



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH SUBCOMMITTEE ON CONGRESSIONAL REDISTRICTING

FOR THE MEETING HELD
WEDNESDAY, MARCH 9, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Subcommittee on Congressional Redistricting to order at 3:18 p.m.

Members Present:

A quorum was present with Chair Mills, and Vice-chair Brooks participating by telephone, and subcommittee members Tavares and McColley attending.

Presentations:

Chair Mills began the meeting by announcing that the subcommittee, consisting of himself, Vice-chair Paula Brooks, Senator Charleta Tavares, and Representative Robert McColley, was created after the last meeting of the full Legislative Branch and Executive Branch Committee on January 14, 2016. He said the purpose of the subcommittee is to discuss possible amendments to a proposal for Congressional redistricting reform that he said the committee was not yet ready to vote on. He said over the last weeks various individuals worked on crafting amendments to the proposal, including Bethany Sanders, legal counsel for the Ohio Senate Democratic Caucus, and Jeff Jacobson, a member of the Commission.

Chair Mills then recognized Sen. Tavares to provide an overview of activities that had occurred since the last full committee meeting. Sen. Tavares indicated that a working group held a meeting earlier in the week, identifying participants as including Chair Mills, Rep. McColley, Ms. Sanders, Mr. Jacobson, Representative Michael Curtin, Ohio State University Professor Richard Gunther, and staff from some of the legislative offices. She said the group reviewed amendments that she had proffered on behalf of her colleagues as well as amendments or concerns that Mr. Jacobson had. She said Ms. Sanders and Mr. Jacobson would be providing more information on the discussions that had occurred.

Ms. Sanders then addressed the subcommittee, describing that the working group discussion started with the draft joint resolution identified as “LR 131 0157,” as well as subsequent amendments by Sen. Tavares and a largely-new-but-based-on-the-same-principles proposal by Mr. Jacobson about how parameters are set for the districts, making sure the districts are always possible to be drawn, but also creating sufficient barriers against gerrymandering by either party. She said all parties agreed there needed to be further details worked out, and that they need to see the entirety of the plan before a final agreement could be reached.

Ms. Sanders then highlighted areas that received significant attention.

First, she said the group had a good discussion regarding considerations inherent in attempting to balance counties and cities, and that the group recognized an interest in having the district entirely within that city. She acknowledged a good suggestion by Mr. Jacobson had assisted in the group’s discussion of this issue.

She said the group also had a significant discussion on which no resolution was reached regarding whether to retain language that had been adopted as part of the legislative redistricting joint resolution [Issue 1 on the November 2015 ballot, now Article XI, Sections 1-10]. Specifically, she said the language in question related to the definition of a split between noncontiguous portions of cities and townships. She said the line-drawing restriction is an important check on gerrymandering, and that further discussion is needed.

Ms. Sanders continued that the primary new suggestion from Mr. Jacobson’s proposal, when measuring if too many splits have occurred in any particular district, is to look at the percentage of population from whole political subdivisions, as opposed to the percentage coming from split political subdivisions. She said that is in contrast to Issue 1, which used a number of splits per district framework. As a new proposal, she said this received significant consideration. The current number the working group is considering would be a requirement that no more than 25 percent of a population of a district can come from political subdivisions that are split. She said that is an important primary means of drawing districts outside the larger counties that receive explicit protection, but in the case of smaller counties the issue is percentage splits.

Ms. Sanders added, to complement that, the working group will consider whether an individual political subdivision is to be split between too many districts.

The subcommittee then heard from Mr. Jacobson, who began by acknowledging the work of Professor Gunther as being indispensable in helping the group consider legislative districting reform issues, and now has provided assistance in this effort.

Mr. Jacobson said there are several important principles involved in the discussion. He said one of these involves what happened to the rules that were in the constitution prior to 2014, noting a United States Supreme Court case in 2012 in which the Court acknowledged the lines that were drawn in that case may have violated the rules, but failed to enforce the rules. He said he is not a critic of the decision itself but is a critic of the fact there were so many rules for drawing districts that some were impossible to follow. He said, essentially, the Court only said it was important to try to follow the rules. He said that is not a good system, in which there are rules that cannot be

enforced, and that it would be better not to write unenforceable rules. He said his other point is that it is important to ensure there are consequences to breaking the rules.

He continued that his concern is that he does not want another situation where, because of well-intentioned rules, “we draw ourselves into a corner, and can’t draw districts that meet constitutional requirements.” He noted a situation could result in which district populations do not work out to exact numbers. As a consequence, he said, it is important to look at what kind of leeway the map drawing body has in drawing lines. He said, with legislative districts there is a smaller number, but there could be a ten percent variation from high to low on how many people are in a district.

He noted that, in this case, unlike a ten percent deviation, “we are down to a 1.5 percent deviation, roughly.” He said his concern is that there could be a situation in which litigation results because it is impossible to simultaneously follow all of the rules.

Mr. Jacobson said his goal was to be certain that a legal map can be drawn. He said it is possible to just look at the number of splits, but the question arises whether it is better to split a city or to split two small townships. He asked “which does more violence to the idea that you are trying to recognize communities of interest?” He suggested it is better to look at the percentage number, adding that 25 percent was unnecessarily high, and if the number were reduced it would not take away the ability to draw a valid map even if the population distribution in the state does not cooperate.

He observed one of the things having leeway allows is the ability to prioritize, and that, in drawing a map, one must start with the concept that very big counties having a big city have a more recognizable community of interest. He noted the higher principle is to try to keep that community intact.

Describing the status of discussions on the issue, Mr. Jacobson said there is general agreement that the goal should be to protect the intactness of relatively large political subdivisions. He said, if any city or township gets to the point where it is in the range of five to 15 percent of a whole district all by itself, it deserves protection against being split for no good reason. He said that goal provides the opportunity to ensure the ability to draw a legal map. He noted, “let’s protect the communities of interest that are large enough that they need to be taken into account.”

Finally, Mr. Jacobson said it is important to avoid a situation in which the courts intervene. He concluded that “it feels as if we are close, and that hopefully one more meeting will conclude the discussion.”

Sen. Tavares asked if there were any questions for Ms. Sanders and Mr. Jacobson. There being none, she thanked them for their summaries.

Chair Mills then indicated that the next step is for the subcommittee to come together when a work product is finished. He said he is not sure that date can be set at this time. He said his intention is to do it as soon as there is consensus in the work group.

Sen. Tavares agreed with the plan described by Chair Mills. She said she believes there will be a work group effort in the coming week, and is hoping to have a consensus to bring back to the subcommittee.

Chair Mills then invited public comment, of which there was none.

Chair Mills concluded by saying it had been a quick meeting but very helpful. Chair Mills said he appreciates the summaries provided by Ms. Sanders and Mr. Jacobson, and is encouraged about the progress made on the issue.

Adjournment:

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

Approval:

The minutes of the March 9, 2016 meeting of the Legislative Branch and Executive Branch Subcommittee on Congressional Redistricting were approved by the members of the subcommittee at the May 11, 2017 meeting of the Legislative Branch and Executive Branch Committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair