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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

CONSTITUTIONAL REVISIONS & UPDATING COMMITTEE
DENNIS MULVIHILL, CHAIR
WEDNESDAY, AUGUST 8, 2013

Chairman Mulvihill called the meeting of the Constitutional Revisions and Updating Committee to order at 9:11am and asked staff to call the roll. The following members were present: Chairman Mulvihill, Vice-Chairman Kurfess, Dr. Herb Asher, Mr. Roger Beckett, Representative Dennis Murray, and Senator Obhof. A quorum was present and the committee proceeded.

Chairman Mulvihill began the committee by thanking Mr. Beckett and his interns for the analysis provided to the committee.

Chairman Mulvihill called the committee's first and only witness, Mr. Steven Steinglass, Dean Emeritus of Cleveland-Marshall College of Law and Consultant for the Ohio Constitutional Modernization Commission. Mr. Steinglass presented to the committee a brief overview of the referendum, initiated constitutional amendment, and initiated statute processes in Ohio as compared to other states.

The committee asked questions regarding the referendum and initiative process. A question was posed as to whether the committee members had the sense that, while the use of ballot initiative is low, the threatened use thereof is higher. The 2010 Humane Society ballot initiative and subsequent Compromise that resulted was cited as an example of a credible threat.

Chairman Mulvihill raised the issue of whether the Committee should curtail the people's ability to initiate statutes or referenda, calling upon the members to consider whether they are good or bad, and whether they achieve the intended goal of facilitating democracy.

Mr. Steinglass pointed out that statutes adopted by the General Assembly in response to the statutory initiative often do not indicate their origin, and that the Legislative Services Commission does not appear to have this information. Thus, it is hard for the public to gauge the efficiency of the statutory initiative..

Mr. Steinglass discussed some of the competing theories for creating a more robust citizen initiation process for statutes, which could include a method of bypassing the legislature altogether and thus remove some of the incentives to initiate amendments.

Chairman Mulvihill asked the witness whether there are any procedural limitations on the legislature, which would prevent the General Assembly from simply repealing a citizen-initiated

statute. The witness responded that there are currently none, but that possible procedures could include the enactment of a ten-year limitation, requiring a super-majority vote in the legislature to repeal, and the built-in protections that the electorate holds in the reelection of their representatives.

The committee discussed whether there were possible limitations on what is appropriate for constitutional amendments versus statutes. The question was asked whether there were ways to prevent non-constitutional issues from being initiated. Possibilities were suggested, including a review process by the General Assembly or by a court, . The 2009 Casino Initiative was cited as an example of a constitutional amendment that was proper under the constitution even though it would have been more appropriate as a statute.

Another issue raised was how to protect the rights of the people from wealthy special interests, such as out-of-state organizations that funnel money into Ohio, from pushing initiatives. A possible approach would be to include limitations on the items or topics that can be proposed by initiative amendments. An example cited is Article 2 §1e of the Ohio Constitution, Powers; which restricts the use of the initiative and referendum powers from being used to pass a law authorizing items relating to taxes.

The committee members discussed signature requirements for ballot initiatives. Currently, Ohio law requires 10% of the number of votes cast in the last gubernatorial election. Mr. Kurfess urged the committee to review the appropriate methods of signature collection, geographic collection restrictions by county, and the preclusion of payment for signature collection.

Once on the ballot, a constitutional amendment must pass by a majority of the votes cast on the amendment. Some states require a super majority, and Ohio is one of only 2 states with no time limit on the circulation period.

Upon Chairman Mulvihill's request, recommendations were made for the following organizations to attend the October hearing: League of Women Voters, the organizations behind three major initiatives in recent years and the lawyers involved in the initiative process: healthcare, casinos, Issue 2 (repeal of Senate Bill 5 from the 129th General Assembly). Other suggestions include We Are Ohio, the Ohio Round Table, and both sides involved in the casino initiative.

Chairman Mulvihill moved to approve the July minutes and Mr. Becker seconded the motion. Without objection, the minutes from the July meeting were approved.

There being no further business before the committee, Chairman Mulvihill adjourned the meeting at 10:15am.

DENNIS MULVIHILL, CHAIR

CHARLES KURFESS, VICE CHAIR