



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, DECEMBER 15, 2016

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

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:39 p.m.

#### **Members Present:**

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Curtin, Davidson, McColley, Talley, and Tavares in attendance.

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

The minutes of the November 10, 2016 meeting of the committee were approved.

#### **Reports and Recommendations:**

##### *Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies)*

Chair Mills recognized Steven C. Hollon, executive director, for the purpose of presenting to the committee a report and recommendation for Article II, Sections 3, 4, 5, and 11. Mr. Hollon said the report and recommendation reflects the committee's conclusion that the subject sections be retained in their present form. He said the report indicates the sections require legislators to have lived in their districts for one year prior to election, restrict legislators to holding only one public office, prevent persons convicted of embezzlement from serving in the General Assembly, and define how vacancies in the General Assembly are to be filled. Mr. Hollon said the report describes revisions to Sections 4 and 11 that resulted from the activities of the Ohio Constitutional Revision Commission (1970s Commission), as well as discussing litigation relating to the sections. Mr. Hollon said the report and recommendation summarizes the committee's conclusion that the 1970s review resulted in changes that continue to appropriately and effectively guide the legislature's organization and operation, and so the report recommends no change to Article II, Sections 3, 4, 5, and 11.

Mr. Hollon having completed his presentation, Chair Mills asked if there were comments or questions. There being none, committee member Jo Ann Davidson moved that the report and recommendation be issued by the committee. The motion was seconded by Senator Charleta Tavares. The committee then voted unanimously to issue the report and recommendation.

*Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly)*

Mr. Hollon then presented a report and recommendation relating to Article II, Sections 6 through 9, and Sections 13 and 14, all relating to the manner in which the General Assembly conducts its business. Mr. Hollon said the report provides summaries of the sections, with Section 6 outlining the powers of each house of the General Assembly, Section 7 allowing for statutes to prescribe the organization of the houses, Section 8 governing the legislative calendar, Section 9 requiring a journal of proceedings, Section 13 requiring open proceedings, and Section 14 controlling the ability of either house to adjourn.

Mr. Hollon continued that the 1970s Commission, in reviewing these sections, issued a comprehensive report recommending the amendment of the legislative sections of Article II, and that these amendments were adopted by voters and continue to serve the state well. He said the report and recommendation describes the limited litigation related to these sections before setting out the committee's conclusion that the legislature is its own best authority for determining how often and how long it should meet. Thus, Mr. Hollon said, the report and recommendation indicates the committee's view that these sections should be retained in their current form.

Mr. Hollon having concluded his presentation, Chair Mills asked if anyone wished to discuss or comment on the report. There being no comments, Sen. Tavares then moved that the committee issue the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 11, and committee member Petee Talley seconded the motion. The committee then voted unanimously to issue the report and recommendation for no change to the subject sections.

Chair Mills thanked Mr. Hollon for his presentations, and announced that the two reports and recommendations would now be submitted to the Coordinating Committee for its review as to form before being forwarded to the full Commission.

**Presentations and Discussion:**

Chair Mills announced that the committee would address the next item on its agenda, which is Congressional redistricting. After providing a brief summary of the committee's work on the topic to date, Chair Mills said the committee would hear from several speakers who wished to address the progress of discussions regarding a proposal for Congressional redistricting.

*Carrie L. Davis, Executive Director  
League of Women Voters of Ohio*

Chair Mills introduced Carrie L. Davis, executive director of the League of Women Voters of Ohio, who said she was appearing on behalf of the Fair Districts = Fair Elections Coalition, a group that formed in 2015 to work on Issue 1 on the November 2015 ballot relating to legislative redistricting. She said since the passage of Issue 1, the coalition has shifted its focus to applying the same principles used in relation to legislative redistricting to methods for drawing Congressional districts. She said the coalition concluded it could not wait indefinitely, so it

drafted an alternate proposal which she provided to the committee.<sup>1</sup> She said the purpose of the proposal was to invite public comment.

Describing the proposal, Ms. Davis said the group started with Issue 1 as its template, adapting the document to fit the requirements of Congressional redistricting, and suggesting revisions that fit on one page front and back. She said a goal was to keep the proposal short and simple so that voters can understand it. She said the proposal uses the Ohio Redistricting Commission, created by Issue 1, as the body that will determine the Congressional districts. She said the remaining sections remain unchanged, other than being renumbered. She identified a new Section 3 as spelling out criteria for drawing new districts. Ms. Davis identified the two main criteria as being representational fairness and community preservation, both of which are already written into the Ohio Constitution by virtue of Issue 1. She said the proposed change elevates criteria used in legislative redistricting from aspirational to primary goals when drawing lines for Congress. She said the proposal abandons the complicated rules on splitting, trying to keep it simple and clear.

Explaining some of the specific recommendations in the proposal, Ms. Davis said Section 3(A)(1) explains how the number of districts is determined, while Section 3(A)(2) mirrors the current United States Supreme Court standard regarding the ratio of representation. She said Section 3(B) allows for public submission of district plans because the coalition wanted an opportunity for public participation. Ms. Davis said Section 3(C) lists criteria the redistricting commission would have to follow. She said this was in response to the Ohio Supreme Court decision in *Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814. She said the proposal gave priority to these criteria in the order in which they are listed, so there would be no confusion, legal question, or risk. She said the Ohio Supreme Court pointed out current law is deficient in this regard, an issue the proposal resolves by setting out the specific criteria in the order of their importance. She noted that Section 3(C)(1) provides that the districts must be composed of contiguous territory with a goal of keeping communities whole. Section 3(C)(2) requires a plan to comply with all applicable provisions of federal and state law. Section 3(C)(3) proposes that the redistricting commission maximize representational fairness. Ms. Davis said the coalition wanted this to be a required criterion in drawing Congressional districts. She said that subsection, requiring a plan “whose statewide proportion of districts most closely corresponds to the partisan preferences of the voters of Ohio” provides for a ten-year look back of Ohio voting history to see how Ohio voters voted over that period.

Ms. Davis said Section 3(C)(4) prevents a plan from being drawn to favor or disfavor a political party or candidate, while Section 3(C)(5) provides a goal of minimizing the number of splits. Ms. Davis described that Section 3(C)(6) allows the redistricting commission to adopt a plan containing more than the fair numerical number of splits, so long as the commission explains the splits, why they were necessary, and how the splits serve the public interest. She said the proposal also requires the commission to hold hearings and adopt a plan by a certain time. She noted that the proposal does not include an impasse provision.

Ms. Davis having concluded her remarks, Chair Mills asked if there were questions.

Representative Mike Curtin asked about the order of the criteria contained in Section 3(C). He wondered if there would be an objection to moving 4 to 3, 5 to 4, and 3 to 5, because

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<sup>1</sup> A copy of the proposal is provided as Attachment A.

representational fairness as a higher goal would cause a conflict that would not be there if the order were switched. Ms. Davis said the coalition had lively debates about how to order the requirements. She said representational fairness was a key criterion because currently Ohio does not have that. She offered to raise that issue with the coalition committee with which she is working.

*Jeff Jacobson, Commission member*

Chair Mills then recognized Jeff Jacobson, a participant in discussions regarding Congressional redistricting, who said he was present to provide a status update on the progress of discussions. He said, on November 7, 2016, he met with Representative Charleta Tavares, Senator-elect Vernon Sykes, and Ohio State University professor emeritus Richard Gunther. He said they began the meeting working from the Issue 1 text, but that an outstanding issue from previous discussions in April 2016 was still unresolved, which is the splitting of counties. He said his position was that districts should be entirely within one county if the county is big enough to have its own district. He said Republicans are concerned that if cities cannot be split, the cities will maintain their Democratic majority. He said cities and townships are the building block of Issue 1, adding that a prohibition on splitting counties protects Democrats from being gerrymandered but not Republicans.

Mr. Jacobson said the Democrats wanted to go down as far as 15 percent, which would have added Dayton and Akron, but not Canton. He said that was the entire distinction between the positions of the two sides, and they have not been able to bridge that gap. He said, in an attempt to accomplish something, he proposed they could go down to 15 percent so long as one of the group of 15-to-25 percent could still be split. He said the Democrats responded with a proposal to extend that to all medium counties, and both sides retired, with the hope of a deal.

Mr. Jacobson said while there were some conversations by email, no response was ever given to that proposal. He said a meeting was scheduled later in November, but it was canceled and has not been rescheduled. He fears the reason is the testimony just given by Ms. Davis, meaning that Democrats wanted the proposal to go beyond his last offer. Mr. Jacobson said he agrees the goal should be to avoid reproducing the same map that has been criticized and that it should not be possible to use the rules to guarantee a certain outcome for one party. He added that results under Issue 1 are not guaranteed for either side, and that makes both sides work together. He said he is dismayed that the bipartisanship of Issue 1 is being abandoned when the discussion group had reached a fair bipartisan compromise. He said Professor Gunther's insistence on county boundaries has been abandoned.

Mr. Jacobson said the goal of the new plan, unlike Issue 1, is to dictate a one-sided political outcome. He said these plans only provide lip service to protecting minority rights. Rather, he said, the focus on the definition of what they are trying to achieve in terms of partisan outcomes.

Chair Mills confirmed that he asked Mr. Jacobson to indicate the history of the discussions and that Mr. Jacobson is correct as to timing. He said he appreciates where the discussions have been in the last year.

Sen. Tavares said she takes exception to some of Mr. Jacobson's comments, adding that just because someone believes there is a goal of gaining a partisan advantage does not mean that was the intent. She said Professor Gunther, who was part of the team that was trying to negotiate,

certainly was not promoting partisanship in the discussions. She said she would agree with the chair that the dates are probably accurate, and that the delay is the fault of many. She recommended the committee put a date certain on when it will get a result. She said there is a date certain on the proposal introduced by Ms. Davis. Sen. Tavares continued that there has to be additional criteria in a Congressional district because those districts change based on the census, and the proposal cannot be exactly like Issue 1. She said, from her perspective, everyone bears some blame, and part of the problem is there was no date certain.

Mr. Jacobson said he agrees that Issue 1 is preferable to a partisan plan. He said it cannot be a date certain if there is no resolution process.

Rep. Curtin said he is not sure who is involved in the discussions, and is not sure who is invited to participate. With regard to the proposal, he said eliminating Section 3(C)(3), relating to representational fairness, and elevating the priority of the requirement that jurisdictions not be split, are principles that people understand. Rep. Curtin said he does not understand Mr. Jacobson's concern about treating all counties the same. Rep. Curtin continued that 68 to 78 of Ohio's 88 counties are "reliably red, year in and year out." He said, if one is talking about blue counties and a need to split, the competitive counties are only 20 to 25 percent of all the counties of Ohio. He said he does not understand the point about it being to the advantage of Democrats to not break up large counties. He said, in his view, the goal should be not to break up any counties.

Mr. Jacobson said one does not protect counties, but rather one protects cities and local governments. He said he would protect the largest ones. He said gerrymandering occurs when map drawers take a large group and cut it into little pieces. He added the problem is the small counties are already small enough. He noted "If there is no protection against gerrymandering, all it benefits are those few larger counties that happen to be where a lot of Democrats live."

Rep. Curtin said Ohioans have lived in counties since before Ohio became a state; people recognize county government. He said he would take issue with the statement that people do not identify with counties. He said he commends the draft resolution submitted by Ms. Davis. He commented, "If we don't protect counties then we are inviting gerrymanderers to split Franklin County more than once."

Mr. Jacobson said there ought to be protections against multiple splits because it is not possible to draw Congressional districts without breaking some county lines. He said there is no such thing as a perfect map. He said his objection was to being told which counties could be split.

Rep. Curtin asked whether Mr. Jacobson would accept a change in the proposal that would remove Section 3(C)(3), about representational fairness, and move up the requirement of minimizing splits, keeping the requirement of an explanation of why additional splits were needed.

Mr. Jacobson said the plan would still require an impasse resolution, and that he could not support a plan that lets disputes go to federal court. He noted the proposal does not allow disputes to go to an Ohio state court.

Chair Mills asked where in the proposal that is stated. Mr. Jacobson said that concept was in an early draft provided to him by Professor Gunther.

Vice-chair Paula Brooks asked, as a procedural matter, to what draft Mr. Jacobson was referring. Mr. Jacobson said he was given an earlier version in October. Ms. Brooks followed up, saying the court provision does not appear in the current draft. She asked when the last time was that the discussion group met. Mr. Jacobson said the group met on November 17, 2016.

Mr. Jacobson said his point is that there is nothing new in the proposal. He said there are slight areas of disagreement but the group is close to a consensus. He said, as drafted, the proposal presented by Ms. Davis is not agreed to.

There being no further questions or comments, Chair Mills said the committee would meet again on January 12, 2017, and would continue to discuss Article II issues. He said there has been some interest in discussing the one-subject rule in relation to the legislative lame-duck session.

Committee member Petee Talley asked whether there are additional meetings planned for the Congressional redistricting subcommittee. Chair Mills answered that he hopes the process is not over. He said there have been emails suggesting next dates for a meeting but there is nothing scheduled at this point. He said he hopes the committee can talk about redistricting again in January.

Sen. Tavares asked whether the discussion group referenced by Mr. Jacobson is an ad hoc committee, a subcommittee, or just a group. Chair Mills said it is just a group. He said if the group can come to an agreement, he will have the subcommittee consider it.

**Adjournment:**

There being no further business to come before the committee, the meeting was adjourned at 3:53 p.m.

**Approval:**

The minutes of the December 15, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the January 12, 2017 meeting of the committee.

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

/s/ Paula Brooks  
Paula Brooks, Vice-chair