



Rob McColley
State Senator, District 1

1 Capitol Square, Rm 40
Columbus, Ohio 43215
(614) 466-8150

Chairman Wiggam, Vice Chair Stephens, Ranking Member Kelly and members of the House State and Local Committee, thank you for allowing me to testify today and thank you to my co-sponsor, Senator Roegner for providing a history and overviewing the mechanics of our legislation.

To begin, I want to frame what we are doing with this legislation compared to what the impression may be. This bill does not limit the Governor's authority, but rather it clarifies what the original authority granted actually was. Senator Roegner just gave you a history of these health orders, and in doing so highlighted our main point that we are not limiting the authority of the Department of Health or the Governor; we're clarifying the original intention of the statute. Therefore, we are also clarifying the Governor and health director never had the authority to begin with to do many of the things they have. Another intention of this bill is to install reasonable checks and balances that are crucial to a well-functioning government, particularly in a time of crisis. Senator Roegner and I feel this interpretation is more than reasonable, and in fact this interpretation has been confirmed by several courts here in Ohio.

As it stands, there are 5 cases that have been filed against the state of Ohio in state courts for powers under 3701.13-14. In all 5 of these cases, the courts have ruled against the state. These courts have ruled that venerable and fundamental rights have been violated with these orders. Although not a binding decision in the state of Ohio, a U.S. District Court of the Western District of Pennsylvania eloquently summarizes the constitutional challenges in *County of Butler, et al v. Thomas W. Wolf*. The court ruled:

However, good intentions toward a laudable end are not alone enough to uphold government action against a constitutional challenge. Indeed, the greatest threats to our system of constitutional liberties may arise when the ends *are* laudable and the intent *is* good—especially in a time of emergency. In an emergency, even a vigilant public may let down its guard over its constitutional liberties only to find that liberties, once relinquished, are hard to recoup and that restrictions—while expedient in the face of an emergency situation—may persist long after the immediate danger has passed.¹

The decision goes on to later say, in regards to checks and balances within the government, “absent a robust system of checks and balances, the guarantees of liberty set forth in the constitution are just ink on parchment” (US District Court, Western District of PA). The opinion goes on further to quote the Supreme Court in a decision stating: “[t]he Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency”².

I want to highlight again it does not matter how good the intentions are, and I believe the Governor acted with what he felt were good intentions, but it does not change the fact that the constitution remains in effect and the Governor and Health Director did not have the authority to

¹ <https://casetext.com/case/cnty-of-butler-v-wolf-1>

² *Home Building & Loan Ass'n. v. Blaisdell*, 290 U.S. 398, 425 (1934)

begin with. We feel the legislation before you today is more than reasonable, so reasonable that there are 10 other examples in the ORC currently that allow a concurrent resolution to override a governor's action. The Governor himself proposed a change in the last operating budget that would allow the General Assembly to suspend the operation of an executive order during a time of emergency via a concurrent resolution. There are 23 other states in this country that have similar checks and balances in place.

We as the legislature, who have been elected by the people of their district, have a responsibility to represent their concerns during a time of emergency when great authority is being granted to the executive branch. Chairman Wiggam and members of the House State and Local Government Committee, thank you for your time this afternoon and we are happy to answer any questions.