



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 14, 2016

Call to Order:

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 12:38 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the January 14, 2016 meeting of the committee were approved.

Reports and Recommendations:

Richard Saphire, chair of the Bill of Rights and Voting Committee, provided a review of a report and recommendation issued by that committee.

Article V, Section 6 (Mental Capacity to Vote)

Mr. Saphire indicated that Article V, Section 6 currently reads as follows:

No idiot, or insane person, shall be entitled to the privileges of an elector.

He then summarized the report and recommendation, describing the history of Article V, Section 6, the concern over the outdated and pejorative use of the words “idiot” and “insane person” to describe individuals with diminished mental capacity, the deliberations of the Ohio Constitutional Revision Commission in the 1970s in relation to the section, the presentation to the committee on the topic, and the committee’s discussion and conclusion.

Concerning the committee's review, Mr. Sapphire indicated the committee quickly reached a consensus to eliminate the offensive references to persons of diminished mental capacity. But, he said, the committee was divided on whether to simply repeal Section 6, or whether to replace the section by recommending substitute language or a completely rewritten section. He said the committee opted to rewrite the section, and proposed the following replacement for Article V, Section 6:

The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

Mr. Sapphire indicated the issue of voting for persons of diminished mental capacity does not come up frequently, but that a majority of the committee wished to maintain the constitution's prohibition on voting for persons who have been determined, under law, to lack the mental capacity to vote.

Chair Trafford complimented Mr. Sapphire for shepherding the committee to a conclusion on a topic that was difficult to address.

Ms. Jo Ann Davidson complimented Mr. Sapphire on the report and recommendation, indicating the depth of its discussion made it easy to understand where committee members had conflicts.

Committee member Dennis Mulvihill asked whether the Ohio Revised Code provided guidance on some of the issues. Mr. Sapphire said, to his knowledge, only one section of the code deals with the topic at all, specifically, the section addressing when a person is involuntarily admitted to a mental institution. In that instance, he said, the statute requires there to be a separate determination that the person lacks the capacity to vote before disenfranchisement can occur. He said there is significant ambiguity in the law, as well as ambiguity in the medical and psychiatric community, about exactly what level of mental capacity would disqualify a person from voting. He said the committee recognized it will be up to the legislature and courts to determine that question.

Mr. Mulvihill asked whether the result would be the same if the requirement for action by the General Assembly were eliminated from the proposed revision. Mr. Sapphire said the committee was not in favor of a phrasing that would disenfranchise without there being a law enacted by the General Assembly.

Senator Bill Coley said he is the chair of the legislative committee that would be assigned the issue, asking whether the committee's intent is to require the General Assembly to pass a law on reviewing the mental capacity of developmentally disabled individuals. He said, under current law, there is no court order regarding that, and those individuals have no contact with the judicial system.

Mr. Sapphire said the impression he got from Michael Kirkman, the executive director of Disability Rights Ohio who presented to the committee, is that generally these issues do not arise.

Sen. Coley asked, regarding the self-executing feature of the current provision, why the committee decided to add a requirement that the General Assembly provide law.

Mr. Saphire said the committee had some proposals that explicitly would have required a prior adjudication, a feature that was rejected by a majority of the committee. He said the final proposal requires the General Assembly to enact law providing a procedure for disenfranchising if the intention is to do so. He said it would be up to the General Assembly to determine what that procedure would look like.

Chair Trafford reminded the committee that its function is to review reports and recommendations for form, not substance. She said the committee's task is to make a recommendation that the form and process has been followed.

Representative Emilia Sykes asked Mr. Saphire how often the existing provision is used to disenfranchise people.

Mr. Saphire said, because the section is not used, the committee considered whether the recommendation should be simply to repeal it. He said some members of the committee wanted that but others believed the state had a legitimate interest in disenfranchising people who have no ability to understand what they are doing with regard to voting. He said, in that view, without the provision there is a presumption they have the right to vote.

Committee member Patrick Fischer, who is also a member of the Bill of Rights and Voting Committee, explained that there were not enough votes simply to repeal the section without there being something to replace it. But, he said, everyone on the committee felt that that the existing language is insulting and had to go.

Sen. Coley raised a concern with the proposed inclusion of the phrase "the General Assembly shall provide," when what was being described sounded like the word "may" should have been used.

Mr. Saphire described the discussion in the committee on this issue, indicating the committee consciously wanted to provide some sort of legal process.

Judge Fischer continued that the committee was following the testimony of Mr. Kirkman, who recommended that the provision should require the General Assembly to be able to change the law in relation to evolving concepts regarding mental capacity.

Sen. Coley asked whether the committee considered using language that would allow the General Assembly the discretion to enact law in this area.

Mr. Saphire said the committee looked at 25 or more formulations of the provision, saying the committee probably considered something like that but did not adopt it.

Chair Trafford entertained a motion by Judge Fischer to approve the report and recommendation for Article V, Section 6, and the motion was seconded by Mr. Mulvihill.

Upon a roll call vote, the motion passed unanimously.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 1:17 p.m.

Approval:

The minutes of the April 14, 2016 meeting of the Coordinating Committee were approved at the June 9, 2016 meeting of the committee.

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

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