



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

THURSDAY, MARCH 12, 2015

9:30 A.M.

STATEHOUSE ROOM 017

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of January 15, 2015
- IV. Presentation
 - Review of “Thorough and Efficient Proposals”

Steven H. Steinglass
Senior Policy Advisor
- V. Committee Discussion
 - The “Thorough and Efficient” Clause in Article VI, Section 2
- VI. Adjourn



Ohio Federation of Teachers AFT, AFL-CIO

A Union of Professionals

1251 E. Broad Street
Columbus, OH 43205

**Testimony before the Ohio Constitutional Modernization Commission
Regarding Ohio's Thorough and Efficient Clause for Public Education
Presented By Darold Johnson, Legislative Director
for the Ohio Federation of Teachers**

March 12, 2015

Chair Readler, Vice Chair Gilbert and members of the Education, Public Institutions and Local Government Committee of the Ohio Constitutional Moderation Commission, thank you for this opportunity to speak before you today.

The Ohio Federation of Teachers represents 20,000 members who are teachers, paraprofessionals and nurses in Ohio's public schools, higher education faculty, and public employees who provide vital services to families and communities across our state. OFT has had the opportunity to work with most of the members of this committee in some fashion previously and we welcome the opportunity to speak with you today.

After attending many of OCMC's previous meetings we felt compelled to express our support for the current language contained in the Ohio Constitution in sections 6.01 Funds for religious and educational purpose, 6.02 School funds, and 6.03 public school system, boards of education.

Our rationale is simple. The Constitution is a living document in the sense that it is subject to legal rulings. The case law in Ohio and other states is established when it comes to "thorough and efficient" school funding. The Ohio Supreme Court used Article VI section 6.02 in its rulings on ***DeRolph v. State I, II, III and IV***.

In DeRolph I, the Supreme Court upheld findings of the original trial. In his decision, Judge Lewis ruled that a Constitutionally acceptable system of school funding must provide:

1. Sufficient oral and written communication skills to function socially and economically in Ohio and globally;
2. Sufficient mathematic and scientific skills to function as a contributing citizen to the economy of Ohio and globally;
3. Sufficient knowledge of economic, social and political systems, generally, and of the history, policies, and social structure of Ohio and the nation and enable the student to make informed decisions;

4. Sufficient understanding of governmental processes and of basic civic institutions to enable the student to understand and contribute to the issues that affect his or her community, state, and nation;
5. Sufficient self-knowledge and knowledge of principles of health and mental hygiene to enable the student to monitor and contribute to his or her own physical and mental well-being;
6. Sufficient understanding of the arts to enable each student to appreciate his or her cultural heritage and the cultural heritages of others;
7. Sufficient training, or preparation for advanced training, in academic or vocational skills, and sufficient guidance, to enable each child to choose and pursue life intelligently;
8. Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in Ohio, in surrounding states, across the nation, and throughout the world, in academics or in the job market;
9. Sufficient support and guidance so that every student feels a sense of self-worth and ability to achieve, and so that every student is encouraged to live up to his or her full potential;
10. Sufficient facilities, equipment, supplies and instruction to enable both female and male students to compete equally within their own schools as well as schools across the State of Ohio and worldwide in both academic and extracurricular activities;
11. Sufficient monitoring by the General Assembly to assure that this State's common schools are being operated without there being mismanagement, waste or misuse of funds; and
12. Sufficient facilities for each school district across the State that are adequate for instruction, safe, sanitary and conducive to providing a proper education as outlined by the above-related criteria. (Judge Linton D. Lewis, Jr., New Lexington, Ohio July 1, 1994)

These criteria provide the necessary benchmark for future consideration.

Additional research of other states with the same language as Ohio shows similar situations. "Thorough and efficient" was strong enough to rule New Jersey's school funding plan unconstitutional in the *Abbott v. Burke*, and *Robinson v. Cahill* Supreme Court decisions. (Peter J. Mazzei, *Rutgers Law Journal*, vol. 38:1087)

Mazzei's article details the discussion held during the 1873-1875 Constitutional Review Committee discussions, which led to the "thorough and efficient" clause in the New Jersey Constitution. This discussion and various amendments mirror some of the concerns expressed by members of this committee in that they reflected the times and the desire to have high quality schools no matter where you lived in the state.

OFT would recommend that the language for these sections remain as they are in the Ohio Constitution. Thank you for your time and attention. I would welcome any questions.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chairman Chad Readler and Members of the Education, Public Institutions, and Local Government Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor
Ohio Constitutional Modernization Commission

DATE: March 2, 2015

RE: Review of Proposals Regarding the Thorough and Efficient Clause in Article VI, Section 2 of the Ohio Constitution

At its January 15, 2015, meeting the Education, Public Institutions, and Local Government Committee asked Commission staff to pull together the various proposals that have been presented to the Committee on Article VI, Section 2 (School Funds), particularly as it relates to the “thorough and efficient” clause. This memorandum provides background to the “thorough and efficient” clause and identifies proposals concerning its possible revision.

Current Provision

Currently, Article VI, Section 2, provides in its entirety that:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

This provision, adopted as part of the Ohio Constitution of 1851 and never amended, includes the first use of the phrase “thorough and efficient” in the constitution of any state. The provision was influenced by a report about education in England and Europe commissioned by the Ohio legislature and prepared by Calvin Ellis Stowe, a professor of biblical literature at Lane Theological Seminary in Cincinnati. Prof. Stowe, the husband of Harriet Beecher Stowe, was a strong supporter of universal public education, and urged Ohio to follow the Prussian example of state-supported education.

Section 2 was the subject of multiple Ohio Supreme Court decisions in the *DeRolph* litigation, about which this committee has had several presentations. This memorandum focuses only on proposals to alter the provision of the “thorough and efficient” clause.

Proposals to the Committee

Readler Proposal

At the committee’s April 10, 2014, meeting, Chair Readler distributed a discussion draft of proposed changes in Article VI, Section 2. This proposal would eliminate the “thorough and efficient” language in Section 2, introduce a non-discrimination requirement, and re-number the provision as Section 1, as follows:

Proposed New Article VI, Section 1

The General Assembly shall provide for the organization, administration and control of the public school system of the state supported by public funds, without discrimination as to race, color, national origin, sex or religion. No religious or other sect, or sects, shall ever have any exclusive right to or control of, any part of the school funds of this state.

Phillis Proposal

William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, presented to the committee on March 13, 2014, and on April 10, 2014. He also submitted substantial materials that are now in the Commission files and available on the Commission website. Mr. Phillis provided the committee with information on public education, relevant methodologies for determining the cost of public education, and information on the impact of charter schools. He also provided drafts of specific amendments for the committee’s consideration. In addition, Nicholas Pittner, the lead attorney in the litigation, made a presentation relative to the history of the *DeRolph* cases.

Mr. Phillis recommended the “thorough and efficient” clause that be maintained. He also provided the committee with the text of three proposed amendments to Article VI. A new Section 2a would contain a lengthy proposal to provide state officials with direction in determining what constitutes a “thorough and efficient” education. Mr. Phillis provided a second provision that would require the provision of early childhood educational programs. The text of this proposed amendment is as follows:

Proposed Early Childhood Amendment

Provision shall be made by law for early childhood education programs and services available to all children beginning at three years of age. Standards for such programs and services shall be promulgated by the State Board of Education and school district boards of education shall be responsible for implementing the programs and services with full funding provided by the State.

Mr. Phillis' third proposed amendment concerns the state board of education and provides that "[s]tate board of education members shall be elected, one from each congressional district."

Wilson Proposals

Prof. Emeritus Charles Wilson of the Moritz College of Law provided a broad overview of Article VI at his November 14, 2013, presentation to the committee. Subsequently, he submitted two alternative proposals. Both alternatives retain the "thorough and efficient" language and expressly characterize education as a "fundamental right." These alternatives (excluding the provision on the selection of local boards of education) are as follows:

Wilson Alternative # 1

Education being a fundamental right, the General Assembly shall provide for and fund an efficient, safe, secure, thorough, equitable, and high quality education through a system of free common schools throughout the state. No public funds intended for education will be used for the religious purposes of any religion or sect.

Wilson Alternative #2

- A. The General Assembly shall provide and fund a thorough and efficient system of common schools throughout the state. No school funds will be used for the religious purposes of any religion or sect.
- B. Education being a fundamental right, the General Assembly shall fund and provide by law for a uniformly high quality educational system designed to prepare Ohio's people to function effectively as citizens.
- C. The General Assembly shall by law provide for, and fund, a high quality, equitable early childhood education system for the children of Ohio designed to assure that they have basic school-readiness skills.

Other Presentations and Proposals

In addition to the above proposals, the committee received presentations on education from other individuals and organizations. This portion of the memorandum reviews, and summarizes these presentations.

Paolo DeMaria

Paolo DeMaria of Education First made a presentation on August 8, 2013. His presentation, which is available on the Commission website, provided a broad overview of education in Ohio, focusing on the importance of education to the public good, the role of government, the elements of an excellent education, the governance of education at the state and local level, the variety of local educational structures, and funding. He also identified emerging issues, including: standards, assessments, educating all students, early childhood education, accountability,

teacher/leader quality, technology, data, school operational improvement, competency-based education, finances, and the relationship between education policy and tax policy. Finally, he concluded with a brief review of state and local support for K-12 education, observing that more spending does not result in better student outcomes.

Richard C. Lewis

Richard C. Lewis, Executive Director of the Ohio School Boards Association, made a presentation on August 8, 2013. His presentation which is available on the Commission website, provided a general overview of public education issues and the organization's perspective on those issues. His presentation focused on the constitutional structure of education in Ohio; the importance of local control; the importance of reliable and equitable funding; the spectrum of urban, suburban, and rural districts; the impact of privatization; the importance of balancing the traditional and the innovative; and accountability. He also provided the committee with some detailed materials on the elements of a model school funding formula.

Stephen Dyer

Stephen Dyer, the Education Policy Fellow at Innovation, Ohio, made a presentation on June 12, 2014. His presentation, which is available on the Commission website, focused on the financing of education in Ohio and his concerns about the level of state support and the disparity in the ability of districts to support education. With respect to the "thorough and efficient" requirement, he urged that if the requirement is to be replaced it should be replaced with language that is even stronger. He pointed to provisions in the Florida and Montana Constitutions (quoted in his prepared statement), and he provided the committee with his suggested language.

Fundamental Right to Education

Education being the foundation of our economy, all Ohio residents shall have the fundamental right to a World-Class education regardless of where they live in the state. It is the state legislature's responsibility to primarily fund this World-Class system of public, common schools which shall consist of at least pre-school and grades Kindergarten through grade 16 (or equivalent vocational training). And it shall be guaranteed to every state resident eligible for each grade,

Maureen Reedy

Maureen Reedy co-founder of Ohio Friends of Public Education and a former grade school and special education teacher, made a presentation on June 12, 2014. Her presentation, which is available on the Commission website, focused on the importance of the public schools and expressed alarm at the possible removal of the "thorough and efficient" requirement from the Constitution.

Robert Alt

Robert Alt, President & CEO of the Buckeye Institute for Public Policy, made a presentation on September 11, 2014, which is summarized in the minutes from the meeting. In his comments, Mr. Alt provided an overview of the history of educational policy issues in Ohio. He emphasized that it was the role of the legislature, not the courts, to define the contours of education. He was critical of judicial intervention in education, and he expressed concern that broad or generalized language in the Constitution could invite improper judicial intervention. He thought that the proposals before the committee (*i.e.*, the Wilson proposals) were not sufficiently concrete, were vague, and were too aspirational. Although he did not like the current “thorough and efficient” language, he did not believe it should be repealed. Nor does he like the alternatives being proposed, and he does not think they should be adopted. Finally, he declined to suggest new language because of his position that the General Assembly should have primary responsibility for education issues.

Hon. Paul E. Pfeifer

Hon. Paul e. Pfeifer, Associate Justice of the Ohio Supreme Court, made a presentation on November 13, 2014, that was supported by excerpts from his concurring opinions in two of the four *DeRolph* decisions (and which are on the Commission website). Justice Pfeifer, who is the only justice still on the court who sat on all four *DeRolph* cases, provided background on the litigation. He expressed the view that not all decisions regarding education should be left to the legislature, but he observed that the court in *DeRolph* did not intend to tell the legislature what to do. Rather, the court told the legislature that what it was doing to support public education was not enough. He expressed the view that “thorough and efficient” served a worthy purpose, and he did not advocate removing it from the Constitution. He did say, however, that he would not be opposed to more modern language to replace “thorough and efficient.”

Stephanie Morales

Stephanie Morales, a member of the Board of the Cleveland Municipal School District, a graduate of the Cleveland public schools, and the parent of three children currently in the Cleveland public schools, made a presentation on January 15, 2015. In her presentation, which is available on the Commission website, Ms. Morale described the challenges faced by the school district, the efforts made by the district to support its mission, and the importance of state funds to the district. She acknowledged the substantial support provided to the district through the Ohio Facilities Construction Commission. With respect to the “thorough and efficient” requirement, she urged the committee to not take any action that might be interpreted as weakening the state’s duty to provide a quality education for all of Ohio’s children.

Dr. Renee A. Middleton

Dr. Renee A. Middleton, Dean of the Patton College of Education at Ohio University, made a presentation on January 15, 2015. In her presentation, which is available on the Commission website, Dr. Middleton stressed the history of public education in Ohio and its importance in

ensuring an educated citizenry and in safeguarding our nation's democracy. She urged that public education be fair and equitable, she expressed support for maintaining judicial oversight, and she urged the committee not to turn its back on "thorough and efficient." She also emphasized the importance for the state to determine and fund the components of a high-quality education without an overreliance on property taxes as well as the importance of the General Assembly securing adequate funding for essential educational opportunities for all. Finally, she asked that the Commission reaffirm Ohio's commitment to public education.

Resolutions

The committee received resolutions urging that the committee not recommend the repeal of the "thorough and efficient" language from several school districts, including the Bath and Wellington School District, the La Brae School District, and the Logan-Hocking School District.