

*Co-Chair*  
*Charleta B. Tavares*  
*Assistant Minority Leader*  
*15<sup>th</sup> Senate District*



*Co-Chair*  
*Ron Amstutz*  
*Speaker Pro Tempore*  
*1<sup>st</sup> House District*

## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES FOR THE MEETING HELD THURSDAY, JANUARY 14, 2016

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

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 11:12 a.m.

#### **Members Present:**

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Abaray, Asher, Beckett, Brooks, Clyde, Cole, Coley, Cupp, Curtin, Jacobson, Jordan, McColley, Mills, Mulvihill, Peterson, Readler, Sykes, Taft, Trafford, and Wagoner in attendance.

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

The minutes of the December 10, 2015 meeting of the Commission were reviewed and approved.

#### **Co-chair Report**

After calling the meeting to order Co-chair Tavares welcomed members to the first meeting of 2016. She noted that the Commission has a new member, Senator Kris Jordan, who was appointed to replace Senator Larry Obhof. Sen. Jordan commented that he looks forward to working with the Commission. Co-chair Tavares then recognized Co-chair Ron Amstutz for his report on a meeting of the legislative members.

Co-chair Amstutz reported that the legislative members of the Commission met on January 6, 2016 for the purpose of appointing the public members of the Commission, as well as to elect the co-chairs. He indicated that all public members were re-appointed; however, not all had requested reappointment, and replacements for those members may be named soon. He added that the legislative members voted to retain both himself and Sen. Tavares as co-chairs, and that he looks forward to continuing to work with the Commission in the coming year.

## **Standing Committee Reports:**

### *Coordinating Committee*

Kathleen Trafford, chair of the Coordinating Committee, reported that the committee would be meeting later in the day, and anticipated hearing status reports from the chairs of the Constitutional Revision and Updating Committee and the Judicial Branch and Administration of Justice Committee.

## **Subject Matter Committee Reports:**

### *Education, Public Institutions, and Local Government Committee*

Chad Readler, chair of the Education, Public Institutions, and Local Government Committee, reported on the activities of his committee. Mr. Readler said the committee is focusing on Article VI, Section 4, relating to the creation of a state board of education and the board's selection of a state superintendent of schools. He said the committee heard a presentation by Tom Gunlock, president of the state board, who gave insightful testimony on the role of the board as well as the challenges the board faces in coordinating efforts with other governmental bodies that address educational issues. Mr. Readler said the committee will hear additional testimony at its next meeting, and suggested that anyone with an interest in the state board of education or the state superintendent contact him.

Senator Bill Coley, a member of the committee, commented that the discussion in the meeting had been enlightening, and had raised questions about the purpose and necessity of a state board of education. Sen. Coley complimented Mr. Gunlock for highlighting an area in which the constitution potentially could be amended. He asked whether Mr. Readler intends to bring in other groups that may have opinions on that topic. Mr. Readler answered that the committee previously heard from Bill Phillis on the role of the board, and anticipates that at future meetings the committee will hear from other current and former members of the board, and possibly from legislative members who are familiar with education communities and the General Assembly's role in education.

### *Finance, Taxation, and Economic Development Committee*

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the committee had not met since last month and would be meeting again in February to continue its review and to firm up its recommendations relating to Article VIII.

### *Judicial Branch and Administration of Justice*

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that the committee met in December, at which time it heard presentations from two county prosecutors in regard to how grand juries conduct hearings. She said the committee has been generally reviewing how grand juries are conducted, particularly trying to find if there are measures the committee could propose that might increase public confidence in the grand jury

system. She said the committee previously heard from scholars about the role of the grand jury, and heard about how grand juries are conducted in other states.

#### *Constitutional Revision and Updating Committee*

Dennis Mulvhill, reporting as chair of the Constitutional Revision and Updating Committee, said the committee had not met since the last Commission meeting, but would be meeting later in the day to continue its review and discussion of possible changes to the statutory initiative procedure.

#### *Legislative Branch and Executive Branch Committee*

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee would be meeting later in the day to hear a first presentation of a report and recommendation on Congressional redistricting, a topic that has been discussed in numerous meetings. He indicated the committee is considering a constitutional amendment that would reform Ohio's method of drawing Congressional districts.

### **Reports and Recommendations:**

#### *Article I, Section 20 (Powers Reserved to the People)*

Co-chair Tavares recognized Jeff Jacobson, vice-chair of the Bill of Rights and Voting Committee, who provided a second presentation of a report and recommendation issued by the committee on Article I, Section 20 (Powers Reserved to the People). Mr. Jacobson explained that the report and recommendation was described at the last meeting by the committee chair, Richard Saphire. Mr. Jacobson indicated that the committee is recommending no change to the provision based on its conclusion that the powers not given directly to government in the constitution should remain with the people.

Co-chair Tavares asked for public comment on the report and recommendation. There being none, she entertained a motion by Mr. Jacobson to adopt the report and recommendation, which motion was seconded by Mark Wagoner. Co-chair Tavares then asked if Commission members wished to discuss the report and recommendation, which they did not.

Co-chair Tavares then called for a roll call vote, which was as follows:

Co-chair Tavares – yea  
Co-chair Amstutz – yea  
Abaray – yea  
Asher – yea  
Beckett – yea  
Bell – absent  
Brooks – yea  
Clyde – yea  
Cole – yea

Coley – yea  
Cupp – yea  
Curtin – yea  
Davidson – absent  
Fischer – absent  
Gilbert – absent  
Jacobson – yea  
Jordan – yea  
Kurfess – absent  
Macon – absent  
McColley – yea  
Mills – yea  
Mulvihill – yea  
Peterson – yea  
Readler – yea  
Saphire – absent  
Sawyer – absent  
Skindell – absent  
Sykes – yea  
Taft – yea  
Talley – absent  
Trafford – yea  
Wagoner – yea

The motion passed unanimously, by a vote of 22 in favor and none opposed, with ten absent.

*Article V, Section 4 (Exclusion from Franchise for Felony Conviction)*

Co-chair Tavares then recognized Mr. Jacobson for a second presentation of a report and recommendation for Article V, Section 4 (Exclusion from Franchise for Felony Conviction). Mr. Jacobson explained that Article V, Section 4 gives the General Assembly the power to exclude from the privilege of voting, as well as from being eligible to hold public office, persons having a felony conviction. Mr. Jacobson indicated that the report and recommendation states the committee is recommending no change to the provision.

Co-chair Tavares asked for public comment on the report and recommendation. There being none, she entertained a motion by Mr. Jacobson to adopt the report and recommendation, which motion was seconded by Co-chair Amstutz. Co-chair Tavares then asked if Commission members wished to discuss the report and recommendation.

Representative Emilia Sykes said although Ohio has allowed convicted felons who are out of prison to vote, under the current version of Article V, Section 4 that right can be taken away if the General Assembly chooses. Rep. Sykes said she thinks it would be in the interest of the state to specifically ensure in the constitution that felons may return to voting once they are no longer incarcerated, in order to prevent the enactment of a law that would permanently disenfranchise ex-convicts.

Mr. Jacobson explained that the Bill of Rights and Voting Committee did not have an extensive conversation about the provision, but that it was the general opinion of the committee that it would be difficult to get the number of votes sufficient to change the provision. He said there may be a difference of opinion about whether to restore voting rights after incarceration, but the thought in the committee was that the system is not broken and so should not be changed.

Co-chair Amstutz, speaking as a member of the committee, added that the committee's sense was that Ohio is in a hybrid, or middle-of-the-road position. He said some states are more aggressive in disenfranchising while others are a little more open in their policy. He said Ohio's policy, which is set by the General Assembly, is among the more open policies, which is why the committee recommended retaining the constitutional language as it is.

Mr. Cole commented that the committee heard from Professor Doug Berman from the Moritz College of Law at the Ohio State University. He said Professor Berman, a leading expert on criminal sentencing, noted that Ohio is one of the more permissive states with respect to felony disenfranchisement, although this is not reflected in the constitutional language. Mr. Cole said Professor Berman's testimony gave the committee comfort in terms of keeping the language the way it is. Mr. Cole said he does not think there is support in the General Assembly for a change in the current statutes that would put Ohio in a different position.

Rep. Sykes said there is still the consideration that the General Assembly has been moving to make more crimes a felony, and she is not convinced this language is sufficient to keep things the way they are. She said, statistically, African Americans are disproportionately incarcerated, and as an African American she will not be supporting keeping the constitutional provision as it is.

Co-chair Tavares commented that this was an area in which she hoped there would be more discussion from the public's perspective. She said when it is considered how many people have a felony conviction, and the large number of people who potentially could be disenfranchised, it is concerning for the public to be vulnerable to the political mood. She remarked, "these are our constituents whether incarcerated or not." She said she would have liked the committee to have had a broader discussion, but that possibly there were not enough individuals coming forward from interested parties to provide input to the committee on this issue. She said she does not know if there was enough outreach to justice groups in the community in an effort to solicit their participation in the discussion.

Co-chair Amstutz said he agrees with Rep. Sykes as to bills that "put more felony weight into the justice system," but currently the Criminal Justice Recodification Committee, consisting of government and public representatives, is reviewing the criminal code, focusing on rehabilitation and reentry, and recommending changes to the criminal justice system. He said that focus works against legislative proposals that would increase incarceration. He said he has not noticed that voting rights have been recognized as needing to become more restrictive. He said the points about incarceration are well-taken, but they are under active consideration right now outside of the constitutional provision.

Mr. Mulvihill asked, if the Commission does not adopt the report and recommendation, the result would be that the report and recommendation goes back to the committee. He also wondered whether, if the Commission adopts the report and recommendation, the committee is precluded from revisiting Article V, Section 4.

Executive Director Steven C. Hollon explained that, if the Commission adopts a report and recommendation, no further action would be taken and the recommendation would be sent to the General Assembly. He continued that, if the Commission does not adopt it, then it could be subject to a motion to send it back to the committee or to take no further action.

Mr. Cole asked for a point of clarification, asking what happens if the Commission adopts a recommendation for no change and whether that recommendation gets sent to the General Assembly. Mr. Hollon said all reports and recommendations are being sent to the General Assembly once adopted by the Commission. Mr. Cole asked whether that would prevent the committee from reconsidering the issue.

Mr. Mulvihill commented that the Commission may outlast the Criminal Justice Recodification Committee, and there may be issues that come up after that group concludes its work. Mr. Mulvihill wondered whether, if the Commission adopts this report and recommendation, it is foreclosed from ever considering Article V, Section 4 again.

Mr. Hollon answered the Commission is foreclosed only in the sense that there are 259 sections of the constitution to review. However, he said he sees the point that if circumstances arise the Commission may want to have a committee re-engage in the review process.

Ms. Abaray asked whether the full Commission could hear presentations on this topic before voting. Mr. Hollon answered the Commission could decide to table the vote and have someone come before the Commission to make remarks or presentations.

Commission member Paula Brooks moved to table the vote, which was seconded by Rep. Sykes.

Co-chair Tavares then called for a roll call vote on tabling the vote on whether to adopt the report and recommendation for Article V, Section 4, which was as follows:

Co-chair Tavares – yea  
Co-chair Amstutz – yea  
Abaray – yea  
Asher – abstained  
Beckett – no  
Bell – absent  
Brooks – yea  
Clyde – no  
Cole – no  
Coley – no  
Cupp – no  
Curtin – yea

Davidson – absent  
Fischer – absent  
Gilbert – absent  
Jacobson – no  
Jordan – no  
Kurfess – absent  
Macon – absent  
McColley – no  
Mills – no  
Mulvihill – yea  
Peterson – no  
Readler – no  
Saphire – absent  
Sawyer – absent  
Skindell – absent  
Sykes – yea  
Taft – no  
Talley – absent  
Trafford – yea  
Wagoner – no

The motion to table did not pass, by a vote of 13 opposed, eight in favor, and one abstaining, with ten absent.

Commission member Herb Asher noted that Article V, Section 4 only says that the General Assembly has the ability to adopt public policy. He said the concerns raised are public policy questions for the General Assembly, unless the constitutional provision is to become a complicated legislative provision that tries to cover all situations. He said he does not think that is possible. He said the provision simply says this is a public policy issue that the General Assembly will control.

Mr. Cole agreed, saying that the committee understood this to be a provision that empowers the General Assembly to make determinations about voting based on the fact of a felony conviction. He added current public policy makes Ohio among the most progressive states in this area. He said one thing the committee talked about was, if the constitution were to undertake that quasi-legislative effort, how generally would the rules need to be specified in the constitution, and is that more appropriate as a statutory endeavor. In response to the concerns of Rep. Sykes, Mr. Cole said the committee also considered and discussed the racial impact of felony disenfranchisement provisions.

Mr. Mulvihill asked whether, if circumstances change, the Commission could address this subject again regardless of the vote. Mr. Hollon said there is nothing in the Commission's Rules of Procedure and Conduct to prohibit that.

Ms. Brooks said it is important that the Commission has the option to reconsider this issue at a future time.

Sen. Coley commented that, according to the rules, any member who votes yes for the motion can, at a later date, move to reconsider the subject, so long as the motion passes.

Mr. Jacobson commented regarding the importance of keeping the constitutional language more general. He noted that, in enacting law, the General Assembly has the ability to consider specifically which felony convictions permanently remove one's ability to run for public office, and to provide detailed statutes regarding this. He said, in contrast, if the constitution were changed to state that voting rights and office eligibility are always restored, it would impact a situation involving a legislator convicted of bribery, for example. He said the constitution would contain a blanket statement, with no exceptions, even where public policy might favor eliminating the ability of that legislator to run for office. Mr. Jacobson said the Commission should not write specific rules in the constitution because that is the role of the General Assembly. He said, "we cannot decide we are going to start becoming the legislature on this."

Co-chair Amstutz said he is comfortable with the work done by the committee. He added that there is a broader justice issue here, however, that he would suggest be taken up by the Judicial Branch and Administration of Justice Committee. He said that committee is already looking at grand juries, so this concern fits into that review and would be a place to continue the conversation. He said he would also agree that the Commission can take up a settled issue if necessary, but there might be other ways to raise the issue.

There being no other questions or comments, Co-chair Tavares then called for a roll call vote on whether to adopt the report and recommendation recommending no change to Article V, Section 4, which was as follows:

Co-chair Tavares – no  
Co-chair Amstutz – yea  
Abaray – yea  
Asher – yea  
Beckett – yea  
Bell – absent  
Brooks – yea  
Clyde – yea  
Cole – yea  
Coley – yea  
Cupp – yea  
Curtin – yea  
Davidson – absent  
Fischer – absent  
Gilbert – absent  
Jacobson – yea  
Jordan – yea  
Kurfess – absent  
Macon – absent  
McColley – yea  
Mills – yea

Mulvihill – yea  
Peterson – yea  
Readler – yea  
Saphire – absent  
Sawyer – absent  
Skindell – absent  
Sykes – no  
Taft – yea  
Talley – absent  
Trafford – yea  
Wagoner – yea

The motion to adopt the report and recommendation passed by a vote of 20 in favor, two opposed, with ten absent.

Co-chair Tavares commented that the Commission needs to look at the constitution in a broader context, noting that there are provisions that negatively and disproportionately impact racial and ethnic communities. She added, where the law does so, the state needs to act to address it. She said “we need to represent all constituents and ensure the law is fair to all.”

#### **Executive Director’s Report:**

Co-chair Tavares then recognized Mr. Hollon for his report. Mr. Hollon noted that the legislative members had reappointed the 20 public members, and that he will be circulating a letter to the public members officially notifying them of their reappointment.

#### **New Business:**

Co-chair Tavares asked if anyone had new business for the Commission.

Ms. Abaray proposed that the Commission have a process that would allow it to request and hear presentations on reports and recommendations before voting on them. She said the Commission does not have the benefit of the information considered by the committees, so that it would be helpful to have direct presentations to the Commission. Co-chair Tavares indicated that if testimony is requested at the time a report and recommendation is subject to a first presentation, that request should be accepted. Sen. Coley noted that Commission members also may attend committee meetings as public spectators to hear presentations there.

#### **Adjournment:**

There being no further business to come before the Commission, the meeting adjourned at 12:00 p.m.

**Approval:**

The minutes of the January 14, 2016 meeting of the Commission were approved at the March 10, 2016 meeting of the Commission.

*/s/ Charleta Tavares*

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Co-chair  
Senator Charleta B. Tavares  
Assistant Minority Leader

*/s/ Ron Amstutz*

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Co-chair  
Representative Ron Amstutz  
Speaker Pro Tempore