



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, FEBRUARY 4, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 10:10 a.m.

Members Present:

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

Approval of Minutes:

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

Report and Recommendation:

Chair Mills announced the committee would be discussing the Congressional redistricting report and recommendation that first was presented at the January 14, 2016 meeting. He asked if members of the audience desired to provide public comment on the topic. There being none, Chair Mills explained that he had intended to bring the report and recommendation up for a final vote upon this second presentation, but realized that concern had arisen regarding what the proposed constitutional amendment should be. He said that, after reviewing recently-provided written comments by Senator Charleta Tavares and Commission member Jeff Jacobson, he concluded the committee was not prepared to discuss each amendment and render a decision today. He said this decision was not without consternation on his part, but that he did not think it was right to let the full Commission handle the matter, nor is the committee prepared to do it today.

He said, instead, he intends to appoint a four-person subcommittee to negotiate a resolution to the points in contention. He said he plans to serve on the subcommittee, along with Vice-chair

Paula Brooks and Sen. Tavares. He added he will invite Representative Robert McColley to be the fourth person on the subcommittee. He said the subcommittee will discuss and resolve individual points raised by both Sen. Tavares and Mr. Jacobson, with a goal of having a second presentation with an agreed-on proposal for the committee to vote on. Chair Mills then invited comments from committee members.

Sen. Tavares thanked Chair Mills for sharing his thoughts. She explained the original proposal was the result of the discussions legislators have had for several years in the House and the Senate, specifically noting the efforts of Representatives Kathleen Clyde and Michael Curtin, and Senators Frank LaRose and Tom Sawyer. Sen. Tavares noted the success of Issue 1 on the November 2015 ballot, an effort that has resulted in legislative redistricting reform. She said proponents of Congressional redistricting reform were told last year that it was necessary to wait until resolution of the Arizona case, then pending in the United States Supreme Court.¹ She said proponents of reform then were asked to wait until after the November 2015 election to see the vote count on legislative redistricting, so again they waited. She said she was prepared to offer amendments today to the proposal by Rep. Clyde last month, and that is why she sent the memorandum outlining those amendments. However, she added, at this point she is still in favor of moving the original proposal forward as was shared before. She said if the committee does not act now it will not get anything through this body, emphasizing that two hearings are required in the full Commission before the issue is presented to the General Assembly. She said if the proposal does not move this year, it will not pass, and so she would like to move forward with the original proposal.

Senator Bill Coley said it is good to bring forward ideas for Congressional redistricting reform, but urged caution. He said the difference in size between General Assembly House districts and Congressional House districts results in problems with drawing the maps. He asked whether those proposing reform have tried to draw a map using the criteria contained in the new proposal. He said the map drawn in 2012 has been criticized, but that it does comply with the principle of “one person, one vote” as well as with the federal Voting Rights Act (VRA). He noted when Ohio is compared to other states, seven states are not considered because they have only one Congressional district. He said of the remaining 43 states, 37 have maps drawn by state legislatures. He added that all six states that have redistricting panels draw the maps have lawsuits challenging those maps. He said Ohio did not have such a law suit because the map that was drawn complied with the law. He said two states with redistricting commissions, Idaho and Hawaii, have maps that were struck down. He said he would like to see what a map would look like based on the criteria outlined in the current proposal.

He further cautioned that, as soon as that map is drawn, the question arises about how the map will look in 2022, because Ohioans move out of their districts or out of state so that the population is changing. He said he applauds the subcommittee idea and the selection of persons to serve on the subcommittee. But, he said, “hand me the map when you hand me the proposal.”

Committee member Herb Asher said when he came to the meeting he was prepared to vote for the original proposal, and complimented the chairman for getting the committee to this point. He continued that he was surprised to see amendments at the last minute, and had read the

¹ *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ____, 135 S.Ct. 2652 (2015).

comments by Sen. Tavares and Mr. Jacobson. He said he has no objection to Chair Mills' plan to have a subcommittee, but it would be helpful to get a better sense of what really motivated these later amendments, and whether these amendments are being pushed by other groups. He wondered what the amendments are accomplishing that merits slowing down the process.

Rep. Curtin commended the work of Chair Mills in bringing this proposal before the committee and the Commission, expressing the hope that it would ultimately come before the electorate. He said he cannot disagree with the subcommittee idea for the purpose of working through the details. He said it seemed to him the broad principles the committee agrees on have been broadly embraced, and that there is agreement that if there is no new plan in place soon, there will be no reform until 2022. He said that outcome is not serving Ohio well, and that most Ohioans believe the current map to be very bad. He noted there are 54 county splits, and a district known as "the snake on the lake," with other districts that stretch "hither and yon." He said "it is not that difficult for well-intentioned people on both sides to draw a map that meets the requirements of case law or the VRA," adding that nothing requires drawing a snakelike district along the lake to create a super-majority district. He said "we can draw a map that is fair, balanced, that respects voting rights, and that does not look like a Rorschach test." He expressed his hope that the committee would engage in expeditious work, requesting that there be a time frame for receiving a work product back from the subcommittee. He also disagreed that it was necessary to see a map before deciding whether the proposal was a good one, stating "the redistricting commission just supported by a majority of Ohioans is entrusted with coming up with a bipartisan map." He added, "if we are mandating someone come up with a map before we push this forward we are going to fail."

Committee member Kathleen Trafford commented that she is one of only two people on the committee who has never held public office or run for office. She said she is purely a member of the public. She said she shares some concerns raised initially, but when she read through the comments of Sen. Tavares and Mr. Jacobson, it made her consider the role of the Commission versus the rule of the legislature. She said the role of the committee is to reach a consensus that something needs to be done, and to conclude that a particular course of action is a good thing to recommend. She said the committee is getting bogged down in too much detail. She said, moving forward, there will be a subcommittee and some "legislative horse-trading," which she understands, but that she disagrees that a committee of the Commission is the place for working out details. She said the committee's role is to forward a proposal, and that if there is fine tuning it should be done by the legislative body. She said "we are not that body, we recommend; they have the final say, they handle the details." She said she would move that the committee move this forward and let it go to the legislature to worry about details. She then made a formal motion that the committee forward the original proposal, and if the legislature wants to provide or change details, that is their prerogative.

Chair Mills stated the motion would be ruled out of order due to its timing, and asked if other committee members had further comments.

Sen. Tavares said she agrees with Ms. Trafford that this is a public body, even though it was appointed and designed by the legislature. She said the legislature will have an opportunity to address the specific details of the proposal, but that the Commission is supposed to promulgate

ideas for amending the Ohio constitution, and is supposed to represent the voices of the people of Ohio, not just the legislators.

Sen. Coley said the proposal takes the drawing of the map away from the legislature, so the legislature cannot fix problems with the map if the proposal is enacted. He said he is not saying draw the map, he is saying prove you can draw a map and not violate the principles. He said he does not believe it can be done. He said if this is a better proposal than what Ohio currently has, “let us see what the 2012 map would look like if this proposal were in place.” He added, “until you show me the map can be done, you are just talking about aspirational goals.”

Mr. Asher said he does not have a sufficient appreciation of the proposed amendments, and does not know if they have technical, substantive, or partisan implications. He said his ultimate goal is to get an amendment on the ballot to be approved by the voters that will improve Congressional redistricting. He concluded that he is uncomfortable with letting the legislature work it out because that could be very divisive. He said he thinks, in the long term, the committee might be better off trying to resolve it first, with the ideal result of having a strong bipartisan recommendation.

Committee member JoAnn Davidson said the success with Issue 1 is informative. She said in that instance there was no animosity when the issue went to the ballot, and not even much debate, and that the measure passed by a large margin. She said that is a good recommendation for taking a little more time to work out a compromise that will guarantee what goes on the ballot has a chance of passing. She said she fully supports Congressional redistricting reform, but agrees with the chair that a subcommittee could negotiate how that will be accomplished.

Rep. Curtin agreed with Ms. Davidson, saying the committee should be endeavoring to put a bipartisan plan in front of the full Commission and the General Assembly. He said he would like to do that by a date certain. He said the committee should have an expectation of when that will occur.

Ms. Trafford said she defers to Mr. Asher, saying she agrees this procedure of having a subcommittee work on the issue makes sense, but she is concerned that the committee is confusing its role with that of the General Assembly.

Ms. Brooks moved that, over the next three weeks, the subcommittee, as proposed by the chair, would meet and come back for the committee’s next meeting prepared with a product that can be discussed, and placed before the committee for a vote. Governor Bob Taft seconded the motion.

Ms. Davidson moved to amend the motion to have the subcommittee act within six weeks for the reason that three weeks is too short. Ms. Brooks agreed to accept Ms. Davidson’s motion as a friendly amendment.

Chair Mills then summarized that the motion on floor is to allow a subcommittee to meet and report back with a work product in a six-week time frame. Mr. Asher clarified that the subcommittee would have “up to” six weeks to perform its task.

Rep. Curtin asked whether the committee is endeavoring to have a work product ready for a vote at the committee's April meeting. Chair Mills answered affirmatively.

Chair Mills asked if there were any objections to the motion. Noting none, he announced that the motion was approved.

With regard to the subcommittee's meeting, Chair Mills said he would provide notice when the meeting is scheduled so that those who would like to attend may do so. He noted that some interested individuals likely would attend, such as Mr. Jacobson and Rep. Clyde, but that the only official voting would come from the subcommittee members.

Chair Mills then recognized Ms. Brooks, who commented that the phrase "justice delayed is justice denied," applies to the issue of Congressional redistricting. She said "we need to get this done now," adding "this last-minute flurry of activity [with regard to the details of the proposal] was very concerning to a lot of people." She expressed the hope that there would not be further delays because "we need to assure the citizens of Ohio that they have a democracy."

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:56 a.m.

Approval:

The minutes of the February 4, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the April 14, 2016 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair