



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

THURSDAY, JUNE 11, 2015
11:00 A.M.
OHIO STATEHOUSE ROOM 018
AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of May 14, 2015
- IV. Reports and Recommendations
 - None Scheduled
- V. Presentations
 - To be Scheduled
- VI. Committee Discussion
 - Special Interest Amendment – Continuing discussion regarding a constitutional amendment limiting initiative petitions that create special interests.
- VII. Next Steps
 - Committee discussion regarding the next steps it wishes to take in preparation for upcoming meetings.
- VIII. Old Business
- IX. New Business
- X. Public Comment
- XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 14, 2015

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 3:10 p.m.

Members Present:

A quorum was present with committee members Chair Dennis Mulvihill, Vice Chair Charles Kurfess, Sen. Larry Obhof, Roger Beckett, Rep. Bob Cupp, Janet Abaray, and Chad Readler in attendance. Rep. Mike Curtin attended as a guest of the committee.

Approval of Minutes:

The committee approved the minutes of the April 9, 2015 meeting.

Presentation:

Limitation on Initiative Petition – No Special Interest

*Dave Yost
Ohio Auditor of State*

The committee received a presentation by Dave Yost, Ohio Auditor of State, regarding the involvement of special interest groups with the Ohio initiative process.

Mr. Yost said he spoke at a January 30, 2015 Associated Press Legislative Forum, where he said he was critical of the way the Ohio initiative process has been hijacked. Since then, he said he has had many conversations on this topic, and has drafted language for an amendment. He said two current events have made this topic more pressing: the marijuana initiative proposal and the discussion in this committee about this issue at its last meeting. He identified the draft language he has provided as a concept document that is subject to editing, and is being offered as a place to begin the debate.

Mr. Yost said the first challenge in drafting language is the nature of the prohibition, with the idea being to avoid policy questions and try to avoid allowing the constitution to be used to confer a benefit, either directly or indirectly. He said any interest conferred by the constitution must be available to all people who are similarly situated.

Mr. Yost also indicated that his draft language doesn't attempt to prevent the use of "trump card" language, such as the phrase "notwithstanding any other provision in the constitution" being used to prevent anyone from altering or removing a constitutional amendment. He said it would be problematic to try to prevent that kind of language, and instead he proposes that the process, and not the prohibition, be the solution.

Mr. Yost said the emphasis of his proposal is to limit the people's path to amendment, rather than the legislature's, since the legislature is not currently responsible for proposing problematic amendments in the constitution. He said the legislative process protects against the General Assembly proposing resolutions that have these same kinds of problems. Quoting Theodore Roosevelt, he remarked that the constitution should not be somebody's paycheck. Mr. Yost said the constitution has been hijacked by a powerful few for their own purposes.

Mr. Yost then invited questions from committee members. Committee member Janet Abaray asked, if the legislature cannot pass a statute that only benefits a person or small group, why that isn't also a rule for the constitution. Mr. Yost asked Senior Policy Advisor Steven H. Steinglass to comment. Mr. Steinglass said the reason is there are requirements that statutes be uniform. He said there is use of the words "special privilege" in Article I, Section 2, and that this phrase has a unique meaning. Mr. Steinglass said he is not sure we have an overriding constitutional provision that bars the state from making money available to a single beneficiary.

Committee member Sen. Larry Obhof commented that, whether it is called a cartel, oligopoly, or monopoly, he shares the concern expressed by Mr. Yost.

Vice Chair Charles Kurfess said the issue of limiting initiatives is problematic, specifically raising the question of how the public might react if this becomes a ballot issue. He said the difficulty is the perception that a restriction on the initiative process would not be favored if the public thinks it is unfair that the legislature retains an ability to grant monopolies.

Mr. Yost said he shares Vice Chair Kurfess's concern. He said he would make the political arguments to the voters. He said no problems have arisen with the legislature doing this, so that he became convinced that limiting the restriction to the initiative process would be a measure that would be narrowly tailored to the situation we have experienced here in Ohio. Vice Chair Kurfess commented that, as a former legislator, he is not as concerned about tying the hands of the legislature.

Chair Mulvihill recognized Rep. Mike Curtin, who said he agrees with Sen. Obhof that there are economic interests that are looking at this issue, and that the General Assembly has a moral obligation to act, and act soon. Rep. Curtin said he addressed the House Democratic Caucus on this issue, after the caucus had heard from ResponsibleOhio about the issue. He said the response in the caucus was that if there is a real motivation to liberalize marijuana, it could be done through initiated statute, and that the only reason the proponents want it in the constitution

is to make money. Rep. Curtin said the proposed initiative will set precedent for what is yet to come, and it is not about marijuana.

Mr. Yost said he consulted with Rep. Curtin in forming his ideas. He asked the committee whether, given the Commission rules, it would be possible to get something in front of the legislature by August for putting an issue on the ballot. Chair Mulvihill said no, that is not possible given the rules, and how often the committee meets. He added the Commission's charge is to take a comprehensive view of the constitution, to hear from all sides, and not to respond to immediate political circumstances. He said the General Assembly can take this immediately to the voters, but that this committee could not meet the time frame for getting it on the ballot.

Committee member Roger Beckett said that for many months the committee has been talking about this concern, and now the committee is beginning to see some extreme examples of the problem it has been discussing. He said the committee can continue to discuss the issue to encourage people to use the initiated statute route and steer them away from the initiated amendment route. He said that Mr. Yost's proposal would be a strong improvement to the process. Mr. Beckett said he would encourage legislative members on the Commission to not look at the Commission as a barrier, but as an advisory body, and that the Commission is not meant to stop issues from going forward.

Sen. Obhof asked about the issue of stopping the "trump card" language. Sen. Obhof said it was his understanding Mr. Yost does not advocate trying to prevent that language but asked whether the proposal Mr. Yost outlined takes care of that problem. Mr. Yost said he has discussed the issue with Mr. Steinglass.

Ms. Abaray asked whether any monopoly provisions have been challenged on an equal protection ground by other states, regarding casinos, for example. Committee member Chad Readler commented that equal protection usually applies in other arenas, not economic interest. Mr. Readler said he hopes the legislature will take up the issue. Executive Director Steven C. Hollon suggested that this committee meets next month, and that speakers could be lined up to address this topic. Chair Mulvihill agreed that this would be a good idea.

Committee member Rep. Bob Cupp asked whether there is a mechanism by which one could go through the proposed amendments to the constitution and decide which ones may fit into this issue, to help with the deliberations. He said, for example, there is an amendment that allows the sale of bonds for clean coal, and wondered whether this topic relates to that issue. Dean Steinglass said that it would be possible to take a look at the constitution, and that such a review would be easier to do on what has been approved than on what hasn't been. Mr. Steinglass said the coal example was a result of a constitutional amendment proposed by the General Assembly. Rep. Cupp said that may be true, but wondered whether the same principle would apply if it were suggested by initiative rather than by resolution.

Mr. Yost said the coal initiative would pass muster unless constructed to single out certain people to receive money or a benefit.

Mr. Steinglass commented on the "gateway language," meaning the "trump card" or "notwithstanding" type of provision. He said a goal in this area is to keep it short and simple.

Part of that equation is asking whether the additional language provides some additional degree of protection. Mr. Steinglass said one of the things that the constitution contains is schedules, which could be used to deal with some of the issues.

Chair Mulvihill asked whether other states have begun to see this type of use of the initiative process. Mr. Steinglass said he has not located anything, but mentioned that Rhode Island may have had an experience with this.

Vice Chair Kurfess commented that the legislature is limited, but the General Assembly could propose a constitutional amendment to do through the constitution that which they are precluded from doing by statute. He said it should not be the goal to tamper with that.

Rep. Cupp said that the experience is that the General Assembly has been very restrained in doing these sorts of things. He said, in the past, the initiative process was more difficult without modern technology. The situation with the General Assembly isn't going to change, but it is now easier for citizens to get something on the ballot.

Ms. Abaray asked whether the committee is trying to look specifically at terminology. Chair Mulvihill said the committee is still working on the concept, and could discuss language next time. He then thanked Mr. Yost for his presentation.

Chair Mulvihill then asked the committee whether it wanted a general discussion on language. Vice Chair Kurfess asked whether staff could consider some language and come up with some alternatives. He said the committee could be going on parallel paths with the legislature, and that what the committee does can be supportive of the legislature.

Rep. Curtin said that these comments were well-taken. He continued that he has had discussions with colleagues on both sides of the aisle in the House, and that a majority of both parties is looking to this committee for some refined language. He said the process is not occurring right now in the General Assembly. He suggested that, to the extent the staff can continue to consult, it should refine what it believes is the best language, and that this would be well received by both houses. Rep. Curtin complimented Dean Steinglass as a tremendous resource for the process.

Chair Mulvihill asked whether it makes sense to propose the same limitation on the General Assembly that would be applied to the citizen's initiated amendment process, remarking that if this type of provision isn't appropriate in the constitution, it doesn't matter how it got there.

Ms. Abaray noted an example that was raised, a tax issue, by which the General Assembly might want to encourage a certain industry. She said if such a provision is thoughtfully brought up by the legislature it might be different from a provision that only benefits a small group.

Sen. Obhof said he agrees with Mr. Yost, and that the issue isn't something the committee needs to decide today. He said he would like to hear from witnesses who might like to comment on the issue.

Chair Mulvihill then recognized Scott Tillman from the audience. Mr. Tillman said he works with the Citizens in Charge Foundation and appeared before the committee on a previous occasion in October 2013. Mr. Tillman said the legislature should be bound by the same restrictions as are applied to the citizens. He said the initiative process is a tool for the citizens

when the legislature will not do what they want. He said the initiative gives the people the same voice as the legislature. He said passing an initiated amendment is not a given, is not easy to do, and needs many signatures. He said the constitutional amendment route is preferred because it is too easy for the General Assembly to gut a statute.

Rep. Curtin said that it is a practical political problem to advance an amendment to prevent the public from granting monopolies but still allow the legislature to do so. He said applying a restriction to both would not obviate the legislature's ability down the road to ask for an exception to the monopoly; in fact, the General Assembly has done this over and over again in relation to the \$750,000.00 debt limit. Rep. Curtin said he assumes that, should voters pass an amendment disallowing monopolies, the General Assembly could pass a resolution to remove it.

Chair Mulvihill then proposed that the committee seek commentary from the other side of the issue, and directed staff to assist in locating interested parties, as well as in working on language for a proposed amendment. Chair Mulvihill asked for input from anyone on the committee who has language to propose.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 4:00 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

The minutes of the May 14, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the June 11, 2015 meeting of the committee.

Dennis P. Mulvihill, Chair

Charles F. Kurfess, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Dennis Mulvihill, Vice Chair Charles Kurfess and
Members of the Constitutional Revision and Updating Committee

CC: Steven C. Hollon, Executive Director and

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: June 1, 2015

RE: Proposed Amendment Barring the Use of the Initiative to Create
Special Interests or Monopolies

At its May 14, 2015 meeting, the Constitutional Revision and Updating Committee discussed the need for an amendment that would prevent the use of the constitutional initiative to create special interests or monopolies for private persons or entities. The meeting included a presentation by Ohio Auditor of State David Yost in which he described his proposal to limit the use of the constitutional initiative.

At the end of the meeting, the committee chair asked staff to look at this issue and to suggest language for a proposed amendment that would accomplish the goal of preventing the constitutional initiative from being used to create special interests or monopolies for private persons or entities.

Background

A number of states currently have limitations on their constitutional initiative, while others, including Ohio, have limitations on their statutory initiative. Limitations on the constitutional initiative are discussed in the memorandum to the committee entitled "Subject Matter Limitations on the Constitutional Initiative" (April 1, 2015). That memorandum also describes the unsuccessful challenges to limitations on the initiative.

In 1912, the Ohio Constitutional Convention proposed, and the voters approved, a limitation on the statutory initiative. *See* Article II, Section 1e (barring the use of the statutory initiative "to

pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property”). As far as I can determine, this limitation has not been the subject of a constitutional challenge.

Working Proposal

Attached to this memorandum is a working proposal that limits the use of the constitutional initiative to create special interests or monopolies. This proposal builds on the proposal submitted by Auditor Yost, but differs in certain respects.

The highlights of the working proposal are as follows:

Division (A)

- Limits only the constitutional initiative.
- Does not limit the General Assembly, thus leaving the General Assembly free to adopt a statute that creates a special interest or a monopoly, and to propose an amendment that creates one.
- Does not limit the statutory initiative.
- Seeks to define broadly the prohibition on the use of the constitutional initiative, both in terms of what may not be created (*i.e.*, special interests, monopolies, etc.) and in terms of the entities that may not benefit from the creation of special interests or monopolies.
- The key to the prohibition is the bar on the creation of special interests or monopolies that are not available to other similarly-situated persons or entities.

Division (B)

- Requires the Secretary of State to review the substance of proposed amendments and requires that the Secretary of State not submit offending amendments to the voters.
- The requirement that the Secretary of State not place on the ballot a proposed amendment that violates a limitation on constitutional initiative is similar to the requirement that the Secretary of State not place on the ballot proposals that violate the one amendment rule of Article XVI, Section 1.

Division (C)

- The proposal makes clear that it prevails over any constitutional provision also approved on November 3, 2015 that creates a special interest or monopoly, despite any severability provision to the contrary; thus, this proposal prevails in the event of any conflict with an amendment that creates a special interest or monopoly.

Schedules

- The proposal includes a schedule that makes clear that the amendment, since it would be proposed by the General Assembly, would become effective immediately upon approval by the voters (as is the case under current law).
- The schedule also makes clear that the proposal does not apply retroactively to any provision in the constitution that was in effect prior to the effective date of the amendment; this principle is consistent with current law, but its inclusion in the schedule removes any ambiguity that might arise concerning the validity of past actions of the voters.

Attachment

ARTICLE XVI

Section 4. (A) No amendment to this constitution proposed by initiative petition under section 1a of Article II may grant or create, directly or indirectly, an economic interest, special privilege, benefit, right, license, or monopoly to any person, partnership, association, corporation, organization, or non-public entity, or combination thereof, however organized, that is not available to other similarly situated persons or entities at the time the amendment is scheduled to become effective.

(B) An initiative petition filed under Section 1a of Article II of this constitution is not valid if it proposes a constitutional amendment that would violate or be inconsistent with division (A) of this section, and the Secretary of State shall not submit the proposed amendment to the voters.

(C) If, at the general election held on November 3, 2015, the electors approve a constitutional amendment containing a provision that violates or is inconsistent with division (A) of this section, that proposed constitutional amendment shall not take effect, notwithstanding any severability provision to the contrary.

SCHEDULE

If adopted by a majority of the electors voting on this proposal, Section 4 of Article XVI of the constitution of the State of Ohio enacted by this proposal takes effect immediately. Division (A) does not apply to any provision of this constitution that was in effect prior to the effective date of this amendment.

Constitutional Revision and Updating Committee

Planning Worksheet (June 2015)

| Article II – Legislative (Select Provisions) | |
|---|---|
| Sec. 1 | In whom power vested (1851, am. 1912, 1918, 1953) |
| Notes: | |
| Sec. 1a | Initiative and referendum to amend constitution (1912, am. 2008) |
| Notes: | |
| Sec. 1b | Initiative and referendum to enact laws (1912, am. 2008) |
| Notes: | |
| Sec. 1c | Referendum to challenge laws enacted by General Assembly (1912, am. 2008) |
| Notes: | |
| Sec. 1d | Emergency laws; not subject to referendum (1912) |
| Notes: | |
| Sec. 1e | Powers; limitation of use (1912) |
| Notes: | |
| Sec. 1f | Power of municipalities (1912) |
| Notes: | |
| Sec. 1g | Petition requirements and preparation; submission; ballot language; by Ohio ballot board (1912, am. 1971, 1978, 2008) |
| Notes: | |

| Article XVI - Amendments | |
|---------------------------------|---|
| Sec. 1 | Constitutional amendment proposed by joint resolution of General Assembly; procedure (1851, am. 1912, 1974) |
| Notes: | |
| Sec. 2 | Constitutional amendment proposed by convention; procedure (1851, am. 1912) |
| Notes: | |
| Sec. 3 | Question of constitutional convention to be submitted periodically (1851, am. 1912) |
| Notes: | |