

**STATEMENT OF STEPHEN W. FUNK
IN SUPPORT OF H.B. 218**

Good Morning, Chairman Blessing and Ranking Member Clyde, and the other members of the House Government Accountability and Oversight Committee. Thank you for the opportunity to present my statement today in support of House Bill No. 218.

My name is Stephen W. Funk, and I am a partner at the law firm of Roetzel & Andress, where I practice in the areas of business and public law litigation with special emphasis on appellate law, local government law, constitutional law, and land use and zoning law. In this regard, I was one of the attorneys who litigated the Ohio Supreme Court case, *State ex rel. Chester Township v. Grendell*, which was decided in April 2016 and which relates to the subject matter of H.B. 218. I am not representing any client today, however, but am here to testify only in my capacity as a citizen and as an attorney who has direct experience in litigating important legal issues relating to the scope of probate court jurisdiction over park districts. I am here voluntarily. I am not being paid for my testimony today, and speak only on behalf of myself.

As you know, H.B. 218 seeks to provide some much needed clarity to the scope of a probate court's jurisdiction over township park districts that have been created under Ohio Revised Code 1545. In general, probate courts are courts of limited jurisdiction that may exercise jurisdiction over a particular matter only if it granted to them by statute or by the Ohio Constitution. Here, Ohio Revised Code Chapter 1545 explicitly grants a probate court with authority to create park districts and to dissolve park districts, and to appoint and to remove park-district commissioners. The statute is largely silent, however, on the scope of a probate court's jurisdiction over the operations of a park district after it has been created, and thus there is a

significant confusion over whether a probate court has the authority to take corrective action if a park district created by a probate court is not operating in accordance with Ohio law.

In this regard, the responsibility to ensure that park districts operate in accordance with Ohio law largely falls upon probate courts because, as the Ohio Supreme Court explained in the *State ex rel. Chester Twp.* case, there is no court or agency that has been granted jurisdiction over township park districts, other than probate courts. In *State ex rel. Chester Twp.*, the issue presented was whether the Geauga County Probate Court lacked the jurisdiction to appoint a special master commissioner to investigate a complaint relating to the operation of the Chester Township Park District that had been created by the probate court in 1984. The purpose of the investigation was to determine whether the park district was operated properly and independently in accordance with the purposes of R.C. Chapter 1545 and the original 1984 judgment entry that created the park district.

Now, it is well established that probate judges have the general statutory authority to appoint master commissioners under R.C. 2101.06 and can tax the costs of the master commissioner to the parties. In *State ex rel. Chester Twp.*, however, the Chester Township Trustees argued that the Probate Court lacked jurisdiction to appoint a master commissioner because there was nothing in R.C. Chapter 1545 that *explicitly* granted authority to the appoint a master commissioner to investigate the operations of a park district. Moreover, the Chester Township Trustees argued that the probate court lacked the jurisdiction to grant any relief because the Township Trustees (which originally petitioned to create the Chester Township Park District) were no longer parties to the probate court action.

Upon review, the Ohio Supreme Court ultimately ruled in *State ex rel. Chester Twp.* that probate courts “have the *inherent authority* to investigate the operations of park districts” that they created in order to determine whether “the park-district commissioners are properly exercising their authority” under Ohio law. Moreover, the Court held that “probate courts have plenary power to ‘dispose of any matter that is properly before the court,’” and thus the Geauga County Probate Court had the continuing jurisdiction “to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district’s purposes.” Thus, in *State ex rel. Chester Twp.*, the Ohio Supreme Court held that the Geauga County Probate Court did not lack the jurisdiction to appoint a special master commissioner to investigate the operations of the park district and did not lack the jurisdiction to issue orders attempting to correct activities by the Chester Township Trustees that frustrated the purpose of the original probate court order creating the park district.

This Supreme Court decision was rendered in 2016 and established new legal precedent that helped to clarify at least *some* of the ambiguity that exists in Chapter 1545. In many respects, however, it actually revealed that there still remains significant ambiguity in the existing statutory scheme that should be corrected, if possible, by the General Assembly who, after all, created Chapter 1545 and are in the best position to define the scope of a probate court’s jurisdiction. Indeed, the need for legislative clarity recently became even more clear this year because, notwithstanding the Supreme Court’s opinion, the Eleventh District recently issued an opinion on May 30, 2017, that significantly *limited* the scope of probate court jurisdiction over park districts.

In the case, *In the Matter of the Creation of a Park District Within Chester Township*, 2016-G-0082, the Eleventh District reversed and vacated certain orders of the Geauga County Probate Court for lack of jurisdiction. Even though the Ohio Supreme Court held that probate courts “have the inherent authority to investigate the operations of park districts” and to issue orders “attempting to correct activities by the park-district commissioners and the township trustees that frustrate the purpose of the original probate court order creating the park district,” the Eleventh District nevertheless held that the probate court’s continuing jurisdiction over a statutorily-created park district is limited only to the “court’s power to appoint and remove” park district commissioners, and that probate courts lack a “general supervisory power over park district matters” and lack the jurisdiction over any party “other than the park district’s board of commissioners.” Thus, the Eleventh District held that the Geauga County Probate Court lacked the jurisdiction to issue any orders that attempted to correct certain activities taken by the Chester Township Trustees that frustrated the purpose of the original judgment entry that created the park district. Rather, the Eleventh District held that, other than the removal of the park district commissioners, the Probate Court lacked the jurisdiction to take *any* corrective action and specifically lacked the jurisdiction to issue any orders that exercised any jurisdiction over the township trustees.

The net result is that the statutory ambiguity that was clarified, at least in part, by the Ohio Supreme Court’s decision, and has now only been significantly worsened and only further demonstrates the need for legislative action. Indeed, while I think that the Ohio Supreme Court greatly assisted in clarifying *some* of the statutory ambiguity, the fact remains that it is the General Assembly that has the authority, as the legislative body, to define the scope of the

jurisdiction granted by statute. By adopting H.B. 218, the General Assembly can significantly aid both probate courts and probate court practitioners throughout the State by clarifying the scope of probate court jurisdiction over park districts. In particular, H.B. 218 seeks to clarify that probate courts have the jurisdiction to:

- (1) Enforce the court's order that created the park district;
- (2) Issue an Order compelling compliance with the statutory requirements that govern park districts under R.C. Chapter 1545.
- (3) Investigate matters involving park districts either through a court hearing or a special master commissioner, but *only if* a written request is made to the court by a majority of the board of park commissioners; and
- (4) Tax the costs of the proceedings in the same manner as other court costs.

Importantly, however, H.B. 218 not only adds clarity to the scope of a probate court's jurisdiction, it also imposes *new* limitations on the scope of a probate court's jurisdiction that should allay any legislative concerns about any potential expansion of a probate court's powers:

- (1) First, H.B. 218 contains language that provides that the probate court must give prior notice to any person or party affected by the action and shall conduct a hearing, if requested, before taking any action.
- (2) Second, if a person or entity's participation in the proceedings is necessary to enable the court to decide the matter, H.B. 218 provides that the probate court first must provide notice of an intent to make the person a party and shall conduct a hearing prior to issuing an order if requested.
- (3) Third, H.B. 218 provides that the probate court shall not take any action that infringes upon the rights of an individual or organization that are protected by the United States or Ohio Constitution;
- (4) Fourth, H.B. 218 provides that a probate court shall not impede or interfere with the maintenance or operations of the park district *unless* such maintenance or operations are in violation of Chapter 1545 of the Ohio Revised Code or the Order of the Probate Court that created the park district; and
- (5) Finally, H.B. 218 provides that any actions taken by the probate court are limited to injunctive relief or declaratory judgment.

All in all, I think that H.B. 218 will significantly benefit the State of Ohio and assist both probate courts and affected parties by clarifying and defining the scope of a probate court's jurisdiction over statutorily-created park districts. By so doing, the General Assembly can ensure that probate courts can effectively carry out their statutory function of ensuring that park districts are both created and operated in a manner that complies with Ohio law and the purposes of R.C. Chapter 1545.

Thank you for the opportunity to address the Committee this morning, and I would be happy to answer any questions.