



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 13, 2014

#### **Call to Order:**

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:40 p.m.

#### **Members Present:**

A quorum was present with committee members Mills, Brooks, Coley, Davidson, Huffman, Macon, Sykes, Taft, Talley, Tavares and Trafford in attendance.

#### **Approval of Minutes:**

The committee approved the minutes of the October 9, 2014 meeting.

#### **Topics Discussed:**

##### *Apportionment and Redistricting Proposal*

Rep. Matt Huffman gave a presentation on House Joint Resolution 11, relating to federal congressional redistricting, and House Joint Resolution 12, relating to state district apportionment.

Rep. Huffman remarked that the current system gives little incentive for the majority party to protect the rights of the minority, a situation he is trying to correct with the proposed resolutions, which he said give increasing incentive to the majority party to consider the minority. According to Rep. Huffman, in the past, the plans have rewarded obstructionists. He acknowledged that his plan is not perfect but does give incentive to the majority to consider the minority.

Under the proposed plan described in House Joint Resolution 12, a seven-member Redistricting Commission consisting of the Governor, the Secretary of State, the Auditor of State, and designees of four caucus leaders must approve an apportionment map by a majority of at least four members, including one minority member. If this occurs, the process is complete and the map is effective for 10 years. However, if the Redistricting Commission does not approve a

map, a majority vote of the Governor, Secretary of State, and Auditor of State approves an interim map (with legislative designees having no vote). That map would then be used in the next election, at which time voters also would be asked to decide whether the redistricting commission should reconvene to redraw the districts. If that ballot question fails, the map is effective for half the remaining legislative elections before the new census, but if the map expires before the next census a new map must be drawn by the then-current commission. If the ballot question passes, the process starts over and a new map would be drawn by the entire seven-member Redistricting Commission.

Under the proposed plan described in House Joint Resolution 11, there would be a six-member Joint Legislative Committee comprised of two majority and one minority member from each chamber. If at least four members, including one minority member approve a proposed map, then that becomes the map that will be effective for ten years and the process would be complete. If no minority party vote is included in the vote to adopt a map, or if the General Assembly does not adopt the map put forth by the committee, then the map would automatically become effective and used for the next election, at which time the voters also would be asked to decide whether the General Assembly should draw new congressional districts. If the ballot question fails, the map would be effective for half the remaining legislative elections before the new census. If the map expires before the next census, then a new map would be drawn by the then-current General Assembly. If the ballot question passes, the process would start over and a new map would be drawn by the General Assembly.

Rep. Huffman stated that because the plan requires voter involvement if the parties fail to cooperate, there will be incentive to avoid the partisanship that has created problems in getting agreement on past redistricting plans. Rep. Huffman indicated he intends to testify to the House Legislative Oversight Committee in order to get the House and Senate ultimately to consider this proposal. He then invited questions from members of the committee.

Commissioner Paula Brooks said she is concerned by the proposal because it does not provide a good fail safe. She said she needs more time to review it, but that her impression is that it could result in an ad infinitum situation because people will forget how bad an experience can be until they are again in the middle of it.

Rep. Huffman agreed, but said the fact that his plan provides for an immediate cost because ten years from now no one will care about the issue. Commissioner Brooks asked whether this plan drops the minority requirement after Step 1, and Rep. Huffman said that if voters say redraw the map, they have to go back to get minority member approval.

Senator Bill Coley asked whether the committee should wait for the U.S. Supreme Court to decide the Arizona redistricting case Steve Steinglass had presented on during last month's meeting. Rep. Huffman said that his proposal as to reapportionment, at least, would be unaffected by any Supreme Court decision on congressional redistricting procedures, and so should not be held up by waiting for the court. He said if the General Assembly approves his proposal, it would go on the ballot for voters to approve by November of 2015.

Speaker JoAnn Davidson said she would like to compare Rep. Huffman's plan to that of Rep. Vernon Sykes which was presented at the last meeting. Rep. Huffman said his plan has an automatic "go to ballot" solution if there is no consensus and does not require going through the referendum process.

Rep. Sykes said his problem with the proposal is that it still gives the majority the authority to make the decision and that there is not enough incentive to encourage minority participation. He wondered whether Rep. Huffman is open to other kinds of defaults.

Sen. Charleta Tavares expressed her concern that, two years after the creation of the Commission, participants have failed to come to an agreement about redistricting either in the Commission or in the General Assembly. She observed that because one party has such a strong majority in the General Assembly, Rep. Huffman's proposed legislation could pass with no support from the minority party. She also said she was concerned that the proposal was being rushed through the legislature during the lame duck session, recognizing that the beauty of having the Commission handle redistricting is that the Commission is more bipartisan.

Rep. Huffman said this plan has many of the same elements as Rep. Sykes' plan and that there must be minority buy in for it to work. Sen. Tavares said that perspective is important because if the minority doesn't believe its voice is protected then there is an impasse. She said she does not believe there has been full discussion of this issue yet in this committee, but that it is now being rushed through the General Assembly.

Rep. Sykes stated that the proposal is timely and that there is a unique opportunity now for the Commission and the General Assembly to recommend a plan for approval during the lame duck session. He suggested one way to improve Rep. Huffman's plan would be for there to be a default commission of four members consisting of majority and minority members from the House and Senate who then select a fifth person before the map drawing begins. Then, if the original seven members couldn't agree on a map by a certain date, this "default" commission would decide the question. Rep. Sykes said he has a list of minimal considerations that must go into a plan (as per criteria under federal law, for example) and that he will give that list to Rep. Huffman.

Governor Bob Taft asked why Rep. Huffman is so concerned about the federal courts being used as an impasse mechanism. Rep. Huffman said anytime there is control by an outside entity it creates a problem, and that the people, rather than the judges, should decide the issue. He said judges have their own bias, and unelected federal judges should not make the decision.

Ann Henkener of the League of Women Voters then presented on behalf of herself and Catherine Turcer of Common Cause Ohio. Ms. Henkener said that Ohio is a 50/50 state and should not follow a "winner takes all" formula. She said there must be bipartisan buy in on any plan, and that she was encouraged by the discussion before this committee today as some progress is being made. She directed the committee to prior information provided by the League, emphasizing that a citizens' commission is preferred to one including elected officials but the real end goal must be geographical shapes that make sense to voters.

Richard Gunther, Professor Emeritus of Political Science, at Ohio State University, also presented on this topic. He expressed his opinion that Rep. Huffman's proposal had moved away from Senate Joint Resolution 1 (which had passed in the Senate by a 32-1 vote), and that the new proposal was a different track that worsened, rather than improved, the situation. He said the plan for there to be six members with four of the six to be majority party members did not give any credible incentive that would respect minority views, and that current checks and balances would be removed under the new plan. He also said that redrawing a map could mean as little as some minor movements of existing lines, so that the threat that a map would be redrawn may not prevent the majority from having the map it wants. He said the proposal reinforces majoritarian biases that currently exist.

Speaker Davidson asked whether, assuming the majority in the House and Senate remained, the outcome under the plan would always be the same. Prof. Gunther said that given the gerrymandering of maps in the past, a similar outcome would be inevitable, and having two minority members on the commission would be irrelevant. Rep. Huffman argued, however, that the entire legislature has to approve the new plan, so saying only six are involved is not right. Rep. Huffman also objected to Prof. Gunther's characterization of the future makeup of the General Assembly being 100 percent the same because this could not be predicted. Prof. Gunther responded that gerrymandering has created disproportionality that is more serious than ever, and that he has data indicating that 60 percent of the current seats held by each party will remain the same in the future under the current map. He said currently Ohio has a score of 23, which is the third worst system in the world for redistricting maps. Rep. Huffman objected to this data, stating that it does not take into account variables such as whether the data is compiled during a presidential election year, whether there are opponents to some candidates, or other factors. He also stated that federal law and the Civil Rights Act prevent some line drawing that might be considered to create a more fair system. Prof. Gunther said he stood by his data and that it is possible to incorporate his data without creating a legal violation.

Sen. Coley said that local races drive voters, and that Prof. Gunther is making some broad assumptions that aren't necessarily involved in election outcomes.

### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 3:45 p.m.

### **Attachments:**

- Notice
- Agenda
- Roll call sheet
- HJR11
- HJR12
- Proposed congressional redistricting flow chart
- Proposed general assembly redistricting flow chart
- Prepared remarks of Anne Henkener
- Prepared remarks of Prof. Richard Gunther

**Approval:**

These minutes of the November 13, 2014 meeting of the Legislative Branch and Executive Branch Committee were approved at the December 11, 2014 meeting of the committee.



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Frederick E. Mills, Chair

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Paula Brooks, Vice-Chair