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# Chapter 1

## The Constitutional Framework of Ohio State Government



The Ohio Constitution display, Statehouse Museum and Education Center

### What is a Constitution?

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, federal administrative rules, 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.

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## 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, the Continental 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.

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The history of the Ohio Constitution can be traced back to the Northwest Ordinance, also known as the Ordinance of 1787.

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### 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 made the legislature – a General Assembly comprising a House of Representatives and a Senate – the most powerful branch of state government. The General Assembly appointed all state and county judges for a fixed period of seven years and also selected all state executive officers except the Governor, who was elected by popular vote. The Governor was charged with seeing that the laws were faithfully executed but possessed few specific powers other than the authority to grant pardons, to fill certain vacancies in office, and to convene or adjourn the General Assembly in certain situations. The Governor had no power to veto legislation enacted by the General Assembly. (A constitutional amendment granted the executive veto power 100 years later.) A bill of rights protected individual liberties.

## The Constitution of 1851

Ohio faced issues in the late 1840s that were not adequately addressed by the Constitution of 1802. The state had incurred debt in the then-significant amount of almost \$20 million – much of it under the Ohio Loan Law of 1837 (often called the “Plunder Law”), which required the state to give financial aid to canal, railroad, and turnpike companies. There was also widespread dissatisfaction with the judicial system and with special legislation for the benefit of banking and other corporations. Consequently, in 1849, the people called a constitutional convention by approving an issue that had been placed on the ballot by the General Assembly. Following that convention, which was held in Columbus and Cincinnati in 1850 and 1851, the voters adopted a new constitution on June 17, 1851.

The Constitution of 1851 diminished the authority of the General Assembly, although the legislature remained the most powerful branch of state government. All judges and major executive officers were to be elected by popular vote. The Constitution significantly reduced the General Assembly’s authority to enact laws granting exclusive privileges and required that all laws of a general nature operate uniformly throughout the state. The Constitution also prohibited the General Assembly from enacting retroactive laws.

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

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The Constitution 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” 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.

The Constitution also authorized either house of the General Assembly to propose amendments to the Constitution. If  $\frac{3}{5}$  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  $\frac{2}{3}$  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.

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Under the Constitution of 1851, proposed amendments to the Constitution that are agreed to by  $\frac{3}{5}$  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 constitutional convention. At the 1912 constitutional convention, an amendment was proposed and approved that allows the people to propose amendments to the Constitution by initiative petition.

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

### **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 years, the issue of whether to call a constitutional convention was submitted to and approved by the voters. The convention assembled on May 13, 1873, and concluded a year later. The convention drafted a new constitution, but the voters rejected it.

### **The 1912 Constitutional Convention**

In 1910, Ohio voters again approved the calling of a constitutional convention. By that time, the Progressive movement had become firmly established in Ohio. Ohio Progressives wanted to grant "home rule" to cities, allow women to vote, and increase popular participation in government. In addition, popular support existed for such issues as court procedural reform and legislative regulation of the workplace.

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Several important amendments to the Ohio Constitution were approved in 1912, including court and legislative reform, protections for workers, increased authority for local government, and the initiative and referendum.

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Instead of writing a new constitution, the 1912 convention proposed a series of amendments, many of which the voters approved. Some amendments altered the right to trial by jury, the right to confront witnesses, and the right to seek redress in the courts. Others extended the direct primary to all elections, granted the powers of initiative and referendum to the voters, and gave the Governor the authority to exercise an item veto in appropriation acts. (The Governor had been granted the power to veto an act or parts of an act by an amendment adopted in 1903. The 1912 amendment limited the item veto to appropriation acts.) Several amendments provided protections for workers, including amendments authorizing the General Assembly to (1) provide for liens by which workers could secure payment for labor or materials, (2) fix and regulate the hours of labor, (3) establish a minimum wage, and (4) provide for the "comfort, health, safety and general welfare" of employees. Another amendment authorized the General Assembly to establish a compulsory workers' compensation system. Finally, provisions relating to the "home rule" of Ohio municipal corporations were adopted in 1912; these provisions are explained in greater detail in [Chapter 2](#).

### **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.

## 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.

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 XIX contain provisions relating to the administration of government and subjects of substantive law. The Constitution concludes with schedules of provisions relating to effective dates and the transition from the original constitution. Excerpts from the Constitution appear in [Appendix B](#).

### Articles of the Ohio Constitution

Preamble
I Bill of Rights
II Legislative
III Executive
IV Judicial
V Elective Franchise
VI Education
VII Public Institutions
VIII Public Debt and Public Works
IX Militia
X County and Township Organizations
XI General Assembly Redistricting
II Finance and Taxation
XIII Corporations
XIV Ohio Livestock Care Standards Board
XV Miscellaneous
XVI Amendments
XVII Elections
XVIII Municipal Corporations
XIX Congressional Redistricting
Schedules

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.

## 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 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  $\frac{3}{5}$  vote of each house. The courts make law, known as the common law, as they decide cases, but the General Assembly may check this lawmaking power by enacting legislation that modifies the common law. (See [Appendix D](#).) On the other hand, the courts may restrain the General Assembly by declaring legislation unenforceable if it violates the state or federal constitution.

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

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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. 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.