



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:48 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Presentations:

“Arizona State Legislature v. Arizona Independent Redistricting Commission”

Steven H. Steinglass
Senior Policy Advisor

The committee first heard a presentation from Senior Policy Advisor Steven H. Steinglass regarding the recently-decided United States Supreme Court case of *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S.Ct. 2652 (2015).

Mr. Steinglass said the Supreme Court’s decision in *Arizona State Legislature* focuses primarily on the procedural issue of whether the initiative may be used to adopt a commission-based process for drawing congressional district lines. He said the decision makes clear that commissions may be used to draw lines for congressional districts. As to the significance of the decision, Mr. Steinglass said it removes an obstacle to the adoption of a commission-based method for drawing congressional district lines, so that the Ohio proposed joint resolutions

delegating responsibility for drawing congressional district lines to a commission, SJR 2 & HJR 2 (131st GA), would seem to pass constitutional muster.

Chair Mills thanked Mr. Steinglass for the review, commenting that the Court had rendered a 5-4 decision. Referencing the discussions the committee has had about congressional redistricting, Senator Charleta Tavares asked Mr. Steinglass if he could confirm there is nothing in the *Arizona State Legislature* decision that would prohibit Ohio from moving forward on proposals related to both legislative and congressional redistricting. Mr. Steinglass agreed that the decision indicates there would be no barrier to this.

Chair Mills noted that there are now two proposals in the General Assembly, one by Representative Michael Curtin and Representative Kathleen Clyde in the House, and one by Senator Frank LaRose and Senator Tom Sawyer in the Senate. He said both Sen. LaRose and Sen. Sawyer were invited to attend the committee meeting to discuss their joint resolution, but they were not available. He said it is his understanding that there is a difference in the two proposals because of the triggering mechanism in Rep. Curtin's proposal. He asked whether staff should prepare an analysis of the differences.

Rep. Curtin said there are slight differences in the two versions. He said those differences cannot be termed substantive, in his view. Rep. Curtin said both proposals mirror the Issue 1 framework on the ballot, referencing the legislative redistricting resolution that will be voted on in November 2015. He said the difference is that the Curtin-Clyde plan and the Sawyer-LaRose plan make proper accommodations for federal law, specifically population deviations and other factors.

Mr. Steinglass said one of the significant features of the *Arizona State Legislature* case is that it basically allows the state constitution and the initiative to adopt changes in the voting process. He said the legislature no longer has the final word on issues that had been assigned to the constitution. He noted other committees of the Commission also will be interested in this topic.

“Use of the Decennial Census for Drawing State Legislative Districts”

Steven H. Steinglass
Senior Policy Advisor

Mr. Steinglass then turned to a review of the use of the decennial census information in a case the United States Supreme Court has accepted for review in the next term, *Evenwel v. Abbott*, 135 S.Ct. 2349 (2015), *noting prob. juris. to Evenwel v. Perry*, 2014 WL 5780507 (W.D. Tex. Nov. 5, 2014). He indicated that, in *Evenwel*, the Court will review a three-judge district court decision that held that the “one-person, one-vote” principle under the Equal Protection Clause allows states to rely exclusively on total population and does not require the use of voter population when drawing state legislative districts. He said that most states follow the same policy as the one under review in the case, but that this is the first time for the Court to directly address whether the use of census-based population numbers must be supplemented with other population measurements such as the total number of registered voters.

Regarding the *Evenwel* issue's impact on Ohio, Steinglass concluded that Article XI, Section 2 of the Ohio Constitution relies on the federal decennial census for drawing district lines for the General Assembly, as does HJR 12 (130th GA), which will be on the November 2015 ballot, and, further, that the two joint resolutions that are pending in the 131st General Assembly, SJR 2 (131st GA) & HJR 2 (131st GA), also use the federal decennial census for congressional redistricting. He concluded that if the Supreme Court requires the use of voter registration to supplement the use of the decennial census, both the current and the proposed methods for drawing legislative district lines in Ohio based on the decennial census could be used initially, but would have to be supplemented by voter registration data.

"Ohio Supreme Court Jurisprudence Relating to the One Subject Rule"

Shari L. O'Neill
Counsel to the Commission

Shari L. O'Neill, Counsel to the Commission, presented to the committee on Ohio Supreme Court case precedent interpreting the one-subject rule found in Article II, Section 15(D). Ms. O'Neill began by mentioning and defining key terms that come up frequently in relation to the rule, including "logrolling," "riders," "directory versus mandatory," and the idea of "plurality of topics" being acceptable while "disunity of subjects" is not.

Ms. O'Neill said that, over the years, the court has moved from interpreting the one-subject rule as being merely directory to now being mandatory, saying that where there is a "manifestly gross and fraudulent violation of the rule," an enactment can be stricken as unconstitutional. She said a one-subject rule violation is frequently argued in the context of general appropriations bills, in which thousands of pages of text can include provisions that create substantive changes in the law. Summarizing the court's jurisprudence in this area, she said that the earmarks of an unconstitutional enactment are that it lacks a common purpose or relationship between specific topics, has no discernible practical, rational, or legitimate basis for the combination, and is a manifestly gross and fraudulent violation. She added that a substantive program created in an appropriations bill is not immune from a one-subject-rule challenge just because funds are also appropriated for that program; and that where there is no rational connection between the specific provision and the broader enactment, with no commonality of subject matters, an enactment would be unconstitutional.

Ms. O'Neill went on to describe the case of *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2013-Ohio-4505, 2 N.E.3d 304 (10th Dist.), now pending in the Ohio Supreme Court. She said the case involves the inclusion in a large appropriations bill of an enactment that privatized some state prisons and otherwise changed state law with regard to prison operations. When the union sued on behalf of prison employees, the court of appeals reversed the trial court decision that had ruled for the state, finding the court should have conducted an evidentiary review. Ms. O'Neill said the Ohio Supreme Court heard oral argument on May 20, 2015, at which the state argued that the prison privatization provisions did not constitute a substantive change in the law, and that the appropriate question is whether the enactment had an irrational effect on the state budget.

Ms. O'Neill said a decision from the court is pending, and said staff would update the committee once that decision is released.

Chair Mills thanked Ms. O'Neill for the review and asked if the committee had any questions. There being none, Chair Mills indicated that Attorney John Kulewicz, who has written a law review article about the one-subject rule, plans to present to the committee at its next meeting to talk about the history of the provision. Mr. Steinglass commented regarding the one-subject rule that the big question that flows through the litigation is what is the remedy if the rule is violated. Chair Mills said the one-subject provision will be part of the discussion at the next meeting.

Next Steps:

Chair Mills then turned to the planning document provided in the meeting packet to assist the committee in planning what topics to cover next. He asked the committee to think about what it would like to discuss, and whether the committee would like to proceed section by section or if some sections can be combined. He also noted that staff had provided a reference guide to the relevant sections of Article II that will be helpful to the committee in doing its homework.

Executive Director Steven C. Hollon said that the planning worksheet will be in every packet moving forward to help the committee's review and as a way of helping staff try to "tee things up" for future meetings.

Vice-chair Paula Brooks raised that there are three months left in the year in which the committee could meet, and said she wants the committee to discuss congressional redistricting and move it forward.

Governor Bob Taft said that voters will be voting in November on Issue 1, legislative redistricting. He said if the committee waits to see how that goes, the election result will give some insight about what to expect regarding congressional redistricting.

Ms. Brooks asked whether Rep. Curtin and Sen. LaRose could talk to the committee about their respective resolutions, so that the committee could have something prepared for the November meeting.

Mr. Hollon said Sen. LaRose was invited to come and speak at this meeting, but was unavailable. He said the November meeting is already on Sen. LaRose's schedule.

Rep. Curtin said the committee's next regularly scheduled meeting will be November 12, which is nine days after the election. He said the committee will have abundant analysis as to what the vote was. He said that would be a better time to talk about next steps.

Ms. Brooks said her preference would be for the committee to come prepared to take action in November. Chair Mills said he is not sure the committee will be prepared to do so. He said he believes the committee would be ready to discuss the issue, but not necessarily to take action.

Sen. Tavares said the committee had delayed action until the outcome of the *Arizona State Legislature* case, as some members believed that case would affect the legislative redistricting issue. She said she doesn't know why there would be a hesitation to discuss and conclude a review of the issue because the topic is not new to the committee.

Committee member Herb Asher asked whether, if the committee had an October meeting with informational presentations, it might be ready in November for recommendations. Chair Mills pointed out that the committee is not scheduled to meet in October. Gov. Taft said he has no objection to an October meeting.

Chair Mills then asked Mr. Hollon if he could try to accommodate a meeting in October for the committee. Chair Mills pointed out to the committee that it creates logistics difficulties for staff because there are other committees scheduled to meet that day, and could have to meet at the same time.

Rep. Curtin said he agrees with Ms. Brooks and Sen. Tavares that there is urgency regarding congressional redistricting, but that he also agrees with Gov. Taft that if the committee knows how the vote goes on Issue 1, the idea of moving forward will be so much greater in November than in October.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

These minutes of the September 10, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the October 8, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair