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Wagoner and Walinski Co-Author Article on Ohio's Modern Court Amendment

TOLEDO, OH – Mark Wagoner and Richard Walinski have co-authored an article published today in the *Cleveland State Law Review* that proposes amending Art. IV, § 5(B) of the Ohio Constitution to fill a void that has existed since the Modern Courts Amendment was adopted in 1968. The Amendment left unanswered whether the Supreme Court of Ohio's authority to write rules of practice and procedure for Ohio courts is shared to any extent with the legislature, as it is in the federal system and in 80% of the other states.

The answer to that question has been a lasting and troublesome uncertainty. It has spawned dozens of cases before the Supreme Court of Ohio. The court has generated two diametrically opposite answers. One holds that the court's authority over rulemaking is exclusive and that General Assembly has no further role on a matter of practice and procedure after the court has promulgated a rule. The other holds that the Ohio General Assembly may enact legislation that contradicts and overrides a court-promulgated rule if the legislature simply converts a procedural matter into a right. Both interpretations remain controlling law in Ohio. As propositions of law, however, they cannot both be true.

What makes the question so difficult is that neither interpretation rests on a convincing textual analysis of the sparsely worded Modern Courts Amendment. In fact, there is no textual foundation either in Art. IV, § 5(B) or elsewhere in the constitution from which to deduce a definitive resolution of the uncertainty.

Their article proposes a solution. It can found at *Ohio's Modern Courts Amendment Must Be Amended: Why and How*, 66 Cleve. St. L. Rev. 69 (2017).

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former Ohio State Senator. While in the Ohio Senate, Mr. Wagoner chaired the Senate Judiciary Committee. Richard Walinski, a civil trial lawyer, is counsel to Thacker, Robinson and Zinz. He was chief counsel to two Ohio Attorneys General and served as chair of the Ohio Supreme Court's Rules Advisory Committee. Both were members of the Ohio Constitutional Modernization Commission. In their various capacities, each has dealt with Ohio's Modern Courts Amendment, most often with the Supreme Court of Ohio's exercise of authority to promulgate rules of practice and procedure.