

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**FOR THE MEETING HELD
THURSDAY, SEPTEMBER 11, 2014**

Call to Order:

Chairman Readler called to order the meeting of the Education, Public Institutions, and Local Government at 10:26 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Beckett, Clyde, Coley, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the June 12, 2014 meeting of the committee were approved.

Topics Discussed:

School Funding/Thorough and Efficient Clause

Robert Alt, President and CEO of The Buckeye Institute for Public Policy, was invited by committee Chairman Chad Readler to present about policy and issues related to education in Ohio. Mr. Alt began his presentation by providing a background of The Buckeye Institute, explaining that it is a think tank dedicated to public policy related topics.

Mr. Alt provided a brief overview of the history of educational policy issues in Ohio, including the work that his Institute has done in the past. During his introduction, Mr. Alt posited that the legislature, not the courts, should be left to decide the contours of educational policy. Mr. Alt opined that judicial intervention in legislative action was not best for policy decisions, and that broad or generalized language in the Constitution about education would invite improper judicial intervention into education policy decisions.

Mr. Alt's stated that the language used in certain proposed amendments was not clear. Mr. Alt claimed that phrases such as "high quality" and "basic school readiness" are not concrete enough, and would invite a wide range of possible judicial interpretation, which are really policy questions that should be left to the determination of the legislature and the people.

When asked why he thinks courts are ill-equipped to handle questions such as these, since the justices of the Supreme Court are elected and should be reflect what the people want, Mr. Alt responded that judges are not able to run on specific educational or policy platforms like legislators can, making their job fundamentally different than those of other elected officials.

When asked what he would like to see done with the language, Mr. Alt responded that while he does not like the current "thorough and efficient" language, he does not believe it should be removed from the Ohio constitution. Rather, he does not like the proposed alternatives and believes they should not be adopted.

When asked to identify what he believes to be ineffective with Professor Charlie Wilson's proposals, Mr. Alt responded that the terms used in the proposals were too "aspirational" and that there would be no standard by which to measure "these broad terms" because they were "sufficiently vague."

Mr. Alt responded to other concerns and questions throughout his presentation offering:

- He did not have proposal to "fix" current language because he felt that this was a legislative issue rather than a constitutional one.
- He believes the section of the proposal that addresses higher education is vague and will end up in the hands of the courts rather than the legislature and noted that judges are not experts, and these types of questions should be left to the legislature.
- Mr. Alt also stated that the terms "uniform" and "equitable" are too vague and do little to define basic school readiness or other educational standards.
- Mr. Alt added that the legislature, who has responsibility for the budget, should establish what it should and can pay for instead of having the courts mandate what they need to fund.
- When asked about the inherent overlap between the branches of government, Mr. Alt responded that while there is, of course, overlap between the branches, a functioning system needs a robust judiciary protecting the rights of the people, but that the concern lies with adding layers that make it more ambiguous for the courts to do that.

With no other questions from the committee, Mr. Alt concluded his presentation.

Chairman Readler then invited Professor Charlie Wilson of the Moritz College of Law at the Ohio State University to respond to the presentation by Mr. Alt. Professor Wilson made the

argument that despite every state constitution having an educational provision, he was unaware of any examples of state courts micro-managing the educational process.

Several committee members questioned Prof. Wilson regarding what he thinks about the differences between the two proposals. Prof. Wilson replied that the first version is a “bare bones” proposal, striking the “thorough and efficient” language and adding more specificity. Prof. Wilson explained that the second version maintains “thorough and efficient” while providing specificity, and included references to early childhood education and higher education.

When asked if there had been any precedent with the courts defining thorough and efficient, Prof. Wilson responded that there had been, and that language from his proposal (equitable, safe, and secure) was derived from court opinions interpreting the language. He noted that Ohio is one of three states in the country with a constitution that does not currently state education is a fundamental right. Prof. Wilson added that he believes education should be a fundamental right.

With no other questions from the committee, Prof. Wilson concluded his remarks.

Chairman Readler invited Mr. Alt to address the remarks made by Prof. Wilson. Mr. Alt stated that when interpreting language, the courts would turn to the dictionary first, then to the legislative history. Mr. Alt continued to express his concerns with the ambiguity of the language in the proposals. Mr. Alt then concluded his remarks.

Chairman Readler proposed that the committee distribute the language of the amendments and invite the public to make comments on the potential amendments. Chairman Readler expressed his opinion that the committee would be unlikely to reach an agreement on proposing any new language to the full Commission. He noted that perhaps the committee should be addressing the DeRolph decision, and reminded the committee that they may want to move on to other topics at some point.

For the next meeting the committee would like to distribute the different proposals and get some public input. The Chair would like the committee to consider whether or not there would be enough votes to pass the proposal not only through the committee but through the Commission as well.

Adjournment:

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

Attachments:

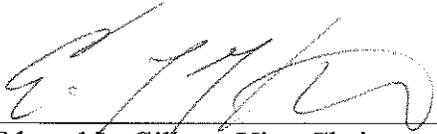
- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Robert Alt
- Prepared remarks of Robert Alt

Approval:

- These minutes of the September 11, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the November 13, 2014 meeting of the committee



Chad A. Readler, Chair



Edward L. Gilbert, Vice-Chair