

Testimony of Bob Young
Why I See
before the
Ohio House Commerce & Labor Committee
in support of HB 219

Thank you Madam Chair, Vice Chair Dean, Ranking Member Lepore-Hagan and members of the House Commerce and Labor Committee. My name is Bob Young, and my company, Why I See, established in 2000, is the largest provider of local-option campaigns going back through 2013. We've placed more issues on the election ballot and run more successful campaigns than any other company for seven years running, so we have a stake in the outcome of this legislation. But I believe we're uniquely positioned to advocate for hundreds of successful clients with Sunday licenses for which we've petitioned.

Before I begin, I want to point out that when this legislation was introduced in April, any of the 12,000 permit holders lacking Sunday licenses could have taken the initiative to place their Sunday sales issue before voters on the upcoming November ballot. All that was required was the effort of asking voters in the local area to sign a petition to place the issue on the ballot and a filing fee of \$10. Since April, hundreds did in fact take these very steps, and their issues will be voted on in November. History strongly suggests most of them will be supported on the ballot, and they will have their Sunday licenses by December unless voters in their area believe that six days is enough. Some hired companies like Why I See, but the majority did it themselves. They put in the effort, and they will earn a competitive advantage over other businesses that haven't made the same effort. No one had been treated unfairly.

As of today, every permit holder in Ohio could take the same steps to place Sunday sales before voters on the upcoming March, Primary Election ballot. If the Ohio legislature does nothing, every permit holder in the state has the opportunity to have their Sunday license by April. The only firm barrier is if voters in a particular community don't want Sunday sales, which has been the case 474 times in the last decade.

Based on testimony so far, the debate over House Bill 219 has been framed as a question of creating new sales versus overturning the long-established will of Ohio voters in communities statewide. While I can speak from experience on both of those issues, sales and the will of the voters, I want to put a human face on some other aspects of the discussion and to answer questions raised by committee members in previous sessions.

THE MYTH OF NEW SALES CREATED

The title of HB 219 is the SALES Act, which implies that new sales will be created. Proponents argue on one hand that HB 219 will create new beverage sales in Ohio. The half of permit holders without full Sunday licenses would see a benefit if they choose to open on Sunday. All of our clients who have won on the ballot increased their sales on Sunday. However, our

experience supports that those were not new sales in a more general sense, but rather sales our clients captured from other businesses already selling the product. With the exception of areas where Sunday sales are widely unavailable as an expression of voter intent, people will go to the store or restaurant where it's available to get the product they want, or they'll buy it on other days of the week. Any increase in sales overall will be negligible.

This is in fact what proponents have also testified. Proponents have testified that there is no increase in alcohol consumption. When Chair Manning asked the Distilled Spirits Counsel rep. whether there would be an increase in alcohol-related crimes such as DUIs, he confirmed *You don't see an increase in overall consumption*, which means we won't see an increase in overall sales. Their interest is simply to shift sales from beer over to the distilled spirits sector. Beer is currently allowed to be sold on Sunday from 5:30 a.m., while wine and liquor are limited to 10:00/11:00 a.m., so passage of HB 219 would benefit the hard-liquor industry to the proportional detriment of beer sales.

It is a fact that permit holders currently with no Sunday sales would see an increase in sales with the passage of HB 219. While some of those sales will shift over from Monday through Saturday, the actual increase in sales for those permit holders will come directly from permit holders who have already earned Sunday privileges. All other permit holders will lose sales overall. Proponents imply that retailers will benefit from the increase in available hours, the additional wine and liquor sales from 5:30 a.m. to 10:00/11:00 a.m., but as their own numbers demonstrate, sales overall will not increase. Liquor manufacturers will see their sales increase as Ohioans buy more liquor and less beer, but the retailers themselves will see no change, possibly working more hours but selling the same volume of product overall.

Aside from the undeniable benefit to the national liquor industry which has promoted HB 219, if the only Ohio retailers to see a benefit are those granted Sunday sales, then a relevant question is, "Who currently has a Sunday license, and who does not." This information is readily accessible on the Division of Liquor Control website, and an examination of said website reveals that most Ohio-based grocery companies have Sunday sales at most or all of their locations. **Kroger**, for instance, headquartered in Cincinnati, **has a D6 (full Sunday privileges) permit at 209 of their 220 locations**. The only exceptions are localities where voters rejected the Sunday license. **Discount Drug Mart**, in Medina, **has a D6 permit at all 75 stores and has already received voter approval at three more stores opening in the next two years**. **Marc's**, in Cleveland, **has a D6 permit at 56 of its 57 stores**, with the only exception being a single store where voters have repeatedly rejected Sunday sales for all carry outs. **Heinens, Buehler's and Dave's Supermarkets** all have their home offices in Northeast Ohio, and **have D6 licenses at 45 of their combined 46 stores** with beer and wine permits. You will find much the same looking at most smaller companies and mom & pop single stores like Braido Foods, Mr. D's, Kelly's Market, Weiland's and Sparkle locations. Ohio grocers, providing tens of thousands of jobs including corporate jobs right here in Ohio, have followed the rules and taken the steps to do the best job for their customers. They, and Ohio generally, are benefitting from their own hard work and investment.

It's somewhat reversed when considering the same sales at similar companies with their headquarters out of state. Of the **290 CVS** locations with beer, wine and mixed beverages, **116 have D6 Sunday licenses, while 174 do not.** Of the **361 Dollar Generals** with beer and wine, **2 stores have Sunday licenses, while 359 do not.** Of the **217 Walgreens** locations with beer and wine, **80 have Sunday licenses, while 137 do not.** Counting only these three companies, passage of HB 219 would be granting Sunday licenses to 670 out-of-state competitor stores that don't currently have them, with millions of Ohio dollars going to places like Woonsocket, Rhode Island, Goodlettsville, Tennessee and Deerfield, Illinois. The majority of Targets, Aldis and Family Dollars with beer and wine sales also lack Sunday licenses. I would be happy to demonstrate how easily these numbers can be verified on the Division of Liquor Control website. These stores could have made the same investment as Ohio grocers as far back as 1970, which strongly suggests that without passage of HB 219, it would be decades before most of them do so. They could all take the initiative, but most of them won't.

All of the out-of-state retailers above are fine companies, and I know of no reason for anyone to resent the massive windfall of increased sales Dollar General will realize if Sunday sales are granted to 359 stores overnight. But because sales of alcoholic beverages in Ohio would not increase, every additional dollar in sales by Dollar General amounts to a loss of sales somewhere else where they are already occurring. HB 219 has been presented as a boon to Ohio's small businesses, and without crunching numbers it sounds like a good idea on its face. No one wants to be regressive when it comes to business and morality. But when you do crunch the numbers, it's clear that Ohio grocery businesses will lose the most, and the loss in sales will be in the millions annually.

It could be argued that if you double the number of permit holders with Sunday licenses, alcohol sales at permit businesses that currently have licenses would decline by one half. But if the loss at each store with Sunday sales now were only 20%, the impact would still be dramatic. If Buehler's, with 13 D6 locations, were to lose a mere 20% of their Sunday alcohol sales, it would amount to \$500,000 in sales company wide, and this doesn't include ancillary sales.

A similar case could be made regarding on/off-premises sales at restaurants and bars affecting Ohio companies like Winking Lizard and Grinders Above and Beyond, though one doesn't see the same disparity with out of state versus in state companies. But the same rationale applies when it comes to trying to help out the small businesses. The impetus is to make it easier for new businesses by granting them full Sunday sales, but doing so comes directly at the loss of sales for thousands of responsible operators who have done it the right way. Diluting sales among twice the number of Sunday permit holders will hurt as many businesses as it helps, and it may even hurt more.

Accountability to voters is a part of this process. Not all of the 78 Discount Drug Mart locations passed on the first try, but the quality of Discount Drug Mart's stores, both new and existing, have improved over the years, and voters have taken notice. The reaction to a new Discount Drug Mart now encourages exclamations of excitement from voters, who have responded by

voting every Discount Drug Mart wet seven days.

If HB 219 passes, the liquor industry benefits over the beer industry, and businesses without Sunday sales benefit over businesses with Sunday sales currently. But companies who currently have Sunday licenses are Ohio-based companies, and those companies will lose millions of dollars in sales with the passage of HB 219, which will ultimately hurt Ohio's economy and cost jobs. This reason alone is enough to reject HB 219.

EXAMPLES OF NO VOTES

Not wanting to be accused of dredging up ancient history, we've limited the research into No votes to just the last decade. Going back through 2009 there were 474 Sunday-sales questions rejected. In some cases Sunday sales were defeated along with weekly sales, and in others Sunday sales were defeated while an accompanying weekly issue passed on the ballot, but in a significant majority of cases the Sunday sales question was alone on the ballot.

As would be expected, there are regional biases that affect the results. These predispositions are precisely why a localized voting system was created in the first place. While HB 219 Sponsor John Becker has correctly noted that Sunday issues pass in Clermont County, they are still routinely defeated in Holmes County, for instance. Of the 18 licenses with full liquor privileges in Holmes County, only one has a D6 license for Sunday wine and liquor sales. Of the 42 licenses with wine and/or liquor in Gallia County, only four have D6 licenses for wine and/or liquor. In fact Why I See put the only liquor agency in Gallia County on this past November ballot, and the issue was defeated 205 Yes to 251 No. Some areas of Ohio are still predominantly opposed to Sunday liquor sales.

Some areas of Ohio's largest cities are similarly opposed. This past year Why I See ran the campaign for Sunday sales at American Eagle on Sunbury Road, Columbus, which recently rebuilt the store, adding value to the community. The store owner and I met with North Central Area Commission Chair Tiffany White as part of that campaign, and she was very receptive to hearing our concerns. We ran a very thorough campaign, and despite all of our efforts, the Area Commission organized a meeting of concerned neighbors, and the issue was defeated by a vote of almost two to one. The reason they gave American Eagle was singular. Voters just don't want liquor permits in that neighborhood expanded to include Sunday sales. Six days was enough, and in fact no permit holder in the ten neighborhoods (see attached map) that comprise the area commission border has a D6 license. Several such attempts have been rejected by voters here in the past, and all of these results would be overturned if HB 219 were passed.

During proponent testimony, a representative mentioned crime that takes place at carry-out groceries in some of the neighborhoods in her district, and that voters in those neighborhoods simply want a day of peace. Crime statistics support her position. Statistics are available in Columbus, Cleveland and Dayton showing Saturday consistently has the highest frequency of reported crimes, and Sunday has the lowest frequency of the same. In Columbus this was the

case every single year from 2014 through 2018, and it doesn't take into account that all reported crimes after midnight go on the next day's ledger. Thus a D.U.I. or robbery at 12:01 a.m. on a Saturday night is recorded as a Sunday crime, and yet Sunday still has the lowest incidence of crimes of any day of the week. A person could retort that it doesn't prove that the high incidence of Saturday crimes and low incidence of Sunday crimes are alcohol related, but I'm confident that it would if more detailed numbers were available.

Finally, there are numerous examples of areas where voters typically support Sunday licenses but oppose them for a particular business. One great example of this is the campaign we ran in 2016 in Butler County for Land of Illusion Scream Park, which opens only two month per year, Fridays, Saturdays and Sundays. During our voter I.D. portion of the campaign, I received an evening call from a staff member expressing dismay over loud and continuous booming coming from the Scream Park more than a mile away. In addition to offering six haunted houses, the park has a sizable concert venue which operates on Friday and Saturday nights. Despite our best efforts, the issue was defeated 431 Yes to 547 No. The owner has engaged in meritorious efforts that weigh in favor of supporting Sunday sales, including investing in the township and hiring off-duty Sheriffs deputies to handle parking and security. Their Madison Township neighbors are willing to tolerate loud music two nights per week, two months per year. They just don't want that extended to Sunday. Land of Illusion subsequently put the Sunday issue on the ballot and ran their own campaign, and the issue was defeated 315 Yes to 466 No.

These are just a few examples of Sunday-sales issues that have been defeated in the past few years. Sometimes people don't want it. Those numbers do not include the businesses that don't go on the ballot because they perceive their neighbors are unlikely to support Sunday sales. We were hired by the Diamond Lodge gentlemen's club in Portage County in 2013, and a survey of voters was conducted in advance of circulating and filing petitions. 30% supported Sunday sales versus 46% that opposed it, with only one strong supporter identified. My analysis stated that with a perfectly run campaign the chance of passage would be less than 50/50, and they elected not to go forward. Of Ohio's 72 gentlemen's clubs with liquor permits, only 32 currently have Sunday licenses while 40 do not, but all 72 would have in with passage of HB 219.

OPPORTUNITY TO VOTE DRY

All of the permit holders above would be granted Sunday sales with the passage of HB 219. 40 strip clubs, all permit holders in counties where they been rejected repeatedly, all of the carry outs in the North Central Area Commission neighborhoods, will have the opportunity to begin selling seven days per week. All who pursued previous ballots and lost will begin Sunday sales.

Sponsors have testified that voters would still have the opportunity to vote the permits dry. That opportunity exists now. Voters could take it upon themselves to dry up each and every one of these permit holders regardless of whether HB 219 passes or fails. But if HB 219 passes, then they will no longer have the option to reject Sunday licenses as they've done in the past. The only option to prevent Sunday sales will then be to get permit holders voted dry, which would

ruin most of the businesses in question, putting voters in an awkward spot.

CORRECTING MISSTATEMENTS OF FACT AS TO COST OF PROCESS

Sponsors have testified local options cost the state of Ohio \$5,000 to \$10,000 each, in addition to the costs to the permit holder. The actual cost is much closer to zero, accounting for the administration costs of verifying signatures, typing up an additional question for the ballot, etc. Local options are limited by statute to existing ballots with candidates already being voted on, so no ballot is created for the purpose of a local option vote. Because some of the larger counties have staff dedicated to the conduct of local options, eliminating Sunday-sales elections could potentially lower the costs to counties by eliminating these jobs, but there will otherwise be no cost savings to the state.

There is a \$10 filing fee for a local option paid to the county. The county provides the petition forms and instructions. Many of them will help the permit holder fill out the form, though with the petition for a particular location it's pretty simplistic, requiring permit name, address and use of the permit premises. In general it costs next to nothing and requires no legal expertise. But as with all petitions, from the statewide to the candidate for school board, it does require a degree of effort and a minimum level of competence.

A member of the committee raised the issue regarding Sunday wine sales at his store and the problems this has caused. By way of example, I would point out that 155 valid signatures would be required from that precinct on a petition to be filed by December 11th. If the representative did not want to gather the signatures himself, the local board of elections would provide contact information for a local resident who offers the service professionally and for a reasonable fee, less than \$3,000. This particular issue would be very likely to pass easily once on the ballot.

Sponsors have also testified that the cost to hire a firm to put the issue on the ballot is between \$5,000 and \$10,000. Andy Herf used the same number in the OLBA legislative report, so it's only fair to point out that he contacted Why I See to circulate and file petitions for a client in Mercer County only two years ago. The fee for that service guaranteeing the issue to the ballot was \$3,000, which he believed to be fair. \$210 of that amount was paid to Shumaker and Associates, as a referral fee. These numbers are in direct contravention to the numbers Herf has provided to the sponsors for their testimony and should be taken into account. This is not to suggest the service is cheap, but it's not nearly as expensive nor the process as onerous as proponents have led the committee to believe.

CONCLUSION

The Distilled Spirits Counsel has put together a bill that will make millions for the spirits industry. They've gone from state to state, Virginia, Massachusetts, Indiana, etc., etc., and they've won every time. They've been all or nothing challenges, and they've thus far been able to convince every state legislature to opt for all. Proponent testimony is compelling because they

combine identifiable notions like “into the 21st Century”, “level the playing field” and “very confusing for most retailers” with numbers that support their position. And those numbers do support an increase in sales, but only for some, and at the direct expense of others.

When the blue laws were abolished in the 1970s, Ohio took a different approach, giving voters in every community the opportunity to decide whether Sunday sales would be permitted in that community. As a result, businesses in those communities have had to reach out to their neighbors. It took 49 years for half of the permit holders in the state to be granted this privilege. And, like all alcohol permits, it is a privilege. The irresponsible sale and consumption of alcohol can have grave consequences. Ohio businesses like Winking Lizard, Discount Drug Mart, Heinen’s, Marc’s and Grinders Above and Beyond have addressed those concerns over time and have earned the privilege of Sunday sales at most of their locations. The legislature didn’t set out to give Ohio companies an advantage but rather created a system with rules that were fair for all. The playing field has always been level. It just so happens that most Ohio companies have taken the necessary steps for seven-day sales, and many large out-of-state companies have not.

If this committee rejects HB 219, every retailer will be in the same position tomorrow as they are in today. Every retailer lacking Sunday sales can take the steps to have it by April. Every retailer who has followed the rules and earned the privilege of Sunday sales will have the continued opportunity to exercise that privilege. If instead HB 219 is passed, then the legislature will be creating winners and losers. The national spirits industry is a clear winner. Permit holders currently lacking full Sunday sales are clear winners. But the other half of permit holders with seven day sales who have followed the rules and done it all the right way will absolutely lose sales beginning with the first Sunday. Any good business climate is about maintaining a state of equilibrium, which currently exists. HB 219 shakes things up, including lives and livelihoods. Ohio companies will ultimately be among those most harmed. Many don’t realize the impact it will have, but if history is any guide, then an economic downturn is inevitable, and Ohio-based companies, and the jobs they provide, are going to miss those lost alcohol sales.

Gauging the harm of taking away the rights of voters to choose, and overturning the choices they have made, is harder to put a price tag on, but the results of 474 local votes in just the past decade will be erased overnight with the passage of HB 219. Should the voters in Madison Township be permitted to keep the local haunted house/concert venue from selling liquor on Sunday? Should Gallia County voters be allowed to say no to liquor stores on Sunday? Should a ten-neighborhood area commission be permitted to continue rejecting Sunday sales at the local carry-outs again and again? Because they have, and many of them will continue to say No. It is a right they have been given, and it shouldn’t be taken from them.

Members of the House Commerce and Labor Committee, nothing is broken. The playing field is already level. This decision can always be made in the future, but once it’s done it will be irreversible. Protect voter rights and Ohio business sales by voting No on HB 219. Thank you.