall be reimbursed only upon voucher and documentation; and,
- b) Per diem reimbursements are prohibited.

Recommendations a) and b) were adopted by a vote of 18 in favor and 1 opposed.

Commission Recommendation Not Requiring Constitutional Amendment:

The Commission supports elimination of preferential financial treatment in deferred compensation plans or health care benefit programs as between elected officials and state employees.

This recommendation was adopted unanimously by the Commission.

SECTION 16: Legislative Districts

Commission Recommendation:

The Commission recommends reducing the size of the General Assembly, limiting staffing of the General Assembly and limiting its budget.

This recommendation was adopted by a vote of 18 in favor and 2 opposed.

ARTICLE III – LEGISLATION

SECTION 4: Consideration of Bills

Commission Recommendation:

The Commission recommends that Article III, Section 4 be amended to require that every bill shall be considered on three different calendar days. A legislative day is a calendar day, defined as 24 hours, ending at midnight, regardless of adjournment or recess.

This recommendation was adopted unanimously by the Commission.

ARTICLE VIII – Taxation and Finance

SECTION 12: Governor’s Budgets and Financial Plan

Commission Recommendation:

The Commission recommends Article VIII, Section 12 be amended as follows:

If the budget is not passed by June 30, no salaries or funds will be paid to members of the legislative branch and staff, and members of the executive branch and staff out of any fund.

This recommendation was adopted unanimously by the Commission.

SECTION 13: Appropriations

Commission Recommendation:

The Commission recommends the following changes to the budgeting process:

- a) No appropriation to the legislature can be a continuing appropriation; and,
- b) All amendments to appropriations bills must first be considered by an appropriations committee. This will not preclude the introduction of an amendment from the floor of the General Assembly provided such amendment had been previously submitted to an appropriations committee and rejected.

These recommendations were adopted by the Commission by a vote of 12 in favor and 7 opposed.

LEGISLATIVE REAPPORTIONMENT

ARTICLE II – THE LEGISLATURE

SECTION 16: Legislative Districts

Commission Recommendation:

It is the recommendation of the Commission that Article II, Section 16 be amended to include a definition of “compact” based on generally accepted measures of compactness. The Commission therefore recommends the adoption of a definition of compactness that compares legislative districts to the area of a circle. The new definition of “compact” is as follows:

Compactness for purpose of measuring the fairness of a legislative district’s boundaries shall consist of π , multiplied by four, multiplied by the area of the district, divided by the perimeter squared.

For a full explanation of this recommendation see pages 37-40 of the attached Legislative Reapportionment Committee report.

This recommendation was adopted unanimously by the Commission.

SECTION 17: Legislative Reapportionment Commission

Commission Recommendation:

The Commission recommends that Article II, Section 17(b), providing for the selection of the chair of the Redistricting Commission, should be amended to provide as follows:

- a) To provide that no sitting or former judge of the Pennsylvania Courts or sitting or former member of the Pennsylvania Legislature may serve as Chair of the Redistricting Commission. It is the Commission’s view that such a change reinforces the appearance of independence of the Pennsylvania Supreme Court in addressing any challenge to the Redistricting Plans proposed by the Commission.
- b) That the present system of selecting the Chair of the Legislative Reapportionment Commission by the other four legislative members of the Commission be retained. If, however, the Legislative members fail to agree on the appointment of a Chair, then the Supreme Court will do so as is presently required by Article II, Section 17, but with the added requirement that the appointment be made by a super-majority of five of the seven members of the Supreme Court.
- c) If the Supreme Court cannot achieve a super majority to appoint the chair, a majority of the sitting commissioned appellate justices and judges of the Supreme, Commonwealth and Superior Courts shall make the appointment.

Recommendations a) and b) were adopted unanimously by the Commission. Recommendation c) was adopted by a vote of 17 in favor and 1 opposed.

Commission Recommendation:

The Commission recommends that Article II, Section 17(c) be amended to require that the Redistricting Commission prepare a detailed record supporting both the preliminary and final reapportionment plans.

This recommendation was adopted unanimously by the Commission.

Commission Recommendation:

The Commission believes that the reapportionment process should be an open and public process. It is the Commission's recommendation that Article II, Section 17(c) be amended to provide that during the 120 day period currently provided for the Legislative Redistricting Commission to develop its preliminary plan (90 days) and to receive comments thereto (an additional 30 days). Further that the Chair of the Commission be required to undertake or oversee the following measures:

- a) Conduct hearings across the State to receive public comment relating to the development of the proposed redistricting plan for the Senate and House Districts.
- b) Provide for public participation in the redistricting process through the use of advanced communications technology and for publishing the Commission's preliminary plan for public comment within the currently prescribed 30-day period.
- c) Review of all public comment and alternate proposed plans and consideration of such in development of the Commission's preliminary and final reapportionment plans.
- d) Advise the public, through the use of advanced communications technology, including both electronic and print editions of all newspapers of general circulation in the Commonwealth, about the importance of the reapportionment process and its impact on voting rights.

Recommendations a), b), c) and d) were adopted unanimously by the Commission.

Commission Recommendation:

The Commission appreciates that the proposed amendments to Article II, Section 17 place an added burden on the Legislative Reapportionment Commission and on the Commission Chair. The Commission therefore recommends that Article II, Section 17(g) be amended to authorize the Commission Chair to retain an Executive Director as well as such additional support staff as may be required and that such staff resources would be adequately funded by the legislature.

This recommendation was adopted unanimously by the Commission.

REAPPORTIONMENT OF UNITED STATES CONGRESSIONAL DISTRICTS IN PENNSYLVANIA

Commission Recommendation:

The Commission comprehends that the same deficiencies in the process for reapportioning Pennsylvania House and Senate districts are present in the process for drawing Pennsylvania Congressional districts. The boundaries for Congressional districts in Pennsylvania have frequently been drawn to protect incumbents and to increase advantage for one political party over another. It is apparent from the distorted shapes of the Pennsylvania Congressional districts

why these districts are considered to be among the most gerrymandered in the nation (see appendix 4). Therefore, the Commission proposes a constitutional amendment to provide that Congressional districts would be determined by the same Commission charged with drawing state legislative districts under the Pennsylvania Constitution. The Commission concedes that this proposal will have no impact until at least 2021. It is the opinion of the Commission that there is more than sufficient time for careful consideration of this proposal to change the manner in which Congressional districts are established in Pennsylvania.

This recommendation was adopted unanimously by the Commission.

PUBLIC EDUCATION

ARTICLE III – LEGISLATION

SECTION 14: Public School System

Commission Recommendation:

It is the recommendation of the Commission that Article III, Section 14 be amended to read as follows:

The education of children is a fundamental value of the citizens of the Commonwealth. It is, therefore, a paramount duty of the Commonwealth to make adequate provision for the education of all children residing in the State. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of other public education programs that serve the needs of the Commonwealth. All actions by the General Assembly regarding education shall be subject to review by the court.

This recommendation was adopted by the Commission by a vote of 16 in favor and 4 opposed.

JUDICIARY

ARTICLE V – THE JUDICIARY

SECTION 13: Election of Justices, Judges, and Justices of the Peace, Vacancies

Commission Recommendation:

The Commission recommends that the Pennsylvania Constitution be amended to create an appointive system for the appellate judiciary.

This recommendation was adopted by the Commission by a vote of 12 in favor and 10 opposed.

Commission Recommendation:

The Commission recommends that Article V, Section 18 be amended to include a new section as follows:

Following a preliminary investigation, if the board determines there may be imminent danger to litigants, the court system, or the administration of justice, it may petition the court for an emergency hearing. Following the emergency hearing, the court may issue an interim order directing the suspension, with or without pay, of any justice, judge or justice of the peace. An interim order under this paragraph shall not be considered a final order from which an appeal may be taken.

For a full explanation of this recommendation see page 104 of the Judiciary Committee report and page 142 of the Judicial Discipline report.

This recommendation was adopted by the Commission by a vote of 12 in favor and 7 opposed.

REQUIREMENT OF COUNSEL IN DELINQUENCY OR DEPENDENCY PROCEEDINGS

Commission Recommendation:

The Commission recommends that Article V be amended to include the following:

A waiver of counsel shall not be accepted by the court in any juvenile delinquency or dependency proceeding.

This recommendation was adopted unanimously by the Commission.

MANDATORY VOTER’S JUDICIAL ELECTION GUIDES

Commission Recommendation Not Requiring Constitutional Amendment:

The Commission recommends that the legislature enact a provision that would require mandatory voter guides for appellate court candidates to be published and mailed to every

household. The Commission notes that this is would be an interim program, since the Commission is recommending the adoption of an appointive system for the appellate courts.

The Commission adopted this recommendation by a vote of 14 in favor and 8 opposed.

RECUSAL

Commission Recommendation Not Requiring Constitutional Amendment:

The Commission urges the Supreme Court and its Ad Hoc Committee to Review the Judicial Canons of Ethics to consider and adopt a concrete and predictable mechanism to promote judicial independence and the public's perception of the integrity of the judicial process by imposing clear guidelines to assure that a sitting judge is not beholden to a specific litigant, lawyer, or party.

The Commission adopted this recommendation by a vote of 18 in favor and 3 opposed.

ARTICLE VIII – TAXATION AND FINANCE

SECTION 13: Appropriations

Commission Recommendation:

The Commission recommends that Article VIII, Section 13 be amended to provide as follows:

The General Assembly shall, by separate annual appropriation, adequately fund the Unified Judicial System through the Supreme Court, in an amount sufficient to perform its core functions and duties as a co-equal branch of government.

This recommendation was adopted unanimously by the Commission.

TAXATION AND UNIFORMITY CLAUSE

ARTICLE VIII – Taxation and Finance

SECTION 1: Uniformity of Taxation

Commission Recommendation:

The Commission recommends that Article VIII, Section 1 be amended as follows:

- a) All property taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; a tax on income is not a tax on property.
- b) Real property is not a single class of property and the legislature may establish specific classes of real estate for taxation purpose.

Recommendation a) was adopted by the Commission by a vote of 18 in favor, 3 opposed and 1 abstention. Recommendation b) was adopted by the Commission by a vote of 18 in favor, 4 opposed and 1 abstention.

LOCAL GOVERNMENT

ARTICLE IX – LOCAL GOVERNMENT

SECTION 1: Local Government

Commission Recommendation:

The Commission recommends that Article IX, Section 1 be amended to include the following:

The State will not impose any new spending requirements that do not have state funding.

This recommendation was adopted unanimously by the Commission.

SECTION 4: County Government

Commission Recommendation:

The Commission recommends that Article IX, Section 4 be amended to remove the compulsory election of the following row officers: Treasurer, Register of Wills, Recorder of Deeds, Prothonotary, and Clerk of Courts. There is no longer a justification for the election of these offices. Those officials with authority to set “policy,” such as Sheriff, should continue to be elected.

This recommendation was adopted by a vote of 14 in favor and 4 opposed.

SECTION 8: Consolidation, Merger or Boundary Change

Commission Recommendation Not Requiring Constitutional Amendment:

The Commission did not take a position on proposing an amendment to Article IX, Section 8, but instead it is the recommendation of the Commission that the issue of whether or not benefits could be achieved through a reduction in the number of municipalities in Pennsylvania should be subject to further examination and study.

This recommendation was adopted unanimously by the Commission.

MISCELLANEOUS

ARTICLE III – LEGISLATION

SECTION D: Other Legislation Specifically Authorized

Commission Recommendation:

The Commission recommends that Article III be amended by the addition of a Section 27.1* to provide as follows:

Future Legislative Action

- a) The Legislature may enact laws relating to legislative procedure to be followed in the enactment of legislation.
- b) A law under subsection (a) shall be binding upon the legislature until it is repealed, and the repeal shall only be effective as applied to legislation enacted after the repeal takes effect. A repeal of a law under subsection (a) containing a legislative procedure requiring a supermajority vote must be enacted with the same supermajority vote as that required in the law subject to repeal.
- c) The Judiciary shall invalidate enactment of legislation on the ground of noncompliance with a law under subsection (a) if it finds, under the particular facts of the case, that the public interest in enforcing the procedural requirements of the law under subsection (a) outweighs any public interest in sustaining the validity of the enactment of the new legislation.

This recommendation was adopted by the Commission by a vote of 21 in favor, 0 opposed and 2 abstentions.

*The Commission suggests adding this provision to Article III, D. Other Legislation Specifically Authorized as Section 27.1 to avoid the renumbering of existing sections in Article III.

COMMISSION RECOMMENDATION FOR IMPLEMENTATION OF THE RECOMMENDED CHANGES

The Commission took no steps to address the methodology for amending the Constitution until it had fully debated and considered Committee proposals and decided which recommendations would be adopted. Thus, the final question before the Commission was whether or not to recommend amendment of the Constitution under the provisions of Article XI of the Constitution or through a Limited Constitutional Convention. The Commission recognizes that this is primarily a political question. The Commission, however, is also aware that many of the recommended amendments to the Constitution have for many years been the subject of efforts by various members of the legislature to amend the Constitution under the provisions of Article XI. Most members of the Commission believe that it is unlikely that the Commission's recommendations can be accomplished through the Article XI amendment process.

Before considering the possibility of recommending a Limited Constitutional Convention the Commission received a report on both the authority for assembling a limited constitutional convention and the case law supporting such a call. The Commission recognizes that the Constitution was amended in 1874 and 1968 through a Limited Constitutional Convention and that in both instances the constitutionality of a convention limited in scope by the legislature was sustained by the Pennsylvania Supreme Court.

The Commission resolved that the amendments recommended by the Commission be addressed through the convening of a Limited Constitutional Convention. The motion in support of this resolution was adopted by a vote of 17 in favor and 3 opposed.

Even after the final meeting and vote, the issue continued to percolate. Further informal discussion among members of the Commission suggested the wisdom of reconsidering the decision to commit to a specific recommendation. The Commission reconsidered and, by a vote of 24 in favor and 1 opposed, adopted an approach of deference to others.

By way of explanation, and notwithstanding the Commission's charge to identify the most effective method for implementing the changes recommended, we now recognize that selection of a single method ignores political reality. The Commission does not know what those realities will be at the time a decision is made to pursue constitutional change. Thus, such a decision is best left to the others in the PBA who will be in a superior position to gauge the then-current winds of (and for) change.

As noted previously, there exist two principal methods for making changes to our constitution. Although the Pennsylvania Constitution contains no express procedure for calling a Constitutional Convention, well-recognized past practice based on Article I, Section 2 of the Pennsylvania Constitution has established that the starting point commands a legislative call for such a proceeding. Our Constitution also offers a specific mechanism for amendment. It requires invocation of such a process by a majority of both houses of the General Assembly in two consecutive but separate legislative sessions and then approval by the electorate. Pa. Const. art. XI. Under any circumstance, the process begins with the legislature.

Given the inherent political nature of our General Assembly and the increasingly rapid pace of change today, any effort to promote constitutional modification necessarily entails awareness of the extant political conditions. In performing the calculus of political action, considerations may include the practical; (What will a Constitutional Convention cost? How may possible changes affect a given legislator's future prospects for advancement?); the political (Are any issues related to a specified amendment being promoted by an active group or portion of a given legislator's constituency? Can constitutional change enhance the legislator's own personal agenda?); the purposeful (Is there a current, identified, overarching necessity for a given proposal?) and the prevailing (Is there a strong, general sense among the citizenry that specific or general changes are needed now – or will wholesale change to the legislative body result from a failure to act?). One thing is clear, the prospect of constitutional revision as reposed in the legislature is a moving target – subject to the vagaries of many variables – all of which may evolve over time. As such, the prospect of implementing constitutional change and the preferred mechanism for achieving the modifications should be made on an ad hoc basis, giving due regard to all prevailing factors at the time that it is made. Our Commission firmly believes that its recommendations possess significant value for improving the Commonwealth's government and the lives of its people. To that end, we place paramount importance on implementation efforts. Therefore, we also conclude that allowing others to select the method most likely to result in acceptance of our proposals at a future point in time maximizes the prospect of successful constitutional change.

ⁱ The Commission's full report may be found on the PBA website at <http://www.pabar.org/public/committees/crcinfo.asp>.