



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, OCTOBER 13, 2016

Call to Order:

Vice-chair Jo Ann Davidson called the meeting of the Coordinating Committee to order at 12:09 p.m.

Members Present:

A quorum was present with Vice-chair Davidson and committee members Abaray, Coley, Jordan, Mulvihill, and Sykes in attendance.

Approval of Minutes:

The minutes of the June 9, 2016 meeting of the committee were approved.

Presentation and Discussion:

Vice-chair Davidson recognized Senior Policy Advisor Steven H. Steinglass for the purposes of introducing the topic of addressing gender-specific language in the constitution.

Mr. Steinglass began by noting the assumption that it is inappropriate to have gender-specific pronouns in the constitution when it is not necessary. He said, in preparing his memorandum on the subject, he was surprised to find there are only 19 sections in which gender-specific language appears, which seems to be a low number. He said he expected the bill of rights to be full of gender-specific language, but there was only one instance. He said gender-based language is sprinkled throughout the constitution, with some references having been adopted years ago, and some being more recent. He said the question is whether the Commission wants to address the issue, and if so, how.

Mr. Steinglass noted two levels to the question. First, he said there is an organizational issue, meaning where the discussion should occur. He observed that none of the six subject matter committees expressly have charge of this topic and none are a logical fit. So, he said, it is the Coordinating Committee that makes that decision.

As far as the method of changing the language, Mr. Steinglass said there are two ways of doing it. He said one way is to propose an amendment that identifies all 19 sections and changes the wording. He said, in that instance, the ballot does not have to go on for many pages, but can just identify the sections being amended. He said the one amendment separate vote problem is not a problem because there is only one thing being proposed. He said it may be necessary to publish all of the sections proposed to be changed in the newspaper, which could be burdensome.

Mr. Steinglass said the other method of implementing the change would be to delegate the responsibility to someone else. He said some states have elevated to the state supreme court the responsibility for cleaning up their constitutions, with Vermont being one example. He said his advice would be that a delegation on an issue like that would be overkill. Instead, he suggested that the Commission consider a recommendation to remove the gender specific language.

Committee member Janet Abaray asked whether Mr. Steinglass considered nouns as well as pronouns, such as the phrase “all men” in Article I, Section 1 [Inalienable Rights] for example.

Mr. Steinglass said he focused on pronouns. Mr. Abaray followed, asking whether a constitutional amendment to fix gender pronouns could be accomplished in one resolution. Mr. Steinglass answered that the one amendment separate vote requirement would be met if the only purpose of the proposed amendment was to remove pronouns or nouns with single gender reference.

Senator Bill Coley asked, mechanically, how this could be accomplished. He wondered whether the change could be accomplished in one amendment and whether the entire constitution would have to be published in the newspaper prior to the election. Mr. Steinglass answered that it would be possible to publish just the section that is being recommended for change. Mr. Steinglass suggested staff could produce a draft of the sections that would be affected. He said it would be useful to continue to look for more gender-based language in order to be certain all were located.

Vice-chair Davidson recognized Commission member Richard Saphire in the audience, who asked whether the proposal is to use the phrase “he or she” every time there is currently a masculine pronoun. He said if the idea is to remove all gender-specific pronouns, he is wondering whether that can be done.

Mr. Steinglass said he is not sure what the best approach would be. He said he would like to avoid “he/she” but he is not sure if that would work in each instance.

Steven C. Hollon, executive director, commented that when he was administrative director with the Supreme Court of Ohio they worked on changes to rules that had included gender-specific pronouns. He said at times they had to get creative, but, on the whole, the revision is doable.

Vice-chair Davidson suggested asking someone from the Legislative Service Commission (LSC) to meet with the committee to talk about how similar decisions were made with regard to gender neutralizing the revised code. She said that would be the right way to go because LSC ultimately would have to prepare the draft legislation at the direction of the General Assembly.

Mr. Sapphire, speaking as chair of the Bill of Rights and Voting Committee, suggested his committee would be willing to take on this task, and that he would not object if it were assigned to his committee.

Representative Emilia Sykes, looking at a chart provided in Mr. Steinglass's memo, asked why some provisions used the phrase "he or she." Mr. Steinglass suggested the drafters were becoming a little more aware but were not quite there yet in terms of working out the best way to provide gender neutral pronouns.

Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, speaking from the audience, said there was an Equal Rights Amendment taskforce in the late 1970s that addressed this issue, ultimately suggesting that LSC should just take care of it on an ad hoc basis when redrafting legislation. She wondered if the changes could be recommended without taking a Commission vote, such as by saying whenever amending the constitution the drafters could fix the gender.

Vice-chair Davidson said the Commission will have to do something officially because the language is currently in the constitution. She continued, saying because the committee has had an offer from the Bill of Rights and Voting Committee to take up the issue, she wondered if the committee is in favor of allowing Mr. Sapphire's committee to address it.

Mr. Hollon said that is one option, but that the Coordinating Committee also could decide to review the issue and make a recommendation directly to the Commission.

Vice-chair Davidson indicated that, in the absence of Coordinating Committee Chair Kathleen Trafford, the committee would wait to decide what the next step should be, and that she would defer to the chair as to whether the committee should keep the topic or assign it elsewhere.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:35 p.m.

Approval:

The minutes of the October 13, 2016 meeting of the Coordinating Committee were approved at the December 15, 2016 meeting of the committee.

/s/ Kathleen M. Trafford
Kathleen M. Trafford, Chair

/s/ Jo Ann Davidson
Jo Ann Davidson, Vice-chair