



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 11, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:50 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Curtin, Manning, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the May 14, 2015 meeting of the committee were approved.

Presentations:

“HJR2 – Congressional Redistricting”

*Ann Henkener
League of Women Voters*

Chair Mills recognized Ann Henkener with the League of Women Voters of Ohio, who presented on the topic of HJR 2, Congressional Redistricting, which was recently introduced in the General Assembly by Representatives Kathleen Clyde and Michael Curtin, both of whom are Commission members.

Ms. Henkener began her presentation by stating that current congressional districts are more highly gerrymandered than the state legislative districts. She said that a good reform proposal should provide for strong input from both political parties when drawing maps, with the goal of having Ohio’s General Assembly and Congressional delegations reflecting the even split between the parties in Ohio. She added that the districts should also be drawn to provide voters

choices in general elections, and to have geographical shapes and boundaries that make sense to voters. Ms. Henkener expressed her support for HJR 2, saying that the proposed resolution meets these goals, and that the similar plan for legislative districts has been accepted by large majorities in the General Assembly. She urged the Legislative Branch and Executive Branch Committee to approve the plan set forth in HJR 2, and to send a recommendation to the full Commission for its approval.

“HJR2 – Congressional Redistricting”

*Richard Gunther
Professor Emeritus, Political Science
The Ohio State University*

Professor Gunther expressed his support for the congressional redistricting plan described in HJR 2, describing the problems he sees with the current district lines, such as communities fragmented into separate districts, and the dilution of voting power of citizens by the creation of districts that are not compact. He also described that the current map does not satisfy the interests of fairness, and noted that Ohio’s map is “one of the worst in the democratic world,” because it “reflects a flagrant disregard of the core principle of representative fairness.” Prof. Gunther reiterated statements he had made to this committee in 2013, in which he proposed that the redistricting process be reformed to “encourage and facilitate the representation of communities, to fairly reflect the preferences of voters, and to make it possible to hold elected officials accountable.” He said that otherwise, voting power would be diluted by placing communities with very different and conflicting interests into one district. Prof. Gunther noted that his home district, the 15th District, represents people in 12 counties with little overlap between the suburban parts of Franklin County and the agricultural Ohioans otherwise in the district. Prof. Gunther argued for fairness, noting that in the 2012 election 52 percent of Ohioans voted for Republican candidates for Congress but that Republicans won 75 percent of the seats. He said the difference of 23 percent is among the worst in the democratic world.

According to Prof. Gunther, HJR 2 meets the goals he described because it uses much of the same criteria as was applied in HJR 12 (legislative redistricting), which passed with the broad support of legislators in both houses at the end of the 130th General Assembly. Prof. Gunther concluded by stating that he regards HJR 2 as “an excellent vehicle for achieving meaningful redistricting reform for the foreseeable future.” Prof. Gunther also recommended that the resolution not be approved until after voter approval of HJR 12 (legislative redistricting) which was on the 2015 general election ballot as Issue 1, so that the congressional redistricting proposal would not “trigger intervention by forces outside the state” who would oppose and potentially bring about the defeat of both reform measures.

The committee then asked Prof. Gunther questions about his presentation. Vice Chair Paula Brooks said she was struck by the list of states and nations that were rated for the fairness of their district maps. She asked Prof. Gunther where the list came from. Prof. Gunther said his recommendation regarding fairness came from language in the Florida Constitution. He said the list of disproportionality scores grew out of his political science class, and that the index is used by political science experts. He said other countries are doing a better job of fairly representing

their voters than Ohio. He added that, with computer programs, it is possible to slice and dice so precisely that you can predict outcomes of elections for many years to come. He said the previous map created in 2001 had a score of 18; but Ohio now has increased that score to 23. He said the legislative redistricting reform plan in HJR 12 reverses that trend, and, if adopted, Ohio would “have a notion of representational fairness.”

Governor Bob Taft asked about the word “attempt” appearing in Section 4 of the proposed resolution. He wondered if there has been other location research about how courts interpret the use of the word “attempt” in the context of attempting to achieve fairness. He wondered what would be sufficient to constitute attempt. Prof. Gunther said this is a slippery slope. He said in the case of Florida, a map was appealed to the Florida Supreme Court, which ruled twice that the map was unconstitutional, and sent it back to the legislature, which then moved lines a little without really creating a fair map. He said so long as we have a subjective notion such as “fairness,” it is subject to different interpretations. He said that Ohio’s map currently has 190 splits. According to HJR 12, now Issue 1, if a map has more than six splits it must be declared unconstitutional and sent back for redrawing. He said that requirement will reduce the possibility for gerrymandering. He said one reason using district boundaries is so useful is because it is unequivocal when boundaries are being split, and the question is how much is bad enough to require court intervention. Gov. Taft asked staff for research on how the word “attempt” is interpreted by the courts, or if there was other language possible.

Chair Mills said he is surprised that Prof. Gunther is recommending that a resolution reforming congressional redistricting not be attempted this year. Prof. Gunther said he is representing himself on this as a political scientist. He said putting it on the ballot this year could jeopardize Ohio legislative reform in Issue 1.

Senior Policy Advisory Steven H. Steinglass asked Prof. Gunther about the implications of *Arizona State Legislature v. Arizona Independent Redistricting Comm.*, currently pending before the U.S. Supreme Court. Prof. Gunther said the Ohio plan in HJR 2 is fundamentally different from the Arizona case. He said the U.S. Supreme Court in 1916, in the case of *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 36 S.Ct. 708 (1916), ruled precisely on this issue, holding that the legislative process is included in the provision allowing for a referendum. He said a second factor is that the Arizona plan provides for a board consisting of nonelected individuals. He said the Ohio plan provides for a majority of commissioners to be legislative representatives, with four of the seven members being legislators. He said this should meet the constitutional requirement that the state legislature determine the conditions for holding an election for congressional representatives.

Gov. Taft noted there is another U.S. Supreme Court case out of Texas, which asks about the criteria for the concept of “one person one vote.” He suggested the committee receive some insight on that issue. He said the outcome of that case could require everyone to go back to the drawing board, but the decision might not come out until a year from now.

Prof. Gunther commented about the population size requirement in drawing maps, noting that, in 2012, the U.S. Supreme Court, in *Tennant v. Jefferson Cty. Comm.*, ___ U.S. ___, 133 S.Ct. 3

(2012), upheld a West Virginia map in which the deviation from exact population equivalents was 0.7 percent.

Rep. Curtin said that he and Rep. Clyde appreciate the committee's willingness to continue to consider this issue.

Committee Discussion:

Sub. SJR 1 – Public Office Compensation Commission

Chair Mills asked for comment regarding SJR 1, a pending measure in the General Assembly that would create a public office compensation commission. No comments were offered.

Next Steps:

Chair Mills then directed the committee's attention to the question of what its next topic of review should be.

Chair Mills said that at the committee meeting in May, Mr. Steinglass presented a planning worksheet on the sections of Article II that the committee has not yet reviewed. He asked whether the committee had opinions about what topics should take priority at future meetings. Executive Director Steven C. Hollon then clarified for the committee that the planning worksheet is being instituted by staff to keep committees up to date. Mr Hollon said he is trying to plan out three meetings in advance.

Chair Mills said one provision that is difficult, but should be addressed, is the single subject rule. He said the Ohio Supreme Court has rendered several decisions in that area, and he would like to see some research and a presentation on where Ohio stands on the single subject rule, after which the committee would discuss it. Gov. Taft mentioned that Sections 33 to 41, adopted in the early 20th century to overcome some controversial rulings by the Ohio Supreme Court, might be a good topic for review.

New Business:

Chair Mills stated that the committee has been meeting every month, and that July is not the normally scheduled month for this committee to meet. He said that unless there is a strong sentiment to meet in July, the committee would go back to its regular schedule. Committee members expressed their support for this plan.

Adjournment:

There being no old business to come before the committee, Chair Mills said the committee will meet next month to discuss congressional redistricting, as well as to get input from committee members about their preferences in terms of future topics to be taken up by the committee. The meeting adjourned at 3:30 p.m.

Approval:

These minutes of the June 11, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the September 10, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair