



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:08 a.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Asher, Craig, Davidson, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Presentations and Discussion:

Chair Mills began the meeting by indicating this was likely to be the committee's final meeting. He said the committee will have met 33 times in the length of the Commission. He said the committee has talked about reapportionment/redistricting at 24 hearings, discussed term limits four times, addressed the single subject rule three times, considered the idea of a public official compensation commission in six meetings, and reviewed other miscellaneous subjects, such as the speech and debate privilege. He thanked staff for its work on the committee's agenda.

*Camille Wimbish, Director
Ohio Voter Rights Coalition*

Chair Mills recognized Camille Wimbish, director of the Ohio Voter Rights Coalition, to provide an update on efforts to reform the Congressional redistricting process in Ohio. Ms. Wimbish said she would be providing an update on behalf of the Fair Districts = Fair Elections Coalition, a group of organizations undertaking the redistricting reform effort.

Ms. Wimbish began by noting that in November 2015, more than 71 percent of Ohio voters supported a new system for drawing legislative district lines. She said since that election Ohio legislative leaders have not taken action on congressional redistricting reform, prompting her group to begin an initiated petition process. She said representatives of the League of Women Voters, Common Cause Ohio, and the Ohio Environmental Council, among others, have begun a ballot campaign to amend the Ohio Constitution. She said on April 24, 2017, the group began by filing the initial 1,000 signatures and ballot summary with the attorney general's office. She said that summary was rejected on May 4, 2017. Ms. Wimbish said the committee has since made changes to address the attorney general's concerns, and the summary now states the Ohio Supreme Court will have exclusive jurisdiction over challenges and that the bipartisan Ohio Redistricting Commission would be reconstituted if the court invalidates the Congressional redistricting plan or map. She said on May 10, 2017, the proponents submitted an amended summary along with more than the required 1,000 signatures to the attorney general. They will now await a determination by the attorney general before beginning the next phase, which will require collecting 305,000 signatures from 44 of Ohio's 88 counties.

Ms. Wimbish provided a copy of the text of the proposal. She said some of the highlights of the proposal include that it follows the language of the Issue 1, 2015 proposal. She said the bipartisan Ohio Redistricting Commission would draw the lines, and that political gerrymandering is prohibited, meaning there can be no drawing of lines to favor or disfavor one political party over another. She said the plan maximizes representational fairness so that the statewide proportionate districts must reflect the statewide party preferences, as determined by the statewide proportionate votes over the last ten years. She added the plan keeps communities together, protecting counties, then cities, then townships by minimizing splits. She said no county may be split more than once. Ms. Wimbish said the plan increases transparency by requiring the redistricting commission to publish a plan for consideration and to hold at least three meetings before voting. She said the redistricting commission must also provide a written explanation for how the plan maximizes compliance with the criteria. She said, finally, the plan requires bipartisan approval of maps, meaning that at least two members of the minority party must agree to the map. She said if the redistricting commission fails to get bipartisan approval, the Ohio Supreme Court will order the redistricting commission to get back to work. She said the proponents will collect signatures throughout the summer, adding that if they obtain the required number of signatures before July 5, they will submit the petition to be placed on the ballot in November 2017. If they do not get the signatures they need in time, she said they will continue to collect signatures in time for the 2018 ballot.

Ms. Wimbish then answered questions from the committee.

Chair Mills commented that the proposal does not include an impasse procedure, such as was included in the modifications to the Ohio reapportionment system. He said the proposal does not mirror Issue 1 on the November 2015 ballot in that regard. Ms. Wimbish explained that the proposal has the court step in to resolve an impasse.

Carrie Davis, executive director of the League of Women Voters of Ohio, who was seated in the audience, explained that she is one of three members of the official ballot campaign committee for Fair Districts. She said when the committee prepared their draft proposal, the dialog they had previously had with the Legislative Branch and Executive Branch Committee was helpful in shaping the final product. She thanked the committee for its assistance.

Richard Gunther, professor emeritus of the Ohio State University, speaking from the audience, explained the difference between the proposal and the language adopted by voters in Issue 1. He said, overall, the proposal is deeply rooted in Issue 1, but, unlike with Issue 1, proponents have built in a requirement that the number of splits of counties or townships should be minimized and no county split more than once. He said Issue 1 had the task of dividing 88 counties, but that is not possible to do when drawing lines for Congressional districts. He said, “If you don’t protect counties you are opening up opportunities for strange districts, and creative maps.” He added that one difference is that the committee wanted to minimize the spitting of municipal corporations, townships, and counties. He said the proposal also allows any citizen of Ohio to put forward a plan to be considered by the redistricting commission. He said everything in the proposal is either in the constitution or will be there in 2020 as a result of Issue 1. But, he added, “We are modifying by taking some of criteria from aspirational goals and moving them to becoming primary criteria.” He said the proposal prohibits plans that favor a party or candidate, in the interest of representational fairness, except insofar as the plan requires that the percentage of districts leaning to one party or another should mirror the preferences of the voters. He said there will be eight or 15 districts that will lean Republican, and seven that will lean Democratic, but that does not mean that seven versus eight will be elected because there are some districts that will flip based on other factors. He said “This is very balanced in partisan terms and should provide a level playing field.”

Chair Mills recognized Jeff Jacobson, a member of the Commission, who sought to offer an alternate view of the proposal. He said the proposed amendment is not a continuation of Issue 1, adding it is disheartening to him that this “attempt to enshrine in the constitution a partisan outcome” is being done in the name of Issue 1. He said the heart of Issue 1 was the recognition that experts can be manipulated and that rules are never perfect. He said, “We find ourselves at wit’s end because voters don’t live where you want them to in order to make the rules work perfectly.” He continued that the heart of Issue 1 is the best way to ensure a good result because it requires both parties to have to come together, and if that does not happen, Issue 1 provides an impasse resolution process. He said that process, while not perfect, causes both majority and minority to gain and lose if they do not go along with making it work. So, he continued, the impasse resolution says the majority rules but the plan only lasts four years. He said there is a problem with a plan that requires a court to resolve the impasse, and there will come a point when the court will have to order a new map on its own.

Mr. Jacobson continued, rejecting the idea that splitting counties is a bad thing for both sides equally. He said gerrymandering is taking something strong enough on its own, breaking it to pieces, and shuffling those pieces around, explaining that is an important reason to keep counties intact that are small enough that they do not need to be broken in order to be gerrymandered. He said the plan only protects county boundaries in the interest of protecting Democrats. He emphasized the goal should not be to guarantee the outcome, and that the proposed amendment only pretends to take politics out of the equation. He said the plan is “Not bipartisan and not fair, and there will be opposition to it on the ballot.”

Chair Mills thanked Mr. Jacobson, expressing appreciation for his work on the issue as well as the work of many others.

Chair Mills then turned the committee’s attention to the committee’s next steps for wrapping up its work. He asked Shari L. O’Neill, interim executive director and counsel to the Commission for suggestions of sections the committee might consider as being ripe for discussion.

Ms. O'Neill noted that Article II, Section 41, regarding prison labor, may benefit from a closer look in conjunction with an objection that has been raised in relation to Article I, Section 6, which prohibits involuntary servitude "unless for the punishment of crime." She said there had been discussion about holding a joint meeting with the Bill of Rights and Voting Committee, which was assigned Article I, Section 6, in order to review those sections in tandem.

Ms. O'Neill said an additional matter had been raised in the Education, Public Institutions, and Local Government Committee relating to Article II, Section 20, dealing with terms of office and compensation of officers in certain cases. She deferred to committee member Bob Taft, who is also on that committee, to talk more about the subject. Gov. Taft said when the Education, Public Institutions, and Local Government Committee solicited ideas from local government organizations, the County Commissioners Association raised a point about the prohibition on raising the compensation of county commissioners within their terms. He said that creates a problem because the terms are staggered, so that some commissioners are afforded a pay raise while others are not. He said the question had been raised in that committee through a letter from the organization, but there had been no testimony about it and there would not be an opportunity to make a recommendation.

Ms. O'Neill said an additional topic the committee did not have the opportunity to resolve was whether to recommend a public official pay commission that would independently review the compensation provided to members of the General Assembly and other elected officials. She said although the committee had held hearings on the topic, they had not reached a consensus, and may want to offer guidance on that topic for a future group to consider.

Chair Mills asked if committee members had suggestions for issues the committee might address. Committee member Herb Asher asked whether the committee would be providing a written work product that would discuss issues the General Assembly might consider in the future. Chair Mills said the committee's suggestions should be part of whatever information the Commission would be communicating as a final report. Ms. O'Neill agreed, saying staff had envisioned a final report that would cover every committee and incorporate the suggestions that are being made at the end of the Commission's work. She said those suggestions in the report could then be available both to the General Assembly and be preserved in the archive to be available to a future commission.

Mr. Asher said he would like to include a reference to Article XV, Section 4, which prohibits anyone from being elected or appointed to any office in the state unless that person has the qualifications of an elector. He said that prohibition may be interpreted as interfering with the ability of universities to appoint trustees if all trustees must be Ohio electors. He noted that he had heard the legislature was considering changing the terms of office for university trustees from nine years to six years, based on the concern that it is difficult to find people who are willing to make a commitment to serve for nine years. He said a change in the constitutional provision to allow persons from out of state to serve as university trustees would expand the pool of candidates for the post. Chair Mills asked whether it is a problem that the section in question was not assigned to this committee. Ms. O'Neill said there have been examples of committees transferring sections, and that this has not been a problem in the Commission's history. Mr. Asher said there had been discussion about how to approach that. Chair Mills said he has no objection to including that topic in a report on the committee's final suggestions.

Vice-chair Brooks asked whether this would be the last meeting of the committee. Chair Mills said he believes that to be the case. Ms. O'Neill agreed, saying that the plan is for the committees to wrap up their business in May and have a full Commission meeting in June. She said, with regard to a report, staff could provide additional ideas and committee members could advise about what they would like to include in a report, and drafts could be circulated. She said a reading could occur at the final Commission meeting without having the committee meet again.

Chair Mills approved this plan, indicating a report could be circulated with committee members adding items that might occur to them in the interim.

Mr. Asher said he would like to publically commend Chair Mills for his leadership.

Chair Mills said it has been an interesting committee, and he has enjoyed working with the members on the various topics under consideration. He said the committee has given the issues their best effort, and particularly noted the committee's contribution to Issue 1, as well as its influence on other tough issues that are still pending. He said it has been a pleasure and an honor to work with both old friends and new friends throughout the process.

Professor Gunther said he would like to thank the committee for its work in helping move forward consideration of the issue of redistricting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 11:44 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the June 8, 2017 meeting of the full Commission.

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

/s/ Paula Brooks
Paula Brooks, Vice-chair