



OHIO STATE BAR
ASSOCIATION
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March 8, 2017

Janet Gilligan Abaray, Esq.
Burg Simpson Eldredge Hersh & Jardine
312 Walnut Street, Ste. 2090
Cincinnati, OH 45202

Dear Ms. Abaray:

As the voice of 28,000 members of the bar and bench, the Ohio State Bar Association (OSBA) has a long history of defending the efficient and effective administration of justice in Ohio by promoting consistent rules of practice and procedure. And when it comes to the operation of Ohio's courts and judicial rulemaking authority, we believe strongly in maintaining the proper balance of power between the Supreme Court of Ohio and the Ohio General Assembly. That is why I write to register our opposition to the proposed amendment to Article IV §5(B) of the Ohio Constitution submitted to the Ohio Constitutional Modernization Commission by attorneys Mark D. Wagoner, Jr. and Richard S. Walinski.

Though well intentioned, we are concerned that the amendment, as proposed, would effectively shift rulemaking authority from the Supreme Court of Ohio to the Ohio General Assembly. This would erode the authority of the Court as envisioned in the state constitution, as well as the critical balance achieved by the Modern Courts Amendment of 1968.

In his letter of January 10, 2017, Supreme Court of Ohio Administrative Director Michael L. Buenger provides outstanding historical context surrounding the adoption of the Modern Courts Amendment, as well as the many years of deliberation and work that informed the final product. The OSBA played a critical role in its development and maintains that our current system, whereby the Supreme Court of Ohio, relying on the expertise and experience of those who regularly use and administer the courts, promulgates the rules, while the General Assembly reserves (in essence) veto authority over those rules, has served us well for nearly 50 years.

We concur with Mr. Buenger in his conclusion: *"The General Assembly is certainly the proper entity to address substantive rights within the bounds of our state and federal constitutions. However, the task of establishing practice is, as it was when the Modern Courts Amendment was adopted, best left to the courts if the goal is to maintain a cohesive, reasonable and generally applicable system of rules."*

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The OSBA supports the open and deliberative process the Supreme Court has established to review, alter and propose new rules and does not see a compelling reason to change it, especially through an amendment to the constitution that can have such far-reaching consequences.

If we can provide additional information or input as you continue to review this and other proposals, please contact me or OSBA's Director of Policy and Government Affairs, Todd Book.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Kopp". The signature is fluid and cursive, with the first name "Ronald" being more prominent than the last name "Kopp".

Ronald Kopp
President

cc: Richard S. Walinski, Esq.
Mark D. Wagoner, Jr., Esq.
Michael L. Buenger, Esq.