

SB 108: REPEAL ORC 1.49

OPPONENT TESTIMONY 5-28-19

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, I'm here to explain my concerns about SB 108.

I have heard Sponsor testimony and heard your questions and concerns. And, I have read Interested Party testimony from the Senate hearing. This bill appears to me to be a solution looking for a problem. It also seems that the solution found a problem. However, the problem it found doesn't seem to be the one it was looking for.

First of all, let's acknowledge the irony of this bill. The **intent** is to stop "encouraging" courts to look at the **intent** of a bill when the language is unclear. This intent presumes two things.

One, it presumes the language is always clear. We know that is not the case and I'll give you some examples soon. The sponsor referred to canons for determining the meanings of words. However, a sentence or paragraph's meaning is more than the specific meanings of each word; it is also the combination of those words and the context in which they are used. *Therefore, courts can't rely simply on the "plain language."*

Second, the bill presumes that considering intent causes problems. However, the sponsor said he had no specific case in mind when he introduced this bill and its predecessor. He said he hadn't even been aware of 1.49 until students asked him about it. This provision is nearly 50 years old. If it was causing problems, it seems likely there would have been an attempt to repeal or amend it before the previous session. For my job and my personal advocacy issues, I have been closely following legislation for about 25 years and I don't recall any earlier attempts to change 1.49. Any such bill would have caught my eye because of its numerical similarity to 149.43 (the public records law) which was integral to my job. *Therefore, courts have apparently not misused their permission to consider intent.*

The sponsor raised the concern that the provision *could* cause problems, namely a court making an interpretation from incomplete information carefully selected to lead to their preferred conclusion. We all know that "legislating from the bench" is in the eye of the beholder. It is a good decision when we agree with it; it is "legislating" when we disagree with it.

If the problem is not that considering intent is unnecessary and/or misused, then what is the problem this bill has uncovered? Chairman Hambley, you said you looked for history of 1.49 and had trouble finding any. I have often had to do that kind of research and have too often come up empty-handed.

The sponsor said Ohio doesn't have the same depth of records about a bill that the federal government has. *This, then, appears to be the problem.*

In *White v. Clinton Co.*, in 1996, the Ohio Supreme Court had to interpret "full" minutes in ORC 305.10 and said that the Clinton Co. Board of Commissioners had to create more detailed minutes of its public meetings because the public has a right to know more than just the vote count on each issue. The court said the public has a right to "understand and appreciate the rationale behind the relevant public body's decision."

I realize the General Assembly has exempted itself from some of the sunshine laws but just because the state legislature is not required to keep more detailed records doesn't mean it can't or shouldn't. *This, then, appears to be the better solution: create more detailed records of discussions and deliberations on bills.*

I told you I had examples of the usefulness of considering intent when language is unclear. In 2010, the Columbus suburb of Hilliard enacted a primary-enforcement law to restrict texting while driving. When HB 99 got watered down from primary to secondary and was enacted in 2012, Hilliard interpreted a confusing section of that bill to mean they could not have their primary law. I explained that I was closely involved in that bill from before introduction through signing and I knew the **intent** of that provision was that local laws could differ from the state law. I cited *Plain Dealer v. Cleveland* in which the Ohio Supreme Court, in 2005, stated (based on a 2003 decision), "A court's preeminent concern in construing a statute is the legislative intent...reading undefined words and phrases in context..." In this way, we were able to save Hilliard's law and thus probably save some lives.

Before I retired as the records administrator for the Columbus suburb of Gahanna, the city was sued over interpretation of confusing language in the income tax code. One of the first things the City Attorney did was ask me for minutes of meetings in which that code section was discussed before being adopted. He needed to know what the City Council **intended** the section to mean.

Currently pending is HB 119 which the Legislative Services Commission requested, to clarify language in Sub. HB 95, passed last fall. The LSC staff member explained to the committee that the language did not convey what was actually **intended**.

In this committee's hearing May 21 on HB 209, Rep. Lanese, you spoke of the **intent** of the current law, in your question to a witness.

When sponsors give their testimony on their bills, they often speak of their **intended** goal for the bill.

We can see that intent and history are relevant and useful when (not *if*) language is not clear. The sponsor acknowledged that courts will continue to use intent and history when interpreting confusing language.

I think it is significant that neither the Senate's nor your committee had proponent testimony, and many of you had questions and concerns.

Rather than merely standing on principle by appearing not to "encourage" use of intent, I would prefer to see a workable solution to the actual problem: more detailed records of bill deliberations so history exists and intent can be determined, when needed.

Thank you for hearing my take on this bill. I am happy to answer any questions.

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