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Senator Bob Peterson
Senate Building
1 Capitol Square, 1st Floor
Columbus, Ohio 43215

RE: Ohio Constitutional Modernization Commission

Dear Sen. Peterson:

As a member of the Ohio Constitutional Modernization Commission, I am sure you are aware of recent recommendations involving the grand jury process in the state of Ohio. I am writing to you in opposition of these recommendations and to share my thoughts on these issues as an elected prosecutor in this state.

For the past 23 years, I have worked at the Pickaway County Prosecutor's Office. For the past 11 years, I have had the honor to serve as the Pickaway County Prosecuting Attorney. The grand jury process has not changed in the 23 years I have worked in the office, nor has it changed in the more than 200 years that this country has existed.

The Ohio Rules of Professional Conduct say this about Prosecutors:

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall not do any of the following:

(a) pursue or prosecute a charge that the prosecutor knows is not supported by probable cause;

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded justice and that guilt is decided upon the basis of sufficient evidence.

Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4. A prosecutor also is subject to other applicable rules such as Rules 3.6, 4.2, 4.3, 5.1, and 5.3.

As prosecutors in the state of Ohio, it is our job “to seek justice”. It is not our job to try to indict an individual because of our like or dislike for the person. It is not our job to try to indict a person because of race, color, creed or religion. Seeking justice is a duty my staff and I take very seriously, as do my colleagues across the state.

The Judicial Branch and Administration of Justice Committee of the Ohio Constitutional Modernization Commission has recommended two changes to the Ohio Constitution that are both ill-advised and poorly conceived. First, the Commission recommends an independent counsel be appointed to advise members of the grand jury. Historically, this is the prosecutor’s job. To indicate that an independent counsel is needed is a direct attack on each and every one of us who has taken the oath of office to uphold the Constitutions of the United States and the State of Ohio. As stated above, it is our duty, under the law, to seek justice, not to bring charges where there is no evidence to support them.

The grand jury process is not broken and does not need to be fixed. While there have been grand jury decisions across the country that have not been popular with everyone, there is no reason to disrupt a centuries old system because some individuals are unhappy with the outcome of a particular case.

There are numerous reasons not to have independent counsel:

1. Someone would have to foot the bill for the person who would make up the independent counsel. Who is going to pay for this plan of action? Will it be the State of Ohio or will it be yet another unfunded mandate?
2. Will this person be appointed or elected? If they are appointed, who would make that appointment?
3. An advisor should be an attorney. Further, it should be someone who has knowledge of criminal law. That means it should be a criminal attorney. In this county, we have four public defenders, three of whom do not reside in this county. Additionally, in any case that a criminal attorney served as an advisor, he or she would have an immediate conflict and would be unable to represent the defendant.
4. Prosecutors are required to seek justice. Defense attorneys have a duty to zealously represent their clients. The duty is totally different between the two. In fact, due to this difference, it is conceivable that an “independent advisor” would give bad advice and a case would be improperly dismissed by the grand jury.
5. There is also the possibility the prosecutor and the independent advisor will fail to agree on how to advise the grand jury. Someone would need to decipher the law and make a determination, but who would that be? Would that opinion/decision be appealable?

The second issue surrounds allowing the accused to have a record of the grand jury testimony of any witness who is also going to be called at trial. This smacks the face of the entire grand jury

process. One of the most important parts of the grand jury system is the secret nature of the proceedings. Grand jurors are given instruction to not discuss the cases outside the of grand jury room. They are told that they are anonymous and that their identities will not be revealed. We ask victims to testify at grand jury where they know that their safety is assured. I anticipate much less cooperation from victims and witnesses if they know their testimony is going to be turned over to the defense.

Additionally, there is already a mechanism in place to take this into account. Any defendant can petition the court for grand jury testimony. *See CrimR 6*. There is no need to change this portion of the Constitution.

Finally, I want to say that this is one of the most catastrophic things that could happen to our criminal justice system. Only one state in the Union addresses grand jury in this manner-Hawaii. There is a reason the other 49 states have chosen not to follow these guidelines. Do not let the voice of a few unhappy people dictate a procedure that seriously corrupts the integrity of the grand jury system. I strongly encourage you to do everything in your power to keep these changes away from the Ohio Constitution.

Sincerely,



Judy C. Wolford

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