

**Outline of Comments by William K. Weisenberg
Before the Ohio Constitutional Modernization Commission Judicial Branch &
Administration of Justice Committee
July 11, 2013**

- I) Reference to Ohio Constitutional Revision Commission - Recommendations for Amendments to the Ohio Constitution, Part 10, Judiciary, March 15, 1976
- Summary of Recommendations
 - Cleveland Marshall College of Law Table of Proposed Ohio Constitutional Amendments and Votes
 - None of the proposals recommended by the Constitutional Revision Commission were submitted by the Ohio General Assembly to the voters. There did not appear to be a groundswell of support in the General Assembly for any of the proposals.

II) Merit Selection – Appointive-Elective

- A proposal to adopt a merit selection plan for the Supreme Court and the courts of appeals, with an option for the courts of common pleas to be determined by the voters of the county, received only 15 of the necessary 22 votes required to receive a Constitutional Revision Commission recommendation. A “Minority Report” on an “Appointive-Elective Method of Judicial Selection” is included in the March 15, 1976 report. Due to the lack of receiving the required votes, an appointive-election method of judicial selection was not forwarded to the General Assembly as a recommendation.

III) Unified Trial Court System

- A proposal that “the salaries of all judges and expenses of the judicial department be paid from the state general fund and that there shall be a

unified judicial budget “was recommended by the Constitutional Revision Commission, but not recommended by the General Assembly.”

- The subject of a unified judicial budget was revisited by the Ohio Courts Future Commission established by the late chief justice Thomas J. Moyer. There was significant resistance to such a proposal from members of the judiciary who referred to it as a “Columbus take-over” of the judicial system with everything coming from the top down, and thus a loss of local discretion in the manner of budgeting and administrative oversight and management of county level courts.
- The focus of the discussion on court unification addresses the elements of consolidation, centralization, and empowerment. For years, this was the underlying basis for court unification efforts. Today, the focus is on “high-performing” courts. It is recommended that the Supreme Court of Ohio address this subject and that the National Center for State Courts be utilized as a resource for the national perspective on this issue. The website ncsc.org is an invaluable tool.

IV) Merit Selection in Ohio

- 1938 - Merit Plan defeated at polls by 2 to 1 ratio.
- 1970’s - failure to get sufficient signatures to place issue on ballot.
- 1987 - Issue 3 - opposed by both major political parties and labor. Defeated once again by 2 to 1 margin.
- The opponents’ lead commercial and slogan was difficult to overcome and sealed the defeat - “Don’t let them take away your right to vote.” Picture a voting book with chains around it! Very compelling!!
- Merit selection has not progressed in the last 25 years, with only New Mexico and Utah adopting it statewide during this time period. A few states have witnessed local/county elections adopting it as an option. What we have seen

are attempts to modify merit selection in Iowa, Florida, Tennessee, and Missouri, and contentious retention elections in Iowa (defeat of three Supreme Court justices) and Florida where they were retained.

- Merit selection (appointive-elective system) is under attack as some states seek to modify their system in order to give appointing authorities (governors) more discretion in appointments and dilutes the authority of nominating commissions.
- For specific information on judicial selection in the states, it is recommended that the American Judicature Society be utilized as a resource. Their website at ajs.org contains excellent information.

V) Court Funding

- Courts throughout the country experienced major cutbacks in funding during the recent recession, leading to furloughs of employees, not filling judicial vacancies, reduced hours, and in the state of New Hampshire, a suspension of civil jury trials. Ohio has its share of cutbacks as courts have reduced hours of operation (clerks' offices), insufficient funds to mail notices (Holmes County) and no paper for copying (Morrow County). The Supreme Court of Ohio, through Chief Justice Maureen O'Connor established a Task Force on Funding of Ohio Courts to gather information on sources and amounts of revenue and expenditures. Ohio is somewhat unique in its mechanism for court funding with counties and municipalities dependent on local/county dollars for operational costs. This results in great disparity between counties as funding depends upon many variables, including the local tax base and revenues. It is not uncommon to hear the courts referred to as just another agency as distinguished from a separate, co-equal branch of government. I am certain you will hear more about court funding when the administrative staff of the Supreme Court of Ohio appears as a resource for the Modernization Commission.

VI) A Proposal for Strengthening Judicial Elections.

An eight-point proposal of Supreme Court of Ohio Chief Justice Maureen O'Connor framed in the form of a series of questions designed to invite a conversation on the subject matter.

You will be hearing from Chief Justice O'Connor at your August 9, 2013 Commission Meeting. My comments are directed at which proposals, if any, require a statutory or constitutional change.

- 1) Should Ohio change the law so judicial races are no longer listed at the end of the ballot? This would require a statutory change as ballot order is prescribed in Ohio Revised Code sections 3503.03 and 3503.04.
- 2) Should all judicial elections be held in odd-numbered years? This would require an amendment to Article XVII, section 1 of the Ohio Constitution.
- 3) Should Ohio centralize and expand its civic education programming and institute a judicial voter guide? With regard to civic education, a statutory requirement is likely as education policy, including core subject matter, is addressed by the General Assembly. If, as the surveys and studies suggest, our citizens are falling short in basic civics including the proper identification of the three branches of government, civic education should be a high priority. Some may think it humorous, but when polling shows that a high percentage of citizens identify the branches as Democrat, Republican, and Independent, we have a problem. Voter guides can be initiated administratively in collaboration with governmental and interested parties, *e.g.*, bar associations, the League of Women Voters of Ohio, the Supreme Court and Secretary of State.

- 4) Should Ohio eliminate party affiliation on the ballot in judicial primaries?
This requires a statutory change.
- 5) Should Ohio join the other states that have a formal non-partisan system for recommending nominees to the Governor to fill judicial vacancies? Article IV, section 13 of the Ohio Constitution addresses the subject of filling judicial vacancies and places this authority with the Governor. A constitutional change would be required if the Governor was mandated to select a person from a list provided by a nominating commission, but there may be a question if the list was advisory only and the Governor was not required to select from the list submitted. Further analysis of this issue is required.
- 6) Should appointments to the Ohio Supreme Court require the advice and consent of the Ohio Senate? This would require an amendment to the Ohio Constitution.
- 7) Should Ohio increase the basic qualification for serving as a judge? This is statutory. There have been several bills introduced in the past decade in the General Assembly to increase the minimum qualifications. None have been enacted.
- 8) Should Ohio increase the length of judges' terms? Article IV provides "terms of not less than six years" for the Supreme Court, Court of Appeals, and Common Pleas. Thus, the General Assembly could statutorily increase the length of judges' terms.

VII) General Discussion

During the course of our conversation we talked about a variety of subjects pertaining to judicial selection and court funding. The Commission is very

interested in a presentation from the Supreme Court on the structure of Ohio's court system. Representatives of the Supreme Court will be invited to appear before this Committee.

Committee member Richard Walinski raised a very poignant question with regard to the creation of specialized dockets in the common pleas courts and where the authority lies for the creation/establishment of such dockets as distinguished from the creation of divisions, historically within the jurisdiction of the General Assembly. A discussion of the superintendence authority of the Supreme Court set forth in Article IV of the Ohio Constitution set the stage for future discussion on this subject. Representatives of the Supreme Court briefly addressed this in general terms. The Commission will no doubt have this on the agenda in future meetings

I thoroughly enjoyed my conversation with the Committee and stand ready to assist the Committee as it continues in examination of this important subject matter.

Respectfully Submitted,

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