



State Representative Jim Butler
41st House District

House Bill 301 – Sponsor Testimony before the House Government Accountability & Oversight Committee; January 24, 2018

Chairman Blessing, Vice Chair Reineke, Ranking Member Clyde and members of the committee, thank you for the opportunity to offer sponsor testimony today for House Bill 301. Simply stated, this bill requires approval by the General Assembly for a state agency, or public official, to agree to a consent decree or a court-approved settlement agreement that would alter or prohibit the enforcement of Ohio Law. I am introducing this legislation because, unbeknownst to most of the public, and to many Members of this body, we currently face a threat to the separation of powers and our system of checks and balances. Please allow me to relay the experience that has brought this issue to my attention.

In House Bill 52 of the 131st General Assembly, a provision was included which would have made Ohio the first state in the country to require meaningful transparency in healthcare pricing, informally known as the Healthcare Price Transparency Law. This provision was carefully negotiated between the House, Senate, and the executive branch, received unanimous approval, and was signed into law in June of 2015, with an effective date of January 1, 2017. At the eleventh hour, in late December of 2016, a complaint was filed in the Williams County Court of Commons Pleas by several healthcare industry groups that sought a permanent injunction on the law, effectively repealing it. In their complaint, the healthcare industry plaintiffs stated that because the Ohio Department of Medicaid never adopted rules for implementation, even though the law expressly required the Department to do so by July 1, 2016, the law was unconstitutionally vague, and compliance would be impossible. Of course, as with many laws we pass, the rule making process related to the Healthcare Price Transparency Law was an important part of the law's implementation because technical issues and definitions were supposed to be hammered out there, after input from healthcare stakeholders. For example, rules would have defined "emergency" which the Transparency Law naturally exempts from the requirement to provide a good faith estimate.

The healthcare industry plaintiffs, working hand in glove with the Kasich Administration, have consistently sought to stop the remedy of the very problem about which they complain. On December 22, 2016, just nine days before the Price Transparency Law was set to go into effect, Healthcare Industry Plaintiffs filed a Motion for Temporary Restraining Order to "enjoin[] the State of Ohio and the Director of the Ohio Department of Medicaid **from taking any action to implement** or otherwise enforce R.C. 5162.80. (the Healthcare Price Transparency Law)". Of course, "Taking any action to implement" could only mean drafting rules because there was nothing else the law required the Director to do. Counsel for the Medicaid Director and the State of Ohio immediately agreed to the temporary injunction. The

Medicaid Director's agreement was not surprising given that the injunction simply reinforced the Kasich Administration's refusal to draft rules pursuant to the duly enacted law. If there was any doubt the Kasich Administration was working with the Healthcare Industry Plaintiffs to try to judicially repeal the law, the Kasich Administration later jointly proposed extending the injunction for more than six months so he could repeal the law in the budget, which he duly attempted in his introduced version of the 2017 budget bill.

This example, done so far on a temporary basis (although the law has been "temporarily" enjoined for more than a year now), can easily be done on a permanent one. Let me explain how and why that could happen in this particular case.

Just as the two sides in the lawsuit have worked together to make sure the Healthcare Price Transparency Law did not go into effect pursuant to the law, they will continue to work together to make sure the Healthcare Industry Plaintiffs win the case and the law be declared unconstitutional. The Kasich Administration is currently doing that in the lawsuit by stating they are defending the law, while actually doing next to nothing in the lawsuit in terms of gathering documents, getting witnesses, etc. After they lose in the trial court, their plan will be to not appeal the case and let the law be repealed. However, I have filed a Motion to Intervene in the case, which, if ultimately successful, will allow the case to be fully argued and, if necessary, appealed.

If this happens, there is a strong possibility the Kasich Administration and Healthcare Industry Plaintiffs will "settle" the case with a consent decree. Indeed, I was informed that was the plan from the very start of the case. This "settlement" will certainly be accepted by the court and would have the effect of law, and be binding not just on this Administration, but all future ones.

While you might not be interested in this particular example, please know that this could happen in any circumstance, where the executive could unilaterally repeal or alter any law without any decision by the elected representatives of the people of Ohio. Imagine such a scenario unfolding in the future when the legislature is controlled by one party and the executive branch is held by the other. Do we really want a governor to be able to unilaterally circumvent the legislative process? I believe the peoples' duly elected lawmakers ought to have more say regarding what the law is or is not than a select few, possibly unelected individuals, potentially working together to the benefit of a particular special interest.

The Legislature is the peoples' branch of government. House Bill 301 will prevent the further erosion of the power and standing of this body, and it will ensure that the General Assembly, as representatives of the people, remains an equal partner in running our government as proclaimed in our Constitution. Mr. Chairman, thank you again for the opportunity to speak to House Bill 301. I would be happy to answer any questions the committee might have at this time.