



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 13, 2017

Call to Order:

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 12:37 p.m.

Members Present:

A quorum was present with Chair Trafford, Vice-chair Davidson, and committee members Abaray, Coley, Craig, Fischer, and Mulvihill in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Reports and Recommendations:

Article I, Section 8 (Writ of Habeas Corpus)

Chair Trafford recognized Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, to provide a presentation of a report and recommendation for no change to Article I, Section 8, regarding the writ of habeas corpus.

Ms. Abaray described that the committee recommends no change to Article I, Section 8, which indicates that "The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it." She continued that the report indicates that habeas corpus is Latin for "that you may have the body," and is a legal concept originating in early English common law. She said the report describes the history of the writ, noting that a writ of habeas corpus allows a person wrongfully imprisoned to petition the government for release. She said the report continues that the writ of habeas corpus is preserved in various parliamentary enactments, as well as in the United States Constitution, in the first Ohio Constitution in 1802, and in the 1851 Ohio Constitution in its present form.

Ms. Abaray continued that the report discusses that the 1970s Ohio Constitutional Revision Commission's review did not "disclose any significant differences between federal and state interpretations or any reasons to recommend changes in the language," and so recommended no changes. The report also briefly describes Ohio Supreme Court jurisprudence relating to the section, indicating that courts generally determine petitioners for the writ of habeas corpus have an adequate remedy in the form of an appeal, and thus do not qualify for the writ.

Ms. Abaray said the report outlines the committee's conclusion that the long history of the writ of habeas corpus, as well as the similarities between Ohio's provision and its counterpart in the U.S. Constitution and other states, indicates that no change should be recommended.

After thanking Ms. Abaray for her presentation, Chair Trafford noted that the Coordinating Committee's role is to review the report and recommendation for form, not substance, before voting on whether to pass it along for full Commission review. She then asked for a motion to approve the report and recommendation, which was provided by committee member Dennis Mulvihill, with Ms. Abaray seconding the motion. The committee then voted unanimously to approve the report and recommendation.

Gender-Neutral Language

Chair Trafford recognized Christopher Gawronski, legal intern, for the purposes of providing a first presentation of a report and recommendation for gender-neutral language in the constitution.

Mr. Gawronski described that the report indicates the committee's recommendation that that gender-specific language currently in the constitution be replaced with gender-neutral language, if appropriate, as part of one comprehensive amendment. He said the report explains the general background of the consideration of gender-neutral language, noting that the constitution currently contains nearly 80 occurrences of gender-specific words scattered throughout the document. He said the report outlines the review by the 1970s Constitutional Revision Commission, describing its conclusion that there was no demonstrated need at that time to change gender-specific language.

Mr. Gavronski continued that the report describes that 11 states have revised their constitutions since 1974 to make them gender-neutral, with the most popular approach being that the state legislature introduces a proposal to change gender-specific language. He said the report indicates other approaches have been through constitutional convention or revision commission, and through delegation to a state agency. Mr. Gawronski said the report and recommendation outlines the committee's discussion of the issue, including a reference to the committee's decision to have the Constitutional Revision and Updating Committee consider a method for ensuring that future amendments are gender-neutral. He said the report further acknowledges the committee's conclusion that a single amendment to change all gender-specific language would be considered a single subject, even though it would mean a modification to multiple sections of the constitution.

Mr. Gawronski said the report also noted the committee's recognition that the Legislative Service Commission (LSC) would be drafting the amendment for consideration by the General

Assembly, and the committee's consensus that LSC propose the specific language for the amendment using the same approach that it uses in drafting language for the Revised Code. Finally, he stated the report expresses the committee's recommendation that all instances of gender-specific language in the constitution be replaced with gender-neutral language as part of a single, comprehensive amendment, with specific wording to be proposed by LSC.

Mr. Gawronski having concluded his remarks, Chair Trafford asked if there were questions. Ms. Abaray asked what was meant by the indication that gender-neutral language would be used "where appropriate." Mr. Gawronski answered that, in some instances, gender-specific language is required in the context in which it appears. For example, he said, one section refers to marriage as "a union between one man and one woman."¹

There being no further questions, Chair Trafford indicated the committee would hear a second presentation of the report and recommendation at its next meeting.

Presentation and Discussion:

"The Record of the Ohio Constitutional Modernization Commission"

Shari L. O'Neill

Interim Executive Director and Counsel to the Commission

Chair Trafford recognized Shari L. O'Neill, interim executive director and counsel, to present to the committee a plan for standardizing and improving the early record of the Commission.

Ms. O'Neill indicated that, in 2013-14, the Commission had not yet hired staff, with the result that the records of committee meetings from that period are sometimes scant and may contain information that is incorrect or incomplete. She said that staff has completed a project in which the minutes and committee chair reports from that period have been edited and reformatted to create revised sets of minutes. Ms. O'Neill indicated the goal was to provide consistency and clarity, in order to leave a more comprehensive record of the Commission's work. Ms. O'Neill emphasized that the original documents would be retained along with the new versions, so that adopting the reformatted minutes would not mean that Commission history was being rewritten or destroyed.

Committee members expressed support for the project, and suggested that committee chairs could be tasked with reviewing the reformatted materials, advising about any changes they wished to make, and signing the new minutes. Chair Trafford and Vice-chair Jo Ann Davidson noted the importance of leaving a good record of the Commission's work for future generations.

Ms. O'Neill thanked the committee for its input and advised that she would provide the materials to the committee chairs for their review and approval.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:57 p.m.

¹ Article XV, Section 11.

Approval:

The minutes of the April 13, 2017 meeting of the Coordinating Committee were approved at the May 11, 2017 meeting of the committee.

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

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