

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



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, JUNE 11, 2015

Call to Order:

Co-chair Ron Amstutz, called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:40 p.m.

Members Present:

A quorum was present with Co-chair Amstutz and Commission members Asher, Bell, Brooks, Clyde, Cupp, Curtin, Davidson, Fischer, Gilbert, Kurfess, Macon, Mills, Mulvihill, Obhof, Sapphire, Sykes, Taft, Talley, Trafford, and Wagoner in attendance.

Approval of Minutes:

Minutes of the April 9, 2015 meeting were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Kathleen Trafford, chair of the Coordinating Committee, reported that the committee had no action items for the Commission at this time.

Public Education and Information Committee Liaisons with Public Offices Committee

Herb Asher, chair of the Liaisons with Public Offices Committee reported on the status of both committees, as the two committees meet jointly during the months when they convene. Mr. Asher reported that neither committee had action items for the Commission at this time.

Organization and Administration Committee

Mark Wagoner, chair of the Organization and Administration Committee reported the Commission remains on budget thanks to staff, and that the Commission is seeing improvements

in the process for approving reports and recommendations. Noting what he called the “roller coaster ride of the state budget,” he said he is optimistic about the future of the Commission.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Edward Gilbert, vice-chair of the Education, Public Institutions, and Local Government Committee, reported the committee has been examining Article VI, Section 1 (Funds for Religious and Educational Purposes) and Article VI, Section 2 (School Funds) and soon will be submitting reports and recommendations to the Commission recommending no change to either section. Mr. Gilbert said the committee is now looking at Article VI, Sections 3 and 4, relating to local and state boards of education, and has heard testimony from board members with the Columbus City Schools and Lincolnview Schools.

Finance, Taxation, and Economic Development Committee

In the absence of Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, and Karla Bell, vice-chair of the committee, Executive Director Steven C. Hollon provided the report for the committee. Mr. Hollon said the committee met on June 4th, rather than the regularly scheduled date in May, to accommodate the schedule of Professor Richard Briffault, Columbia School of Law, who gave a presentation on state constitutional provisions relating to state finance.

Judicial Branch and Administration of Justice Committee

Judge Patrick Fischer, vice-chair of the Judicial Branch and Administration of Justice Committee, noted there was nothing to report at this time.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported the committee met earlier in the day and is making progress in deciding what to recommend regarding Article V, Section 6, which disenfranchises “idiots and insane persons.” He said the committee hopes to conclude its discussion on this issue soon.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee reported the committee met earlier in the day to hear presentations on and discuss the concept of limiting the ability to use the initiative process to create a monopoly in the constitution.

Representative Michael Curtin commented that the work of the committee on this issue spans the last 15 months. He said that a number of issues have come to the ballot in last few years which has raised the question of whether the use of the constitution in this way should be permitted. Rep. Curtin said it is his view, based on research by Senior Policy Advisor Steven H. Steinglass,

that this is a pressing matter for the General Assembly and the State of Ohio. He said rather than being about marijuana, the issue is about any type of plan that would create a monopoly. Representative Curtin said he would like to refine this language for this November's ballot. He said he applauds the committee, chaired by Mr. Mulvihill, as well as the research provided by Mr. Steinglass. Rep. Curtin said it is imperative that the question regarding having a monopoly in the initiative process be addressed now because the state faces this issue in the form of a proposed initiative on the ballot on November 3, 2015. He said he believes the committee should move forward to refine the language, if possible, for this November's ballot in order to give voters an opportunity to state whether naked self-interested monopolies belong in our constitution. Rep. Curtin emphasized the seriousness of this issue.

Mr. Asher commented that the issue focuses on the potential abuse of the constitution. He said even though everyone supports the initiative, it must also be recognized that the political world has changed in terms of technology, campaigning, and funding. He said the casino provision, for example, creates a monopoly, specifies location, etc. Mr. Asher said this was not the purpose of the 1912 provision creating an initiative process. He mentioned a 2000 book by David Broder that talks about the abuse of the initiative process. Although Broder's focus wasn't on Ohio, Mr. Broder described how something that was designed to be a citizen-based, progressive reform was being captured by wealthy interests. According to Mr. Asher, Mr. Broder predicted what is happening now. Mr. Asher said he shares Rep. Curtin's concerns about this issue, and said citizens should have the ability to decide legalization of marijuana or casinos, but the notion that someone can create a monopoly in the process is not the intent of the initiative. Mr. Asher said the question is how to preserve citizens' rights to make decisions about issues like gambling or marijuana, but not at the same time create a "winner."

Co-chair Amstutz then asked Mr. Steinglass to provide some context to what has been developing in the committee. Mr. Steinglass said the committee had been looking for ways to avoid abuses of the initiative process, and noted that Commission staff was asked to do some drafting. He said the proposal just discussed in the committee meeting would be a limitation on the constitutional initiative, not a limitation on the General Assembly's ability to pass statutes or resolutions, or on citizens' ability to put forth a statutory initiative. He said the proposal would also broadly define the type of initiative that would be prohibited. For example, the language prohibits the granting of an economic interest, special privilege, benefit, right, license, or monopoly, which is not available to other similarly situated persons or entities. Mr. Steinglass said it is a broad prohibition, adding that the proposal also prohibits an amendment that violates that standard from going on the ballot, and does so explicitly. He continued, saying the proposal also provides that in the event the special-interest amendment and an anti-monopoly provision go on the ballot, the normal rule would apply (whichever one gets the most votes, trumps). The amendment provides it prevails in the event of a conflict.

Judge Fischer commented that, as a former anti-trust attorney, he recommends having someone speak to the committee on the topics of state-exempted monopolies and regulations, and horizontal and vertical monopolies. He said he thinks people would understand the issue a bit better, not only on the political side but also on the economic side. Judge Fischer said he could provide the committee with a list of potential experts on this topic.

Representative Kathleen Clyde expressed her concern with the language as drafted, saying she is not sure it addresses the issue the committee is trying to get at. She said the language isn't limited to preventing a monopoly, nor is it limited to business or for-profit entities. She said it is "very, very broad language." Rep. Clyde added "When we are talking about the citizen's right, we need to be careful to tailor the language and have lengthy discussions to make sure the language is narrowly-crafted." Rep. Clyde said she is concerned about adopting language that would have the potential for unintended negative consequences, which would then have a negative effect on the citizen's right to the initiative.

Mr. Sapphire asked if the committee had a proposal yet. Co-chair Amstutz answered there is no proposal yet. He explained the Commission is having this discussion now because this issue is also under consideration in the General Assembly, where it is getting expeditious attention. Co-chair Amstutz said it is his observation that the work of this Commission has been helpful with regard to this issue. He said he would agree with Rep. Clyde that the committee hasn't yet settled on language. He noted that though the words are broad, they are constricted by the last half of the sentence. Co-chair Amstutz said it is "well worth it" to be careful in proceeding.

Mr. Mulvihill emphasized that this issue is not about marijuana, even though the press is making it about marijuana. It is about whether someone can enshrine an economic monopoly in the constitution for their exclusive benefit or the benefit of a few. Mr. Mulvihill said this is not "OCMC versus marijuana." Mr. Mulvihill added that during his committee meeting, committee Vice-chair Charles Kurfess asked Ian James, who is director of the ResponsibleOhio legalization effort, whether an anti-monopoly provision would invalidate what ResponsibleOhio is attempting, and Mr. James said it would. Mr. Mulvihill then asked whether marijuana could go on the ballot without the monopoly language. Mr. James said such an attempt would not happen because there are practical impediments, meaning if there is no economic incentive then no one would try to put it on the ballot. Mr. Mulvihill said he thinks that statement is true of every initiative proposal, so Mr. James' argument doesn't work. Mr. Mulvihill said there is nothing the committee is doing that is addressing marijuana, either directly or indirectly.

Co-chair Amstutz said the work the committee has been doing was affected by the "metes and bounds" that recently found their way into the constitution as part of the casino initiative, and the concern that was generated.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee will meet immediately after the Commission meeting, and will be continuing a discussion about congressional redistricting reform in the form of HJR 2. He said the committee also will hear testimony, if there is any, about SJR 1, which creates a public office compensation commission. Mr. Mills said the committee also plans to continue to discuss what future issues would be reviewed from Article II.

Co-chair Amstutz asked commission members if there were any questions for any of the committee chairs. There being none, he noted there was a now a quorum, and the Commission

then addressed the minutes from the April 9, 2015 meeting. On a motion for approval by Co-chair Amstutz, and second by Mr. Asher, the minutes were unanimously approved.

Reports and Recommendations:

Co-chair Amstutz recognized Mr. Saphire, chair of the Bill of Rights and Voting Committee, who provided a second reading of reports and recommendations for Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges), Article I, Section 3 (Right to Assemble), and Article I, Section 4 (Bearing Arms, Standing Armies, Military Power). Mr. Saphire said the Bill of Rights and Voting Committee has voted to retain these three sections in their current form. Mr. Saphire summarized the reports and recommendations for each of these provisions, indicating that it is the recommendation of the committee that these provisions be retained.

Co-chair Amstutz proposed that action be taken on these reports and recommendations, although the Commission was still awaiting one member's arrival, because several legislative members needed to leave. Senator Larry Obhof suggested that the co-chair hold the vote but keep the voting roll open for a brief time to accommodate additional members' votes upon their arrival, and so moved. Sen. Obhof also moved that the vote be taken with regard to all three reports and recommendations together. These motions were seconded by Mr. Mulvihill. The floor was opened for discussion, but there were no comments.

The roll call vote was then taken, with the following Commission members voting in favor of adoption of the reports and recommendations:

Amstutz, Asher, Bell, Brooks, Clyde, Cupp, Curtin, Davidson, Fischer, Gilbert, Kurfess, Macon, Manning, Mills, Mulvihill, Obhof, Saphire, Sykes, Taft, Talley, Trafford, and Wagoner.

None opposed.

Executive Director's Report:

The Commission then heard from Mr. Hollon who gave the Executive Director's report. Mr. Hollon said staff is hosting three student interns from the OSU Moritz College of Law: Bryan Becker, Alex Benson, and Joyce Gray. Mr. Hollon said he will be circulating a point-of-interest email relating to the celebration of the 800th Anniversary of the Magna Carta, in which he will provide relevant articles for those who have an interest in this topic.

Old Business:

Co-chair Amstutz asked if there was any other old business. There being none, he moved on to new business.

New Business:

Co-chair Amstutz referred to the “stirring of the budget-making process,” noting that the Senate is currently circulating a version that shortens the lifespan of this Commission. He said he takes this as a “shot across our bow,” meaning that the Commission needs to “double down” on its work and accomplish as much as possible in order to move forward. He said the budget process has not been completed and there are many in both houses, on both sides of the aisle, that are very interested in and supportive of the work of the Commission. He said it is his observation that although the Commission did have a slow start, the fact that it is now fully staffed has dramatically changed the workflow, the focus, and the leadership that the Commission has been able to generate, as well as the momentum. Co-chair Amstutz thanked staff for what they have been able to do, saying he looks forward to a longer life than might appear to be currently pending, and that he anticipates that process will conclude at the end of this month in a much more positive vein. He then asked if there was any other new business.

Mr. Asher said he wanted to follow up on an earlier reference to a book by David Broder, indicating that the title of the book is *Democracy Derailed: Initiative Campaigns and the Power of Money*. He said the book, published in 2000, identifies a whole industry consisting of campaign consultants, pollsters, lawyers, and others, all of whom have a vested interest in helping private interests and helping them push whatever interests would generate business for them. Mr. Asher said Broder was talking about this in 2000, and was focused on California, but this problem has grown much more severe in the last 15 years.

Adjournment:

With no further business, the Commission adjourned at 2:20 p.m.

Approval:

The minutes of the June 11, 2015 meeting of the Commission were approved at the September 10, 2015 meeting of the Commission.

/s/ Charleta B. Tavares

Co-Chair
Sen. Charleta B. Tavares
Assistant Minority Leader

/s/ Ron Amstutz

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