



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:08 a.m.

Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Macon, Readler, Sykes, and Wagoner in attendance.

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Presentations:

“Update on Status of Anti-Monopoly Ballot Initiative”

Steven C. Hollon
Executive Director

Executive Director Steven C. Hollon provided an update on the committee’s work and what the General Assembly has proposed regarding the anti-monopoly provision, H.J.R. 4, now Issue 2 on the November ballot.

Mr. Hollon distributed to the committee a copy of the joint resolution that was ultimately approved by the General Assembly, as well as the ballot language both for Issue 2 and Issue 3, which is the initiative amendment proposed by ResponsibleOhio. He said ResponsibleOhio has filed an action in the Supreme Court contesting the ballot language, that the issue has been briefed, and the court is expected to rule in short order. He indicated that the secretary of state

has determined that a decision would have to be made by September 19 to accommodate the absentee ballot schedule.

Chair Mulvihill invited questions by committee members. He noted that the final resolution being submitted to voters is more extensive than the language the committee was discussing; specifically mentioning that division (B)(3) seems directed at ResponsibleOhio. Chair Mulvihill asked whether staff had any sense of what prompted the changes from what the committee had been discussing. Mr. Hollon said he did not have that information. Mr. Steinglass said that the legislative process worked on the language, and that legislators had different views and concerns about the initial provision the committee had discussed. He commented that Representative Bob Cupp had one concern about the use of the word “other,” and the change that resulted from his concern got incorporated into the final version. Mr. Steinglass said that as the resolution went through the legislative process, additional language was added. He said Auditor Dave Yost had recommended a two-step process.

Representative Emilia Sykes commented that the language in the House version of the resolution was identical to what the committee had discussed, but when the resolution went to the Senate there were some changes added. She said she could not speak to the Senate deliberations, but what was passed out of the House was the exact same language as was discussed in the May meeting of this committee.

Chair Mulvihill observed that it is a two-part provision, meaning that, if the ballot board believes there is a conflict, the ballot will submit two questions to the voters. Mr. Steinglass agreed that this is what the resolution provides.

“The Ohio Indirect Statutory Initiative”

Steven H. Steinglass
Senior Policy Advisor

The committee then turned to the issue of the indirect statutory initiative. Chair Mulvihill indicated he asked Steinglass for a presentation on the topic as a way for the committee to begin discussing ways to encourage people to use the statutory initiative process instead of the constitutional initiative.

Mr. Steinglass began by stating the question is whether there is anything the committee can or should do to revise the statutory initiative process. He said that, in prior discussions, the committee was reluctant to change the constitutional initiative, but the feeling was that the committee might be able to look at the indirect initiative to see if it can be made more robust in order to encourage the statutory route.

Mr. Steinglass identified the statutory initiative as one of the major accomplishments of the 1912 Constitutional Convention. He said the big debate at the convention was whether to have a direct or an indirect statutory initiative. He said that, after an initial flurry of attempts to use the statutory initiative, it is fair to say it has not had a very active history. There are only 12 instances in which a statutory initiative has gone to the voters, with only three initiatives having

resulted in approval: an initiative to color oleomargarine, an initiative regarding old-age pensions, and, more recently, an initiative prohibiting smoking in public places. Mr. Steinglass noted, however, that the actual appearance of initiatives on the ballot doesn't tell the whole story because it is not possible to get accurate information as to efforts to initiate a statute that might have not made it to the ballot.

Chair Mulvihill commented that the committee had briefly discussed eliminating the supplemental petition requirement. Mr. Steinglass said he tried to recall and summarize what had been discussed at prior meetings.

Mr. Steinglass said, when it comes to states that have both constitutional and statutory initiative, Ohio is an outlier. Looking at the percentage of time people use the initiative, in Ohio 86 percent of the initiated efforts were for constitutional amendments, whereas the mean in other states was around 50 percent.

Mr. Steinglass said one area the committee could focus on is the requirement for a supplemental petition. He said that part of the procedure is more burdensome for the average citizen than it is for groups of investors with "deep pockets."

Mr. Steinglass identified other issues that would benefit from review. He referenced a prior meeting of the committee in which two pro-initiative lawyers, Don McTigue and Maurice Thompson, discussed some of the issues related to the initiative process. Mr. Steinglass said some of their comments about the statutory initiative were worth repeating. He said one comment that struck him as important had to do with timing. He said that, in 2008, the constitution was changed to require submission of proposed initiated statutes to the secretary of state by 125 days before the election, which shortened the time period for obtaining signatures. The argument made by Mr. McTigue and Mr. Thompson in their presentations was that moving the deadline forward, albeit for good motives, effectively creates a July 1 deadline to file the petitions. The result is that petitioners only have 60 days, reduced from 90, to collect signatures for the supplemental petitions. Mr. Steinglass said Mr. McTigue and Mr. Thompson thought that requirement burdened those seeking to use the statutory initiative. He said one solution would be to do something about the time limits. Mr. Steinglass asked whether the recommendation could be to have petitioners get more signatures at the outset and do away with the supplemental petition. He said under that plan, the General Assembly would still have time to examine the proposed statute.

Chair Mulvihill asked whether other states that have both constitutional and statutory initiative, generally have a two-step process like Ohio's. Mr. Steinglass said it is rare. He said that, in an earlier memo he provided to the committee about a year ago, he identified four states that have the supplemental signature language, which is a relatively small amount.

Committee member Janet Abaray said the committee was looking at making the statutory initiative easier and constitutional initiative harder. She wondered if this is still the interest of the committee. Chair Mulvihill said anything is on the table, but the committee also was working on the anti-monopoly idea, which was then taken up by the General Assembly.

Committee member Larry Macon said this topic is difficult to understand for the layperson, wondering what problem the committee is facing right now and whether Mr. Steinglass could succinctly identify or recommend what the solution would be.

Mr. Steinglass said the larger picture is that he doesn't think Ohio is a state that, like California, has had a huge number of constitutional initiatives; rather they have been relatively rare. He said, as far as he can tell, in Ohio the constitutional initiative is an important part of our political heritage. He said tinkering with that, and changing the percentage regarding constitutional amendment, would bring opposition from groups all over the spectrum. Mr. Steinglass said he thinks the committee ought to seriously look at making the statutory initiative more viable, recognizing that is not a complete solution. He recommended that the committee look at each of the potential ways to strengthen the statutory initiative so that the supplementary petition process would be less cumbersome or eliminated.

Mr. Steinglass added he would not recommend abandoning the indirect statutory initiative. He said respect for the legislative process is an important value, and the legislature should have the opportunity to see what citizens have drafted. He said the idea of people drafting a statute, and then having it go on the ballot, and directly be enacted into law he doesn't think is good. Mr. Steinglass said there are too many complexities in the statutory process, so he would not move toward a direct statutory initiative. He said there may be ways, suggested by the National Conference of State Legislatures, to have statutory initiative proponents submit the language to the Legislative Service Commission to receive drafting assistance.

Mr. Steinglass said the committee could do something with the language in these provisions that currently is impossible to follow, perhaps just dividing it up into paragraphs or subsections. He said this could make it simpler to read, providing better transparency.

Mr. Macon asked whether Mr. Steinglass had submitted this recommendation in writing to the committee, and whether he has framed it for the committee in that succinct language. Mr. Steinglass answered he had not, but due to time constraints he thought it might be useful to offer additional opinions about ways the committee could proceed. Mr. Macon asked Chair Mulvihill whether the committee could have Mr. Steinglass provide some recommendations in writing, and Chair Mulvihill agreed this would be helpful.

As follow up, Mr. Steinglass asked whether staff could participate in preparing a cleanup of the language by working with the secretary of state or attorney general. Chair Mulvihill said the committee could look at changes both in substance and in aesthetics.

Ms. Abaray asked about the "trump card" language that has been used in many constitutional initiatives, saying she is disturbed by that trend. She asked whether the committee should look at prohibiting that kind of language.

Mr. Steinglass answered that may be the goal but that he does not advise addressing the language right away. He said he would prepare a memo about the trump provisions because it has become part of the standard drafting approach. He said, it is not a new development and the committee may decide it wants to come up with language for it.

Chair Mulvihill asked whether the committee wants to hear again from someone from the office of the attorney general or secretary of state regarding the statutory initiative process. Mr. Macon suggested that the committee might benefit from hearing from someone who is a proponent of strengthening the statutory process. Chair Mulvihill noted that while the committee has heard from various people, the secretary of state and attorney general didn't seem to want to give recommendations and may have an institutional reluctance to do so.

Mr. Steinglass commented that, regarding redrafting and simplifying the provision, the best approach is to just try to do it. He noted that the committee might also consider the placement of the initiative and the referendum in Article II, the Legislative Article. He said those provisions could be moved but there is no ideal placement.

Committee member Chad Readler said he does not know if these suggestions, if implemented, would do enough to change the numbers. He wondered whether it is possible to heighten the requirements of the amendment process as additional incentive for use of the statutory initiative.

Chair Mulvihill offered that the committee can talk about them both.

Mr. Steinglass referenced a chart he had provided on a previous occasion showing the 18 initiated amendments that were approved, and the vote. He said he could provide this again, and include information about initiated amendments that failed. Mr. Steinglass additionally noted that the committee has not yet covered the referendum. He said it has been used only 11 times, passing only three times.

New Business:

Chair Mulvihill asked if there was any other business for the committee. He summarized that Mr. Hollon will reach out to the secretary of state and attorney general to get input at a future meeting. He added that staff would attempt to put together language to make Article II, Section 1b a little more readable, and would also put together some thoughts about making the statutory initiative more attractive.

Ms. Abaray commented that one issue they had previously considered was whether there was a cost savings to the state if the requirements for providing notice in printed media were updated to reflect modern modes of communication. Chair Mulvihill said that is an additional area the committee could consider.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:04 p.m.

Approval:

The minutes of the September 10, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the November 12, 2015 meeting of the committee.

/s/ Dennis P. Mulvihill

Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess

Charles F. Kurfess, Vice-chair