

OCMC: Witnesses Argue For Maintaining 'Thorough And Efficient' Education Language

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The Ohio Constitutional Modernization Commission panel charged with reviewing the education portion of the document got schooled Thursday on the history and arguments for maintaining the "thorough and efficient" language.

The Education, Public Institutions, & Miscellaneous and Local Government Committee heard from three witnesses on the subject, chief among which was Charlie Wilson, associate professor emeritus of law at Ohio State University's Moritz College of Law.

Mr. Wilson delved into his historical research into the drafting of Article VI of the Ohio Constitution, which is where a requirement for a "thorough and efficient" system of schools lies. That language was in part why the Ohio Supreme Court deemed the state's school funding system unconstitutional in the *DeRolph* case.

The speaker also provided two different draft options for updating Article VI, Section 2, both of which maintain the terms in question.

At its last meeting in March, the committee had debated whether to remove "thorough and efficient" from the document at the recommendation of Chairman Chad Readler. (See [Gongwer Ohio Report, April 10, 2014](#))

The proposal ignited an outpouring of opposition. (See [Gongwer Ohio Report, May 2, 2014](#))

Among Mr. Readler's arguments for removing the words was a question of whether they still have the same meaning today as when the drafters added them to the document and whether the state should be allowing the judicial branch to set education policy.

To the latter argument, Chairman Readler asked the speaker if it was the intention of the framers to allow Supreme Court justices to set the level of education funding for the state.

"This is one of the issues I've struggled with, which is what is the right role of the courts," he said. "Of course we know in recent history it was used to essentially set education policy."

Mr. Wilson said in 1803, it was the role of the judiciary to review the enactments of the legislature to determine if they satisfied the standards set out in the constitution. In 1851 when the constitution was updated, judicial review was not as well developed as it is today. He said the drafters of the federal constitution made it clear, however, that the judiciary is a co-equal branch.

"The notion of taking the judiciary out of the system opens the door to more deprivals of liberty, tyranny and so forth," he said. "I think it's even a stronger case in Ohio where actually our judiciary is currently responsive and accountable to the electorate. It's not like the federal system where once you're appointed, you've got it for a lifetime."

Mr. Readler said, however, questions such as the amount of funding and size of classes are much more difficult questions for courts to answer.

He said, for example, charter schools receive fewer dollars than district ones do because they lack access to property tax money. He asked if the question of funding for those schools would be a one for the courts, to which Mr. Wilson said it would be a proper question for justices to entertain.

As to the history of "thorough and efficient," the speaker said 14 state constitutions require they have either an efficient or thorough system or both. Six states including Ohio require both.

"No state, according to my research, has ever deleted the phrase thorough or efficient from its state constitution since first adopting it," he said.

The associate professor said he believes the terminology originated from a report from Calvin Stowe - husband to abolitionist Harriet Beecher Stowe - who was commissioned by Ohio's General Assembly to study European systems of education and to recommend changes for the state.

Among the themes in Mr. Stowe's report was the thorough nature of the European system, by which he meant its "great completeness," Mr. Wilson said. He also touched on the "efficiency or effectiveness" with which it achieved its goals.

Dictionaries from both 1848 and 2012 provide for the same definitions of those terms, the speaker said. Thorough means "complete" and efficient was "producing the desired results."

Former Gov. Bob Taft asked if efficient really meant "effective" or if it is more like today's meaning including "without waste." Mr. Wilson said Calvin Stowe used the terms efficient and effective interchangeably but did comment on how little waste there was in the European system.

When Ohio adopted a call for a "thorough and efficient" system of schools in Article VI, Section 2 of its constitution, its purpose was to eliminate a patchwork of diverse schools into a "common" - or universal - school approach, he said.

Committee member Edward Gilbert asked if the constitution's language requires schools in East Cleveland to be equivalent to schools in Upper Arlington in terms of budgeting, control, and general teaching methods.

Mr. Wilson said a New Jersey court case held the phrase "thorough and efficient" in its constitution reflects an intent that education is a fundamental right and that schools must be equivalent in terms of opportunities afforded to all children in that state.

The Ohio Supreme Court, however, dealt with the clause three times but has never expressly held that there is a "fundamental right" to education in the state. Some justices have expressed

that as a personal opinion, Mr. Wilson said, adding he cannot imagine that there is anything more fundamental from a state standpoint than to ensure children receive an education.

Maureen Reedy, a founder of Ohio Friends of Public Education, said her group is "alarmed" by the potential removal of the "thorough and efficient" language, which she said could result in the elimination of equitable funding and sustainable supports for all students.

She said the group expects lawmakers to support equitable educational opportunities for all children and to provide public tax dollars for supporting academic progress and the development of social-emotional abilities in school.

"We find today this isn't the state of affairs in Ohio's Statehouse," she said. "Thorough and efficient does not describe the current educational funding practices and policy trends coming out of Ohio's Statehouse."

Ms. Reedy said this is evidenced by the third-grade reading guarantee's "simplistic" approach to improving literacy and the requirements on young students for tests in music and art.

She questioned if it is in the best interest of Ohio's children to leave their education up to a legislature "unbridled and unchecked." She referred to one the legislature's responses to the *DeRolph* decision as "writing blank checks to ineffective charter schools."

"When the FBI investigates charter school operations and record number of charter schools are closing their doors mid-year, the words 'thorough and efficient' do not come to mind," Ms. Reedy said, also referring to district school "scrubbing" scandals as further evidence the constitution's described system is not in place.

Stephen Dyer, education policy fellow with Innovation Ohio, said removing the thorough and efficient clause is "the single greatest threat to public education that I've seen in working on this stuff."

He said if the language is going to be eliminated, it should be replaced with something stronger.

Early Education: Mr. Wilson detailed research on the impact of early childhood education on future learning and economic success.

"The evidence is unassailable that high quality...pre-kindergarten programs produce dramatic both short-term and long term educational, social, emotional and economic benefits," he said.

There remains, however, racial and socio-economic disparity in access.

"This disparity results in an extremely significant discrepancy in school readiness and it also results in a virtually insurmountable achievement gap as early as kindergarten," the witness said. "Those who begin behind tend to almost always stay behind or fall even farther behind."

Meanwhile the research also shows that all children benefit from early childhood education.

"It would be incumbent upon this committee to at least consider the issue of including a right to preschool education in the constitution," Mr. Wilson said.

Recommendations: Associate Professor Wilson provided the committee with two different drafts of potential language to update the "thorough and efficient" section of the constitution.

For [the first](#), he said he borrowed from Florida in drafting an alternative version of the paragraph based on the input of Mr. Gilbert several months ago. It starts by saying "education being a fundamental right...."

It also adds to the requirement for a thorough and efficient system the terms "safe, secure, equitable and uniformly high-quality," and says a "high-quality education" shall include a "system of early childhood education designed to assure that the children of Ohio have basic school-readiness skills."

Mr. Gilbert said he thinks the proposal is an improvement over the current system.

[Rep. Vernon Sykes](#) (D-Akron) asked if the recommendation for early education to assure "school-readiness skills" is an adequate substitute for what has been typically referred to as "high quality" early childhood. Mr. Wilson said he thinks it is acceptable because the most important conclusion of the research is that children must be ready to learn on the first day of kindergarten.

Member Paula Brooks asked why the term "basic" is included to describe school readiness skills. Mr. Wilson said he has no problem removing that term as it might "undercut" the recommendation for "high quality" education.

Mr. Wilson's [second proposal](#) for changing the article, drafted based on his own opinions, has four parts. It maintains the current language on thorough and efficient.

A new portion "sets a standard" by saying, "Education being a fundamental right, the General Assembly shall fund and provide by law for the organization, administration and control of a uniformly high-quality public school system designed to prepare Ohio's people to function effectively as citizens."

It also adds a requirement to provide by law a high-quality, equitable early childhood education system to assure "basic school-readiness skills."

Another addition calls for public fund-supported schools to be governed by a board of education elected by electors with the ability to determine the size of a board left up to a referendum vote. It also says provision will be made by law for the exercise of local control.

[Sen. Tom Sawyer](#) (D-Akron) said he thinks the last portion on school boards sounds more like statute than constitutional language.

Member Larry Macon said he likes the first draft better because it speaks to equity in the entire system, not just in early childhood as the second version seems to suggest.

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