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Janet Abaray
Chair, Judicial Branch and Administration of Justice Committee
Ohio Constitutional Modernization Commission
77 South High Street, 24th Floor
Columbus, Ohio 43215

Re: Grand Jury Independent Counsel

Dear Chairwoman Abaray,

I am aware of the proposal to amend Article 1, Section 10 of the Ohio Constitution to require the appointment of an independent counsel to advise the members of the grand jury. I have also reviewed the positions of the Ohio Judicial Conference and the Ohio Prosecuting Attorneys Association. I am opposed to the proposed amendment.

The addition of an Independent Counsel is a fundamental change in the structure of the grand jury in Ohio. The Ohio Prosecuting Attorneys Association and the Ohio Judicial Conference have set forth a number of problems with this proposal. The proposal creates additional expense and may intrude on the role of the Prosecuting Attorney and the Court. Further, the Supreme Court's Task Force to Examine Improvements to the Ohio Grand Jury System did not contain the independent counsel proposal in its recommendations. Rather, the recommendations indicate a belief that amending the Ohio Jury Instructions to emphasize the grand jury's independence and by providing jurors with a written copy of the judge's instructions would improve the process.

Ohio Revised Code 2939.10 specifically empowers the Prosecuting Attorney to provide "advice upon a legal matter when required" to the grand jury. In most cases, this is sufficient. If the grand jury desires additional instruction they can always request instructions from the Court. I believe this is preferable to inserting a third party who could discourage a grand jury from seeking guidance from the Court.

Thank you. If you have additional questions about my position, please feel free to contact my office at any time.

Very respectfully yours,

Mike DeWine
Ohio Attorney General