

The Supreme Court of Ohio

Presentation before the

Ohio Constitutional Modernization Commission

Judicial Branch & Administration of Justice Committee

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Chair Abaray and Vice-Chair Fischer,

Thank you for inviting me to address the Committee regarding two sections, Sections 19 and 22, of Article IV of the Ohio Constitution. These sections, which allow the establishment of a Supreme Court Commission and courts of conciliation, have been a part of the Ohio Constitution since the mid-1800s. Section 19, regarding courts of conciliation, has, to my knowledge, never been invoked by the Ohio General Assembly. Section 22, allowing for the establishment of a Supreme Court Commission, has been used twice, once from 1876-1879 and again from 1883-1885. The two sections are obsolete and should be removed from the Ohio Constitution.

Section 19 of Article IV, which allows the General Assembly to establish “courts of conciliation”, was adopted into the 1851 Constitution. The purpose was to try and alleviate a significant backlog of cases in the Ohio judicial system, which by most accounts, operated fairly inefficiently in early Ohio history. Prior to this amendment, disputes were either settled privately or by suit. This created a large number of cases in the court system and the processing of those cases took significant time. The General Assembly, however, has never created a court of conciliation. Alternatively, the General Assembly has passed laws that allow for arbitration proceedings and private judges. In recent years, mediation as an alternative dispute resolution method has also assisted in docket management for courts.

It should also be remembered that in 1851 when this amendment was adopted, the Supreme Court did not have any superintendent authority over courts in Ohio. Under Article IV, Section 5 of the Ohio Constitution, adopted in 1968, the Court now has the ability to assist local courts in determining if there is a docket management issue for that court and how best to fix it. It seems unlikely, given the current structure of the judicial branch, that courts of conciliation would be necessary in Ohio.

Section 22 of Article IV allows the Governor, with the advice and consent of the Senate, to establish a Supreme Court Commission to dispose of cases on the Supreme Court’s docket. This section, adopted in 1875, was again intended to relieve a serious

backlog in cases pending before the Supreme Court. In practice, the section essentially allows for two Supreme Courts to be operating simultaneously.

Under Ohio's 1802 Constitution, the Supreme Court operated as an appellate court and as a court of original jurisdiction in a wide variety of cases. In addition, justices were required to ride the circuit and hold court in each county annually. Such a requirement in 1803 was not onerous – Ohio had only 9 counties; however, by 1850, Ohio had 87 counties. In addition, rapid population growth resulted in greater caseloads.

The 1851 Constitution attempted to alleviate some of this pressure on the judicial branch. Under amendments adopted, the Supreme Court essentially became a court of last resort with original jurisdiction only in habeas and special writs. Also established were nine district courts which acted as intermediate courts of appeal. Unfortunately, the district courts were not effective. They were comprised of one Supreme Court judge and all the common pleas judges of the district but there was no mandate that the Supreme Court judge had to sit on the panel so they would often not participate, focusing instead on the Supreme Court's cases. Common Pleas judges had busy dockets of their own, and people lost faith in the district court process. The result was that these courts became a mere layover for cases before moving on to the Supreme Court.

By the time Section 22 was adopted after the Constitutional Convention of 1873-1874, the Supreme Court was four years behind in its caseload. The first Commission was enacted in 1876, immediately following the amendment's adoption, and existed for three years. Another Commission was established in 1883 for two years. Since that time, no Supreme Court Commission has been established by the Governor. As noted earlier, the need for such a drastic docket management tool no longer exists. In 2013, 2,055 new cases were filed, a .9 percent decrease from the number filed in 2012. That was the fifth consecutive year in which the Court saw a decline from the previous year in the number of new cases filed. The Court's case clearance rate was 99 percent in 2013.

Thank you again for the opportunity to provide the Committee with information regarding these two sections. Both provisions are anachronistic and should be removed from the Ohio Constitution. I'm happy to answer any questions the Committee may have.