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Steven H. Steinglass: Legislature undercut work of constitution panel

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The Ohio Constitutional Modernization Commission, created in 2011 to provide a comprehensive bipartisan review of the Ohio Constitution and to recommend constitutional revisions to the General Assembly, closed its doors on June 30 — four years before its original sunset.

I have previously described the modest success of the commission and its unfinished agenda. Here, I address why the commission was not as successful as the 1970 commission on which it was modeled.

Let's start with a quick snapshot. Ohio's current constitution, the Constitution of 1851, has been amended more than 165 times. This has resulted in a constitution that is the 10th longest in the nation and more than seven times longer than its infrequently-amended federal counterpart. It also lacks the clarity and transparency one should find in a foundational document. And it is full of obsolete, unconstitutional, and statutory-like provisions.

Constitutional conventions, once the primary method for revising state constitutions, have fallen out of favor nationally. Ohio's last convention, the iconic Progressive-era 1912 convention, was a great success, proposing 42 amendments 34 of which the voters approved. These included amendments creating the initiative and referendum, requiring direct primary elections for most public offices, authorizing minimum wage and workers' compensation legislation, extending home rule to cities and adopting civil service reform.

The Ohio Constitution provides that every 20 years voters are asked whether to hold a constitutional convention. Since the 1912 convention, Ohio voters have rejected convention calls every 20 years, most recently in 2012.

As an alternative, Ohio had a successful experience with commission-based constitutional revision in the 1970s. In 2011, the Republican-controlled General Assembly voted overwhelmingly to attempt to replicate that experience by creating a modernization commission.

The 1970s commission had 32 members: 12 legislators, divided equally by party and legislative chamber, and 20 public members chosen by the legislators. The 1970s commission recommended 63 constitutional changes, 42 of which were presented to the voters in 20 amendments. The voters approved 16 of the 20, including amendments that provided for the joint election of the governor and lieutenant governor, changes in voting requirements, and creation of the Ohio Ballot Board.

Although resembling the 1970s commission in most respects, the legislation that created the 2010s commission rejected the singular strength of the earlier commission—its strong commitment to public (i.e., non-legislative) leadership; the late Richard C. Carter, a respected businessman from Fostoria, served as the chair for almost the entire life of the 1970s commission. The statutory language that created the 2010s commission only permitted current legislators to serve as co-chairs.

The implications of legislative control were immense. This included control of the appointment of public members, control of hiring staff, control of outreach and location of meetings, and control of the agenda of commission meetings. And most importantly, legislative control effectively prevented the 20 public members from playing a leadership role.

In addition to the strong public leadership in the early 1970s, that earlier period lacked today's corrosive partisanship. In the 2010s, the commitment to strong bipartisan leadership was absent.

Under the best circumstances, state constitutional revision is not easy. Robert F. Williams of Rutgers Law School quotes an observation by Georgia Gov. George D. Busbee in 1983 on the difficulty of state constitutional revision.

Constitutional revision is not for the faint of heart. It is not a Sunday drive in the mountains. It is an incredibly difficult, sometimes tedious, sometimes exhilarating, always challenging undertaking requiring the cooperation of the leadership of all three branches of state government, of counties, municipalities, and local school boards, of the business community and the labor community, of public interest groups and private interest groups, of people inside the government and people outside the government — in short, it requires the cooperation of just about everybody.

This helps us understand the failure of the Ohio Constitutional Modernization Commission, which was plagued by an excess of legislative control, a lack of effective leadership, the absence of legislative commitment to constitutional revision, and by a corrosive partisan political climate.

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