

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Jonathan Dever
28th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, JUNE 8, 2017

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission (“Commission”) to order at 1:11 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Dever, and Commission members Abaray, Asher, Beckett, Bell, Clyde, Cole, Coley, Cupp, Davidson, Fischer, Gilbert, Holmes, Jacobson, Jordan, Kurfess, Mills, Mulvihill, Peterson, Sapphire, Skindell, Sykes, Taft, Talley, Trafford, and Wagoner in attendance.

Approval of Minutes:

The minutes of the May 11, 2017 meeting of the Commission were approved.

The minutes of the May 11, 2017 meetings of the Bill of Rights and Voting Committee, the Constitutional Revision and Updating Committee, the Coordinating Committee, the Education, Public Institutions, and Local Government Committee, the Finance, Taxation, and Economic Development Committee, the Judicial Branch and Administration of Justice Committee, and the Legislative Branch and Executive Branch Committee were approved.

The minutes of the May 14, 2015 joint meeting of the Public Education and Information Committee and the Liaisons with Public Offices Committee were approved.

Subject Matter Committee Reports:

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, indicated the committee met earlier and discussed both the pending report and recommendation regarding the initiative and referendum process as well as Article XVI, relating to the amendment process. He said the committee would have reviewed the constitutional convention process, as well as considering the constitutional commission alternative, if time had permitted.

Education, Public Institutions, and Local Government Committee

Education, Public Institutions, and Local Government Committee Chair Edward Gilbert reported that the committee was to review Article X, Article XV, and Article XVIII, and had divided those sections for nine planned meetings. He said the potential shortened life of the Commission does not permit that review, but nevertheless, the committee's two recommendations regarding Article VII are up for a vote at this meeting.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the committee will be proposing an addendum regarding assigning debt reporting functions to the state treasurer.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported that, due to the possible shortened life of the Commission, the committee was not able to conclude its work on a number of sections that had been assigned to it.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, reported that his committee met 33 times during the life of the Commission, spending 23 meetings on reapportionment or redistricting, three on legislative term limits, three on the single subject rule, and six on a proposal to create a public official compensation commission. He said the committee met with some success on the legislative apportionment issue, and did pass out a term limit proposal that was not discussed in the full Commission. He thanked all members of the committee for their hard work.

Judicial Branch and Administration of Justice Committee

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, said the committee has a pending recommendation regarding the grand jury process. She said the recommendation is no longer on the Commission's agenda, but asked on behalf of the committee for the opportunity to discuss it at the appropriate time.

Co-chair Tavares acknowledged Ms. Abaray's request, indicating that she would recognize Ms. Abaray for that purpose later in the meeting.

Standing Committee Reports:

Organization and Administration Committee

Mark Wagoner, chair of the Organization and Administration Committee, said the committee had not met recently, but would await the decision of the General Assembly regarding the future of the Commission to determine how to proceed.

Liaisons with Public Offices Committee

Herb Asher, chair of the Liaisons with Public Offices Committee said the committee had not met recently and so he had nothing to report.

Public Education and Information Committee

Roger Beckett, chair of the Public Education and Information Committee, agreed with Mr. Asher's assessment, but added that he wished to thank members of the committee for its work in setting up a process early on to allow members of the public to learn of the Commission's activity and to comment on it. He said, based on the many comments and requests to speak that were received in relation to this Commission meeting's agenda, he believes the process they set up was successful.

Coordinating Committee

Jo Ann Davidson, vice-chair of the Coordinating Committee, reported in the absence of Chair Kathleen Trafford, that the committee has taken care of all of the business before it.

Reports and Recommendations:

Before recognizing committee chairs for the purpose of presenting reports and recommendations, Co-chair Tavares said she wished to comment in relation to the suggestion that this would be the last meeting of the Commission. She said the Senate is still debating the biennial budget bill, so there is another branch of government that is debating the issue of whether the Commission lasts beyond the month of June. She said the recommendation to conclude the Commission's work at the end of June was a decision by the House of Representatives. She said, although it is unclear whether this is the last Commission meeting, she does not operate in the area of "what may be," but rather takes the view that, as matters currently stand, the Commission has until December 31 to conclude its business.

Article VII, Section 1 (Support for Persons with Certain Disabilities)

Co-chair Tavares recognized Ed Gilbert, chair of the Education, Public Institutions, and Local Government Committee, for the purpose of providing a second presentation of a report and recommendation for Article VII, Section 1, relating to support for persons with disabilities.

Mr. Gilbert summarized the report and recommendation, indicating the report recommends that Section 1 be changed to read:

Facilities for and services to persons who, by reason of disability, require care or treatment shall be fostered and supported by the state, as may be prescribed by the General Assembly.

Co-chair Tavares asked for public comment, recognizing Michael Kirkman, executive director of Disability Rights Ohio.

Mr. Kirkman thanked the committee for its willingness to engage the disability community in its conversation about the provision. He said several people testified to the committee and assisted with the language, with the result that the recommended language is a vast improvement over the current language in the constitution. He said the recommendation modernizes the language so that it no longer includes outdated, stereotypic, and offensive language to describe people with disabilities, and also includes all people with disabilities who need care and treatment. He said, in addition, the language uses the word “prescribe,” which ties it back to case law relating to the prior provision, clarifying that the General Assembly has the power to enact law to enable the provision. He said, finally, it exchanges the word “institutions” for “facilities and services,” so that it now incorporates the requirements of federal law for community integration, recognizing that most people receive services outside of a specific facility. He encouraged the Commission to adopt the report and recommendation, thanking the committee for its willingness to engage in learning about the needs and interests of the disability community.

Regarding the proposed language, Mr. Cole asked whether the provision might be interpreted as a mandate for spending by the General Assembly. He said the current provision uses the word “shall” but the obligation extends only to certain public institutions, noting the proposal is broader. He referenced case law in the report that indicates the state does not have an obligation to provide for care at private facilities.¹ Mr. Cole said he wondered if the change in language suggests that the case holding would not survive. Mr. Gilbert responded, indicating the issue was discussed by the committee, which concluded that the responsibility is assigned to the state, as in the current language, but stipulated that it would be assigned as prescribed by the General Assembly. He said the committee did not believe that the case outcome would change if the proposed language were adopted.

Commission member Karla Bell asked about the idea that the General Assembly would prescribe limitations on the extent of the state’s responsibility to provide care. Mr. Gilbert answered that the committee discussed at length the idea that authority should not be taken from the General Assembly to determine the type and degree of support the state should provide, but the primary focus was getting rid of the offensive language. He said that the concept of allowing the General Assembly the governing authority was seen as a compromise.

Mr. Cole said he agrees that the language addresses some concerns and poor language in the current provision. He said the current provision also allows the General Assembly to prescribe laws regarding the level of care and that the limiting principle in the case law came from the court’s interpretation that the obligation extended only to public institutions. He said removing the current provision’s requirement that the care be tied to a public institution, and asserting that the part of the provision allowing the General Assembly that authority would not seem to resolve the interpretation asserted by the plaintiffs in *In re Hamil* that the state’s responsibility extends to providing care at a private facility.

Mr. Kirkman pointed out the prescribing language has been interpreted in other Ohio Supreme Court cases, and said that he could supply that information to the Commission. He said the cases make clear that this provision is not self-enabling, and that there is a case from the 1930s that states as much. He said the recommendation uses the exact same language as the current provision, so that it ties back to the older cases.

¹ *In re Hamil*, 69 Ohio St.2d 97, 437 N.E.2d 317 (1982).

Mr. Saphire asked whether, without this language, the General Assembly lacks authority to provide financial and other support for people with disabilities who reside in non-public institutions. Mr. Kirkman said there has been discussion in other committees about the organic or sovereign nature of the Ohio Constitution and the Ohio General Assembly, which has broad power to enact laws for the general welfare. However, he said, it was felt the current provision, which dates from 1851, was a direction in the constitution in relation to the asylum movement in the 1800s, so that the state would always have the responsibility to foster institutions for the disabled. So, he said, there may be a general power, but the provision provides a specific power and guidance for the state to be able to provide that care.

Mr. Saphire said, to the extent the General Assembly has the authority, that might assuage Mr. Cole's concerns about the unintended consequences of the proposed language.

Mr. Gilbert said he does not see a way the language can be interpreted to create an obligation to provide care at a private institution. Mr. Kirkman agreed that removing the language entirely also could create problems.

Co-chair Tavares then asked for a motion to adopt the recommendation, which was provided by Commission member Petee Talley. Upon a second by Commission member Bob Taft, a roll call vote was taken with the following votes recorded:

Co-chair Tavares – yea

Co-chair Dever – yea

Abaray – yea

Asher – yea

Beckett – yea

Bell – yea

Clyde – yea

Cole – yea

Coley – yea

Davidson – yea

Fischer – yea

Gilbert – yea

Holmes – yea

Jacobson – yea

Jordan – yea

Kurfess – yea

Mills – yea

Mulvihill – yea

Saphire – yea

Skindell – yea

Sykes – yea

Taft – yea

Talley – yea

Wagoner – yea

The motion passed by a vote of 24 in favor, none opposed, and six absent.

Article VII, Sections 2 and 3 (Directors of Public Institutions)

Co-chair Tavares continued to recognize Mr. Gilbert for the purpose of providing a second presentation of a report and recommendation for Article VII, Sections 2 and 3, relating to directors of public institutions. Mr. Gilbert summarized the report and recommendation as concluding that Sections 2 and 3 should be repealed because they no longer have a function in how directors of state institutions are selected.

There being no comments or discussion regarding the report, Co-chair Tavares asked for a motion to adopt the report and recommendation, which was provided by Mr. Gilbert, with a second by Commission member Karla Bell.

A roll call vote was taken with the following votes recorded:

Co-chair Tavares – yea
Co-chair Dever – yea
Abaray – yea
Asher – yea
Beckett – yea
Bell – yea
Clyde – yea
Cole – yea
Coley – yea
Davidson – yea
Fischer – yea
Gilbert – yea
Holmes – yea
Jacobson – yea
Kurfess – yea
Mills – yea
Mulvihill – yea
Saphire – yea
Skindell – yea
Sykes – yea
Taft – yea
Talley – yea
Wagoner – yea

The motion passed by a vote of 23 in favor, none opposed, and seven absent.

Article II, Sections 1 through 1i, 15 and 17 (Constitutional Initiative, Statutory Initiative, and the Referendum)

Co-chair Tavares then recognized Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, to present a second reading of a report and recommendation related the constitutional initiative, statutory initiative, and referendum process in Article II.

Mr. Mulvihill began by thanking staff and members of the committee for their hard work on the recommendation. He said the committee strove to keep partisan politics out of its deliberations, and that the committee's judgements were made in the spirit of preserving the people's right to use ballot initiatives. However, he said those decisions required some give-and-take among committee members, who worked on these issues for years. He said the final product reflects the collective compromises and judgements of the committee. He said the committee set out with strong bipartisan cooperation and came to its conclusions in a non-partisan way. He said the recommendation had unanimous support in the committee and reflected that broad spectrum of cooperation.

Mr. Mulvihill continued that, currently, Article II contains some of the most confusing and difficult-to-understand language in the constitution, and the committee's work has been to modernize, streamline, and clear out the density contained in those provisions. He said, to that end, the committee has reorganized Article II, and rewritten the sections to accomplish its goals. He said, during its work over four-and-a-half years, the committee heard dozens of presentations and benefited from public comments and input at nearly every meeting, including from its most loyal attendees, the League of Women Voters, and incorporated most of what was heard. He said from the outset the committee was cognizant of the strong history that supports allowing Ohio citizens to effect amendments and laws. At the same time, he said, the committee had the benefit of 105 years of history to see what has and has not worked. He said, in summary, the committee felt that the constitutional initiative has been overused while the statutory initiative has been underused over the years. He then cited statistics indicating how often the constitutional initiative process has been successfully used, noting that legislatively-initiated amendments enjoy a more-successful, 70 percent passage rate. He said many items have been placed in the constitution that would have been better served as statutes. He said the committee concluded that the reason for the underuse of the statutory initiative process is the requirement of a supplemental petition, and the lack of protection to initiated laws, concluding that the committee's recommendation endeavors to fix those problems.

He said one goal of the committee was to reduce the influence of politics and political gamesmanship that occasionally impair the ability of citizens to get their petitions to the ballot. He then summarized the committee's recommendations, which include:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;

- Increasing the passing percentage for constitutional amendments from 50 to 55 percent, with the idea, if Ohio is a 50-50 state, there should be at least some bipartisan support for a petition to amend the constitution;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;
- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather hundreds of thousands of signatures and spend hundreds of thousands of dollars – a proposal that represents another attempt to minimize the politics in the process;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

He said the committee understands that not every member of the Commission will like each of these recommendations, but in aggregate the committee feels that this is a significant improvement over the current process.

Wishing to address some of the objections to the proposal, Mr. Mulvihill said there have been many letters to the Commission, as well as a proposed amendment that would equalize the 55 percent requirement with the passage rate requirements for amendments that come from the General Assembly. He said the committee did discuss this, and concluded that over the years there has been no evidence of abuse of the process by the General Assembly, as shown by the nearly 70 percent adoption rate of amendments proposed by the legislature. He said the constitution has a requirement that no amendment can get out of the General Assembly without at least 60 percent approval, so there is already a supermajority requirement before a legislatively-proposed amendment gets to the ballot. He said that fact, compared to the poor track record of citizen initiated amendments in recent years, convinced the committee there was no need to equalize the proposals. He said as the chair he sees no problem with making the General Assembly subject to the same requirements, but that particular issue should not de-rail the long work of the committee in taking politics and politicians out of the process and enabling citizens to get their issues to the ballot.

Mr. Mulvihill having concluded his presentation, Co-chair Tavares indicated that Commission member Jeff Jacobson had requested the opportunity to speak prior to public comment on the pending recommendation. She said that she recognized that members of the public were present and wish to speak, and that she does not want to limit their opportunity to address the Commission.

Mr. Jacobson said he appreciates the involvement of the public to bring issues to the Commission's attention, noting that there have been many comments over the last month regarding the issue that he has found persuasive. He said that, like the grand jury proposal by the Judicial Branch and Administration of Justice Committee – a proposal that was removed from the agenda because of significant opposition – the initiative and referendum proposal places the Commission in a position of considering a proposal with significant opposition from both the left and the right. He commended the members of the committee who worked on the proposal for such a long time. He said he regrets that those who may have worked behind the scenes to bring objections could not have shared that earlier with members of the committee as they worked on the recommendation. He said in other committees he has worked on where there was a sense that there would be opposition, the objections would be raised earlier in the process so as to avoid a situation in which members who are unpaid and, for the most part, unpolitical, end up venturing into places where they become the target of a political fight that they had no idea they would be wandering into. He said he does not think the proposal has the number of votes needed to pass, and he respects the fact that many people have come here to testify, but he does not believe that the show of opposition is completely organic. He said there are some who would like to use the opportunity to humiliate the people who worked on this in an attempt to score some partisan points. He said he regrets that, and hopes he is wrong.

Saying he recognized that the proposal needs more work in order to have any chance of passage, Mr. Jacobson then moved that the proposal be referred back to the committee, a motion that was seconded by Senator Bill Coley.

A roll call vote was taken with the following votes recorded:

Co-chair Tavares – no
Co-chair Dever – yea
Abaray – no
Asher – no
Beckett – yea
Bell – yea
Clyde – no
Cole – yea
Coley – yea
Cupp – yea
Davidson – yea
Fischer – yea
Gilbert – no
Holmes – no
Jacobson – yea
Kurfess – no
Mills – yea
Mulvihill – no
Peterson – yea
Saphire – no
Skindell – yea
Sykes – no
Taft – no

Talley – no
Trafford – no
Wagoner – yea

The motion tied, with a vote of 13 in favor and 13 opposed, with four absent.

Co-chair Tavares announced that the motion failed, and indicated the Commission would now entertain public comment. Mr. Jacobson indicated he would renew the motion at first opportunity.

Co-chair Tavares recognized Jack Boyle, a witness who indicated his strong objection to the recommendation, particularly with regard to the “double standard” he perceived between the requirements for passage of a citizen’s constitutional initiative petition as versus an amendment proposed by the General Assembly.

Co-chair Tavares next recognized M. Dane Walters, of the Initiative and Referendum Institute at the University of Southern California, who testified that he was present to provide historical perspective on what is being considered, rather than to testify in favor or against the proposal. Mr. Waters provided written testimony in support of his appearance. Mr. Waters said Ohio would be an outlier if it proposed a different percentage for passage of a citizen’s constitutional initiative as opposed to a legislatively-proposed initiative.

Co-chair Tavares recognized Robert Ryan, executive director of the Ohio Patient Network, a medical marijuana advocacy group. Mr. Ryan stated that, while some aspects of the proposal are positive, he encouraged the committee to drop the 55 percent passage requirement.

Mr. Jacobson commented that he wished to clarify that the recommendation was primarily worked on by the public members of the Commission and that this was not a situation of the General Assembly attempting to write itself a privilege.

Co-chair Tavares recognized Ron Alban, a witness who testified against the proposal. Mr. Alban provided written testimony in support of his appearance. He urged the Commission to refer the proposal back to the committee, and to take a position that there should be the same standard for all amendments.

Co-chair Tavares recognized Corey Roscoe, of the Humane Society of the United States, testified against the supermajority requirement in the proposal. Ms. Roscoe provided written testimony in support of her appearance. She said across the nation citizens have successfully taken animal welfare proposals to the ballot in the initiative petition process.

Co-chair Tavares recognized Mr. Asher for his comments. Mr. Asher said he wished to remind everyone that the committee entered into the discussion with the motivation of making the citizen initiated statute a more attractive option, for the reason that the committee thought there were groups that were not individual citizens but rather highly wealthy business, labor, or other groups who were trying to put things in the constitution that probably should be in statute. But, he said, the committee also recognized that the legislature can just undo initiated statutes, and so the committee had, as part of its proposal, a five-year protection against that happening, in order to make the initiated statute route more attractive. He said the committee has included other

things that make it a better opportunity for citizens to pursue an initiated statute, including eliminating the need to get a second round of signatures. So, he said, that was really the motivation. He said, now hearing the objections to the size of the majority in the proposal, in hindsight he wishes that proposal was not included because it provides an opportunity for people to say the committee is being anti-citizen or anti-democracy. In fact, he said, it is just the opposite, and the committee also was concerned about protecting the constitution. He said there are certain things that should not be in the constitution but rather should be in statute. He said he thinks the committee has come up with a number of significant recommendations, and the 55 percent requirement is not central, nor is the even-year vote requirement, although he understands why people are upset about those things. He said his worry is that a lot of good work has been done, but he has a sense that if they vote to send it back to committee nothing would happen and the Commission would lose a lot of good work.

Co-chair Tavares recognized Senator Vernon Sykes for comment. Sen. Sykes said he applauds the committee for its work to make strong recommendations for improvement. He said he believes much of what they have done is progressive and would modernize the constitution. He said, however, there are some aspects of the proposal he would like to see amended. He asked whether it would be possible to consider dividing the proposal and voting on different parts of it.

Mr. Mulvihill, called on to respond, first noted that the committee had been working on this for the last four-and-a-half years, and the recommendations should not come as a surprise to anyone present to provide testimony on the last day. He said it was never the committee's intent, nor is it their product, that they are denying citizens the right to initiate laws or amendments, and that to state otherwise is a mischaracterization. With regard to the issue of dividing the proposal, Mr. Mulvihill said the committee has essentially rewritten the whole section, making dozens of changes. He said it would not be possible to divide the proposal in order to adopt some, but not all, of it.

With regard to the proposal's requirement of even-year elections, Mr. Mulvihill clarified that that recommendation was due to information indicating that fewer voters vote in odd-year elections, with the drop-off figure being enormous, sometimes as many as two or three million people. He said it was the collective view of the committee that more eyes on an amendment are better than fewer eyes, with a goal of making the constitution better and stronger. He noted that, in Nevada, a citizen's initiative must be proposed in two consecutive elections, thus, it is not true that the recommendation under review, if adopted, would be unique in raising the bar for passing initiated amendments. He said the committee did not see any data or have any presentations indicating a problem with legislatively-proposed amendments, and so it saw no need to equalize the passage rate between the two types of amendment.

Mr. Jacobson said while he applauds the committee's recognition that the constitution has been abused by proponents of issues that would be better served by seeking a statutory route, he noted another problem Ohio does not have is an overuse of the initiative process to the point where things get locked into law and the legislature becomes superfluous. He said the legislative process does something that the initiative process does not – it provides for an opportunity over time for the public to hold people accountable by voting them out of office. He said, in California, there have been "hit and run" initiatives that wreck the state's fiscal system. He noted Ohio instances when people, in his view, have wrecked the state's constitution on behalf of the casino industry, for example. He agreed it is impossible to separate out the parts of the

proposal without doing violence to the whole because the entire process was the product of a compromise.

Mr. Jacobson renewed his motion to refer the proposal back to the committee. He said he had no strong opinion before reading the submitted letters and testimony, but now he believes the proposal as written should not pass and that no single amendment would change his view.

Mr. Beckett seconded the motion to refer the proposal to committee, and Co-chair Tavares called for a roll call vote.

Sen. Sykes raised a point of order, asking whether the motion could be renewed because comment had already been allowed on the issue on the table. Co-chair Tavares asked whether Mr. Jacobson was willing to hold his motion until testimony was complete. Co-chair Tavares indicated that members of the public who were present to testify should be permitted to speak, regardless of whether the motion to refer the recommendation back to committee passed.

Mr. Jacobson indicated his intent to go forward with the motion.

Mr. Asher asked whether there was a point to referring the proposal back to the committee if the Commission is to be terminated at the end of June. Co-chair Tavares reiterated her earlier point that the proposal by the House of Representatives to eliminate the Commission as of June 30 is still under debate and has not been finalized. Therefore, she said, at this point, there is a recommendation to move the proposal back to the committee, which is what the Commission is operating under.

The roll was called, with the following votes recorded:

Co-chair Tavares – no
Co-chair Dever – yea
Abaray – no
Asher – no
Beckett – yea
Bell – yea
Clyde – no
Cole – yea
Coley – yea
Cupp – yea
Davidson – yea
Fischer – yea
Gilbert – no
Holmes – no
Jacobson – yea
Jordan – yea
Kurfess – no
Mills – yea
Mulvihill – no
Peterson – yea
Sapphire – no

Skindell – yea
Sykes – no
Taft – no
Talley – no
Trafford – no
Wagoner – yea

The motion failed, with a vote of 14 votes opposed, 13 votes in favor, with three absent.

Co-chair Tavares recognized Greg Pace, co-founder of the Columbus Community Bill of Rights, and board member of the Ohio Community Rights Network. He said that actions by the office of the Ohio Secretary of State have curtailed citizens' rights to put initiative items related to county charters on the ballot. He said while he agrees with the proposal to eliminate the supplemental petition requirement from the statutory initiative process, he does not agree that the passage requirement should be raised to 55 percent. Mr. Pace provided written testimony in support of his appearance.

Mr. Jacobson commented that the proposal does not have any reference to county charters, and Mr. Pace agreed, indicating he noted that situation as background as to why he wished to testify on this issue.

Co-chair Tavares recognized Bob Krasen, who provided written testimony in support of his appearance. He said he objects to the requirement that a citizen initiated petition receive 55 percent of the vote, when the legislature is not under the same requirement.

Co-chair Tavares recognized John Adams, a former legislator, who testified that the proposed language serves the desires of the legislature and hurts the people's ability to initiate an amendment. He also objected to the even-year requirement in the proposal on the basis that it imposes a requirement on the public that the legislature does not have. He also objected to requiring the petition to be reviewed by the ballot board prior to circulation, and to the requirement that the proposed amendment be determined to be a single amendment. He said the proposal strips parity and gives more power to the politicians in the legislature.

Ms. Abaray commented that, as a member of the committee, she has not heard anyone come to the committee to voice concerns such as Mr. Adams voiced. She said the committee worked with the League of Women Voters to find the best language. She said the committee was not primarily comprised of legislators. She said, while she can appreciate these are important issues to many people, she personally was interested in protecting the constitution from the whims of the voters, so that she favors the 55 percent requirement, and would even have favored a 60 percent requirement, as the United States Constitution cannot be changed without a two-thirds majority vote. She said the committee's conversation focused on whether the constitution deserved more stability than a statute. She said while it is important to protect the people's right to change their constitution, it is also important to protect the people's ability to rely on their constitution. She said there was no malicious intent on the part of the committee in issuing its recommendation. She said this has been a sincere effort of people who gave a lot of their time and the last thing they wanted to do was to undercut the rights of the public.

Co-chair Tavares recognized Paul Jacob, the president of Citizens in Charge, an organization he said supports the initiative and referendum process. Mr. Jacobson submitted written testimony in support of his appearance. He said he objects to the proposal's requirement of a 55 percent passage rate. He said the constitution belongs to the people of Ohio, and it is essential that it be open to the people and not held away from them. He said the changes to the statutory initiative process that were intended to improve it were paired with changes to the constitutional initiative process that puts the legislature in a more advantageous position.

Co-chair Tavares recognized Commission member Charles Kurfess, who moved that the issue before the Commission be laid upon the table. The motion was seconded by Mr. Jacobson.

Co-chair Tavares recognized Doug Cole, who asked whether the Commission had a quorum. It was determined that there were sufficient members in attendance to allow the vote to go forward, and Co-chair Tavares asked staff to call the roll.

The roll was called, with the following votes recorded:

Co-chair Tavares – yea

Co-chair Dever – yea

Abaray – yea

Asher – yea

Beckett – yea

Bell – yea

Clyde – no

Cole – yea

Davidson – yea

Gilbert – yea

Jacobson – yea

Kurfess – yea

Mills – yea

Mulvihill – yea

Saphire – yea

Skindell – yea

Sykes – yea

Taft – yea

Talley – yea

Trafford – yea

Wagoner – yea

The motion passed, with a vote of 20 in favor, one opposed, with nine absent.

Recommendation for Gender Neutral Language

Co-chair Tavares recognized Kathleen Trafford, chair of the Coordinating Committee, who described, on second presentation, a report and recommendation from her committee that recommends that gender-specific language in the constitution be neutralized. She said the basis for the recommendation is self-explanatory, and the report's attachment contains various examples of the types of gender-specific references in the constitution that would require change.

She noted two particular instances in which worker's compensation is referred to as "workmen's compensation," and where the chief justice of the Supreme Court is described as "he." She said times have changed since 1802, and she said she would move that the Commission adopt the report.

Mr. Jacobson raised a point of order that, due to the departure of members, the Commission lacked a quorum of 22 members required to vote on a motion for a change to the constitution. Co-chair Tavares agreed, indicating that the motion would not go forward but that it was important to allow Ms. Trafford the opportunity to give her report for the record.

Executive Director Report:

Co-chair Tavares recognized Shari L. O'Neill, interim executive director and counsel, for the purpose of providing an executive director's report.

Ms. O'Neill acknowledged the many people who gave their time to assist the Commission, including elected officials, judges, attorneys, professors, educators, representatives of state and local governments, members of public interest groups, trade organizations, and think tanks, school board members, financial experts, public assistance agencies, and concerned citizens. She said that staff's requests for assistance were always met with enthusiasm, commenting that "whether they provided scholarly reflection, legal analysis, or practical knowledge, these individuals gave committee members important insight into the operation of the constitutional provision in question." She thanked them on behalf of the Commission for their contribution.

Ms. O'Neill also thanked the many members of caucus staff and the legislative aides who provided assistance throughout the life of the Commission, specifically identifying Lizz Lewis, Pavan Parikh, Bethany Sanders, Frank Strigari, Sheila Willamowski, and Sarah Cherry. She noted that numerous legislative aides helped staff committee meetings, particularly acknowledging Tim Johnson, Chris Smith, and Justin Huckle who were helpful both to their individual members and to OCMC members as a whole and, especially, to staff.

Ms. O'Neill also recognized the efforts of Steven H. Steinglass, senior policy advisor, commenting that Mr. Steinglass's expertise was an important part of this project from its inception. She stated, "As we explored all the nooks and crannies of the document, Steve always provided important context and extensive knowledge based on his many years of scholarly work. He was always eager to help solve any puzzle the committees encountered, and we all have benefited from his commitment to this process."

Ms. O'Neill acknowledged Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, noting that she had been present in the audience for nearly all of the Commission and committee meetings, and also had attended meetings of the Ohio Constitutional Revision Commission in the 1970s. Ms. Rosenfield addressed the Commission, thanking staff for its research, and humorously commenting that if there is a constitutional convention or commission in 2032, she intends to haunt it. Ms. O'Neill followed up by commending Ms. Rosenfield for her dedication, and thanking her for her service to the Ohio Constitution.

Finally, Ms. O’Neill expressed her appreciation for having been giving the honor of serving as counsel and interim director, saying she is grateful for the chance to get to know both the Ohio Constitution and the members of the Commission, whom she thanked for their leadership.

Old Business:

Co-chair Tavares recognized Ms. Abaray, who said she first wished to acknowledge Ms. O’Neill’s role assisting the Commission after the departure of Steven C. Hollon, the former executive director, in addition to her other position as counsel. Ms. Abaray said the Commission had discussed that Ms. O’Neill would be compensated properly and retroactively for her role, but is not aware that this has occurred.

Ms. Bell said she strongly seconded Ms. Abaray’s comments, encouraging the co-chairs to address the situation.

Mr. Wagoner said he agreed that Ms. O’Neill has done a great job, indicating that there is money in the budget to appropriately compensate Ms. O’Neill. As chair of the Organization and Administration Committee, he urged the co-chairs to take Ms. O’Neill’s performance into account and give her just pay.

Mr. Sapphire said he would reaffirm what the others said regarding Ms. O’Neill, noting the dramatic improvement that hiring staff made in the efficiency of the work of the committees.

Article I, Section 10 (The Grand Jury)

Co-chair Tavares then returned to Ms. Abaray, allowing her to continue with the second part of her remarks, relating to the recommendation of the Judicial Branch and Administration of Justice Committee regarding the grand jury process.

Ms. Abaray said that, although the decision was made not to vote on her committee’s recommendation regarding Article I, Section 10, relating to the grand jury, she wished to comment for the record on the work of the committee on that topic. She said the committee approved a provision that would make two changes to the grand jury process in Ohio, making those recommendations after a long deliberation. She said that if the Commission continues, she hopes that these recommendations will get a review. She said the committee realized secrecy has a purpose in the process by protecting someone under investigation from having their reputation ruined, and the committee felt it was important to protect that practice. She added the committee recognized that some witnesses would not be willing to testify in open court but would be willing to do so behind closed doors. She said, at the same time, the committee considered that there is no oversight into the way grand juries are conducted in Ohio, and that prosecutors have full discretion, full authority, with no one supervising what is occurring in the grand jury room.

Ms. Abaray said, while prosecutors assured the committee they are conscientious and there is no need for oversight, the committee also heard testimony that caused concern. She said one part of the testimony concerned her, because it suggested that certain accused individuals are permitted rights before the grand jury that others are not. In particular, she said, an incident was cited in which a college student under investigation for sexual assault was permitted to testify in his own defense – a circumstance that created a “he said – she said” situation that was less likely to result

in an indictment. She said that disturbed her because people accused of other types of crime would not be afforded that right. She said if the public knew about that type of activity by prosecutors, they could address it by voting them out of office, but no one knows about it because the process occurs in secret.

She said that testimony compelled her to think that more oversight of the grand jury process is needed. She said the proposal the committee came up with does not really change anything, it just has an attorney in the room who is appointed by a judge and who is responsible to the judge. She said the committee learned that the grand jury process originally was overseen by a judge, but that changed over the years and prosecutors took on a larger role. She said the proposal puts the judge back in control by having an observer there who reports to the judge. She said there is a value to oversight and this is why she supported that recommendation.

Ms. Abaray said the second part of the recommendation, requiring a transcript to be provided to the accused, came out of a concern that the defense was not being given the opportunity to use grand jury testimony to impeach a witness because no transcript was made or provided to the defense as a matter of course, and there is no other way for the accused to know what was said in the grand jury room. She said a concern about grand jury witness protection should not matter because the transcript would only be available if the witness is going to testify at a public trial – and a witness willing to testify at trial should not be as concerned about making the transcript of the grand jury testimony available. She said if the Commission does not meet again, she would encourage citizens or the legislature to take up these concepts because the committee did hear from state senators and others who are concerned about secrecy and accountability in the grand jury.

Article V, Section 6 (Mental Capacity to Vote)

Co-chair Tavares then recognized Mr. Jacobson and Ms. Bell as members of the Bill of Rights and Voting Committee to bring up an issue relating to Article V, Section 6, mental capacity to vote.

Mr. Jacobson indicated that they had intended to make a motion, but lacking a quorum, they instead would note that it is unfortunate that one blight on the Commission's otherwise positive record is the failure to come up with a proposal that removes from Article V the offensive and derogatory reference to "idiots or insane persons." He said he hopes he reflects the sentiments of Commission members that, while the Commission could not agree on the proper formulation, it would urge the legislature to find a way to get that reference removed from the constitution.

New Business:

Addendum to Report and Recommendation

Article VIII, Sections 7 through 11 (The Sinking Fund and Sinking Fund Commission)

Co-chair Tavares recognized Mr. Cole, who indicated that members of his committee had intended to obtain Commission approval for an addendum to a report and recommendation already issued by the Commission in relation to Article VIII, Sections 7, 8, 9, 10, and 11, the Sinking Fund and the Sinking Fund Commission. He said if those sections ultimately are removed, as recommended by the Commission, the removal would result in the removal of

certain debt reporting obligations that are assigned to the sinking fund commission. He said the Finance, Taxation, and Economic Development Committee heard testimony indicating that, if the General Assembly elects to move forward with that recommendation, it may be good to assign a debt reporting function to the state treasurer, either through a constitutional amendment or by statute. He said the goal of the addendum is to keep it on the radar for the General Assembly that there is a salutary effect to having transparent debt reporting so that the citizens and the General Assembly would have information about the state debt.

Co-chair Tavares recognized Ms. Davidson, who said that since the report and recommendation has already gotten the 22 votes needed to move on, it could be acceptable to pass the addendum with fewer than 22 votes. Ms. Davidson urged the Co-chairs to allow a vote, based on the concept that this action would not have the same status as adopting a report.

Mr. Mulvihill noted that the rules indicate that only 17 members are needed to approve an action.

On a recommendation to conduct a voice vote, Co-chair Tavares noted a motion by Mr. Cole, with a second by Ms. Davidson. She then asked for all in favor to so indicate, and the motion passed unanimously.

Final Work Product of the Commission

Co-chair Tavares recognized Mr. Saphire, who stated that one unfortunate result of the current status of the Commission is that reports and recommendations have not been acted on, with the particular problem that the constitution is being left with the word “idiot” in it. He said it is his sense the Bill of Rights and Voting Committee, as well as the Commission, considers that word to be wrong. He said he reviewed what occurred in relation to Article V, Section 6 in the 1970s, and found that the 1970s Commission resolved to eliminate the word “idiot” and the record of that Commission is silent with respect to what happened to that recommendation. He said he would hate this process to end with some recommendations that have not been acted on, for whatever reason, and a future commission to look back at this Commission record with the same questions about why changes did not come about. He said it might be a good idea if someone went back over the proposals and provided something in the record to indicate to successors what happened to them.

Co-chair Tavares said that idea is one that could be assigned to Mr. Steinglass to summarize where the Commission is with respect to those issues that have been recommended to the full Commission that have not been voted on so that at least there is a full record. She noted the meeting also would be preserved on video, which is why the Commission is attempting to put so much into the record during the meeting.

Mr. Steinglass said the 1970s Commission made 63 recommendations to the legislature, 21 of which disappeared. He said some of them never got introduced as joint resolutions. He agreed that some time could be spent to complete the record.

Co-chair Tavares called on Sen. Sykes for his comments. Sen. Sykes said, as an original co-chair of the Commission, the group had a slow start, perhaps rightly because it took time to get information and to bond as a group. He said the Commission did accomplish a lot. He expressed appreciation to all the members for their time, commitment, and contributions to the

project. He noted that the amendment he was prepared to offer in relation to the initiative and referendum process was not intended to take away from the work of the committee but instead to salvage it. He complimented the committee for its work on that issue.

Co-chair Dever thanked everyone for their diligence and hard work. He said he knows at times it has been a tedious process. He said the job of legislative members on the Commission is to help bring these issues to the attention of the voters, and that this is not the end of the conversation. He said the next step will be to take these concepts to the General Assembly and work through the recommendations and ideas that have been brought forward. He said that he and Co-chair Tavares would be continuing to work on the matters that have been raised.

Co-chair Tavares thanked Co-chair Dever for his leadership, and for his partnership as a co-chair. She thanked everyone for their commitment to the work of the Commission. She said although it took a lot of time to get up and running, the Commission had a dedicated staff, as well as assistance from legislative staff, and this helped the Commission to move along. She thanked the original co-chairs, Sen. Sykes and Speaker William Batchelder. She said it is unclear if the Commission will continue, but that the legislative members will do what they need to do to bring those proposals forward as joint resolutions. She thanked Ms. O'Neill for her work and indicated she should be compensated fairly, and that she would be working with Co-chair Dever on that issue.

She said they will keep the members and the public apprised of what happens next with the Commission as the budget issue develops in the General Assembly.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 3:41 p.m.

Approval:

The minutes of the June 8, 2017 meeting of the Ohio Constitutional Modernization Commission were approved at the _____ meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair
Representative Jonathan Dever