

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, APRIL 14, 2016

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:39 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Asher, Beckett, Brooks, Clyde, Cole, Coley, Cupp, Curtin, Fischer, Gilbert, Jacobson, Jordan, Kurfess, McColley, Mills, Mulvihill, Peterson, Readler, Sapphire, Sawyer, Skindell, Sykes, Taft, and Trafford in attendance.

Approval of Minutes:

The minutes of the March 10, 2016 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Kathleen Trafford, chair of the Coordinating Committee, reported that earlier in the day the committee took up a report and recommendation from the Bill of Rights and Voting Committee on Article V, Section 6 (Mental Capacity to Vote). Complimenting both the presentation by Richard Sapphire and the report and recommendation of his committee, Ms. Trafford noted the role of the Coordinating Committee is to review form rather than substance. She said her committee unanimously approved the report and recommendation, which she said is now ready to be considered by the full Commission.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Chad Readler, chair of the Education, Public Institutions, and Local Government Committee, reported the committee met that morning to begin its review of Article VI, Section 6, relating to

the Ohio Tuition Trust Authority, as well as to further discuss Article VI, Section 4, providing for a state school board and appointment of a state superintendent of public instruction. He said the committee heard a presentation regarding Ohio's college savings plans, as well as hearing a presentation by the Ohio Education Association relating to the selection and makeup of the state school board. With regard to Article VI, Section 4, he said the committee has heard significant testimony over the past several meetings, and has a sense the state board could be functioning in a better capacity. Mr. Readler noted the committee is considering a change that would empower the legislature to better equip the state board to address modern educational concerns. He said the committee is not near a proposal, but he is confident members can agree to something in the future.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported the committee has now had a second reading and vote on a report and recommendation addressing sections of Article VIII specifically providing for bonding authority that has now lapsed. He said the committee unanimously voted to issue that report and recommendation, and had a first reading of two other reports and recommendations relating to Article VIII, Sections 1 through 3, and Sections 7 through 11. He said because all three reports and recommendations are interrelated, the committee's current plan is to present them as a package. He said the committee will have a special meeting next month in order to have a second reading and potentially vote on the two remaining reports and recommendations.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported the committee will meet next month, at which time he expects the committee to begin its review of Article V, Section 1, relating to the general qualifications for a person to be an elector in Ohio. He said he also expects the committee to begin considering whether to provide a right to privacy in the Ohio Constitution.

Constitutional Revision and Updating Committee

Dennis Mulvihill, reporting as chair of the Constitutional Revision and Updating Committee, said the committee has not met since last month, and so his March 2016 report will stand.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said his committee would be meeting later in the day to continue its consideration of a proposal to reform the Congressional redistricting process. He said the committee would not be voting on a report and recommendation yet, but that there continues to be progress in the discussions of interested parties, both officially in a subcommittee, and in a working group. He said he is cautiously optimistic that the committee will be able to issue a report and recommendation, but does not have a time frame. He said the committee also would be reviewing an outline of how to address all the other provisions in Article II. He said he expects the committee will be able to start tackling the rest of Article II as it moves forward.

Reports and Recommendations:

Article V, Section 6 (Mental Capacity to Vote)

Co-chair Tavares recognized Richard Saphire, chair of the Bill of Rights and Voting Committee, who provided a first presentation of a report and recommendation issued by the committee on Article V, Section 6 (Mental Capacity to Vote). Mr. Saphire reviewed the contents of the report and recommendation, explaining the history of the provision, which, in its current form, disenfranchises “idiots” and “insane persons.” Mr. Saphire said the committee easily reached consensus that those descriptors were outdated and offensive, but members were divided on whether to retain any provision disqualifying mentally impaired voters, and also were divided on what replacement language should say. Mr. Saphire said the majority of the committee wanted to emphasize that, if disenfranchisement occurs, it must be as a result of procedures enacted by the General Assembly. Thus, he said, a majority of the committee agreed that Article V, Section 6 should be repealed and replaced by language stating:

The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

Co-chair Tavares thanked Mr. Saphire for his report, asking for public comment. There being none, she then asked for discussion by Commission members.

Senator Michael Skindell, a member of the Bill of Rights and Voting Committee, commended the committee for spending “an incredible amount of time” on the issue, specifically recognizing committee members Karla Bell and Jeff Jacobson, as well as Mr. Saphire. However, he emphasized, the committee’s vote was not unanimous, a fact that should have been reflected in the report and recommendation. He said two committee members were absent for the vote, him being one of them for the reason that his presence was required at a Senate committee meeting. He said four members had concerns about the final outcome of the committee’s deliberations, and would like the opportunity to present a dissenting statement.

Commission member Ed Gilbert, also a member of the Bill of Rights and Voting Committee, said he echoes the concerns expressed by Sen. Skindell. He said he does not think the phrase “under law” in the committee’s proposed language is sufficiently clear. He also questioned the meaning of the phrase “during the time of incapacity.” He said he agrees with the recommendation of Michael Kirkman, executive director of Disability Rights Ohio, who had presented to the committee, which was that Article V, Section 6 should be repealed without replacement language. Mr. Gilbert also questioned why the report and recommendation did not discuss a conflict with the Americans With Disabilities Act.

Commission member Chad Readler noted the hard work of the committee that is apparent in the content of the report and recommendation, but asked why the committee chose to require the General Assembly to act, noting such language generally is not needed.

Mr. Saphire answered that a similar question arose in the Coordinating Committee’s review of the report and recommendation, and that he does not necessarily disagree. However, he said, the

committee, in part, was trying to draft language that would mirror Article V, Section 4, which states that “The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.”

Commission member Doug Cole, also a member of the Bill of Rights and Voting Committee, noted that if the introductory part of the proposed language were stricken, members of the committee were concerned that it would be interpreted as leaving the decision solely to the courts rather than requiring a statutory framework for disenfranchising.

Mr. Readler asked “wouldn’t judicial structure track statute?”

Mr. Cole answered that the goal was to ensure the provision is not self-executing, so that there would be a role for the General Assembly to play in passing statutes.

Mr. Readler said he is more concerned about consistency throughout the constitution.

Commission member Jeff Jacobson, also a member of the Bill of Rights and Voting Committee, said the committee was trying to avoid the conclusion that only a court could decide what constitutes mental incapacity to vote, instead wanting to allow the General Assembly to decide the appropriate process. He said, at the same time, they did not want to leave it open so that a poll worker could decide it. He said the purpose of using “under law” was not to say “under statutory law” but to avoid disenfranchisement being an arbitrary decision.

Mr. Saphire said the committee considered at least six other ways to phrase it, but the language in the report and recommendation was what a majority of the committee agreed to.

There being no further comments, Co-chair Tavares requested staff to research the question proposed regarding the use of “under law,” and the issue of whether the provision should require the General Assembly to enact law. She said the report and recommendation would be presented and discussed a second time at the next meeting on May 12, 2016. She asked Commission members whether there are any speakers on the topic they would like to hear from.

Sen. Skindell noted a concern of the full Commission from the beginning is how to ensure the public is fully aware of the activities of the Commission so as to have an opportunity to provide input.

Co-chair Tavares asked whether there are organizations that Sen. Skindell recommends be invited to give comment. Sen. Skindell said he would give the question some thought and report back.

Representative Bob Cupp asked whether the report and recommendation lists the various formulations of the language that were considered by the committee. Steven C. Hollon, executive director, said the report and recommendation does not provide that information but that it could be disseminated to all of the Commission members by electronic mail.

Mr. Gilbert noted there are large organizations that the Commission should reach out to for input on this question. He observed that Mr. Kirkman had come to the committee meeting several times, and may have additional comments.

Commission member Charles Kurfess wondered if there should be some reference in Article V, Section 1 to Section 6 because, taking Section 1 at face value, there is some inconsistency between the two sections. He added he has a preference toward dealing with the issue in a positive rather than a negative way, thus making the presumption be that all persons over age 18 have the ability to vote, and that all persons having the mental capacity can vote, rather than that persons without the mental capacity cannot vote.

Related to Mr. Kurfess' comment, Mr. Cole noted that Article V, Section 1 creates a background rule, and then Section 6 carves out an exception. He said it is hard to state Section 6 positively because the positive rule is that everyone can vote. He said one concern is that if the background is everyone can vote, and there is no rule, then the mentally incapacitated can vote.

Mr. Jacobson said committee members "wore ourselves down looking for better alternatives." He said they had some principles on which there was consensus, and they were trying to draft according to that. He asked whether, for issues like this one, whether it is fruitful to have discussions in the Commission in which alternative language is considered.

Commission member Patrick Fischer, also a Bill of Rights and Voting Committee member, said all the issues were raised and discussed extensively in the committee, which is where that discussion belongs. He said "this commission cannot become a committee of the whole each time we bring a topic before you." He observed the current language needs to change, but that the Commission could spend another 16 to 18 months debating the same thing. He emphasized the importance of moving forward, one way or another.

Mr. Saphire agreed with Judge Fischer, saying all the points raised were discussed in the committee. He said there was plenty of opportunity to recommend people to come talk. He said the committee's responsibility is to give a proposal reflecting its best judgment, that the Commission then decides if it wants to accept the proposal. He said if the Commission wants to send the report and recommendation back, that is its prerogative, but he cannot say that the committee would come up with anything different or better than what is currently before the Commission.

Executive Director's Report:

Co-chair Tavares then recognized Mr. Hollon for his report. Mr. Hollon said the Commission has continued its efforts to publicize its activities around the state. He said, in March, Commission member Mark Wagoner, Senior Policy Advisor Steven H. Steinglass, Justice Judith Ann Lanzinger of the Supreme Court of Ohio, and Mr. Hollon presented at the University of Toledo College of Law. He said an additional March presentation was given by Mr. Saphire, Governor Bob Taft, and Mr. Hollon at the University of Dayton. He said both of these presentations were well-received.

Adjournment:

With no further business to come before the Commission, the meeting adjourned at 2:27 p.m.

Approval:

The minutes of the April 14, 2016 meeting of the Commission were approved at the May 12, 2016 meeting of the Commission.

/s/ Charleta B. Tavares

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

/s/ Ron Amstutz

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Representative Ron Amstutz
Speaker Pro Tempore