Testimony in Opposition to House Bill 508
(Regards Allocation of Parental Rights and Responsibilities)
Presented by Eric Johnson, Esq.

Before the House Civil Justice Committee
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Chairman Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members of the Ohio House Civil Justice Committee: On behalf of the Ohio State Bar Association ("OSBA"), thank you for the opportunity to submit testimony in opposition to House Bill 508.

I am Eric W. Johnson, OSBA Certified Specialist in Family Relations Law. I have maintained in good standing my license to practice law in the State of Ohio since 1995 and have practiced almost exclusively in the field of family law since 2004. I am the immediate past Chair of the OSBA Family Law Committee and actively participate in numerous family law related committees of the Supreme Court of Ohio and state and local bar associations.

The OSBA opposses House Bill 508, and the changes made in the substitute bill do not alleviate our concerns. This bill relies not only on faulty premises but, even assuming those premises were true, will not achieve the goals it was drafted to accomplish. Further, it will greatly increase the litigation and acrimony present in our state's domestic relations courts, causing the greatest harm to Ohio's children.

Faulty Premises

The primary mistaken premise upon which this legislation is based is that the current system of allocating parental rights is in need of major repair. Often cited for this proposition is that the various courts in this state have created their own standard parenting orders under the rule-making authority granted to them by statute. But these standard orders are not at all, as some would suggest, the "default" orders issued in cases with two active and involved parents. The courts take very seriously their role in creating schedules that meet the best interests of the *children* of divorcing, divorced, and never-married parents. Rarely—almost never—will a court simply use its local order to designate a "winning" party as legal custodian and allocate the "losing" party to a role of every-other-weekend visitor when both parents have active roles in their children's lives.

Nevertheless, some parents, especially unrepresented ones from underserved communities, understandably perceive "the system" as being stacked against them from the start. Some parents in other cases feel as though the courts failed them and that everyone else is to blame if they did not get their way. But essentially predetermining the outcome of every parenting dispute is not the way to responsibly address these problems. Each parent is entitled to enter the courtroom at the same starting point. But this cannot be accomplished by starting them at the finish line together, circumventing this state's role as *parens partiae* over Ohio's children.

The second mistaken premise is that H.B. 508 creates long overdue shared parenting in this state. Much of the testimony presented thus far seems to confuse "shared parenting" with some form of a parent's "equal rights." Ohio has statutorily embraced shared parenting as a cooperative co-parenting arrangement since 1991, and even before that under the name of "joint custody." To imply cooperative parenting is not a long-recognized concept by our court system is incorrect. Ohio's courts have strongly encouraged co-parenting—as joint custody and then shared parenting—for decades.

Increases Litigation

Attorneys rarely relish parenting disputes. They are long and often rancorous cases exacting a substantial financial and emotional toll on the parties, their children, and most others involved, including counsel. It is difficult, exhausting work, and H.B. 508 will greatly increase the amount of conflict in contested parenting cases by discouraging settlement. A party enjoying the benefit of a presumptive outcome has little reason to negotiate; the party who is not advantaged by the presumption will fight even harder when pursuing what they believe to be best for their child. And, because of the "detrimental to the child" standard employed by H.B. 508, battles over the need for psychological examinations and custodial evaluations in contested cases will increase significantly.

Support for this state's children will also be significantly impacted. H.B. 508 promotes parents to trade "dollars for days" when it comes to child support. Without doubt, many parents who are disinterested in equal parenting time will nevertheless continue to pursue it until the other parent agrees to a significant reduction in child support. Not only does the amount of litigation increase, but Ohio's children are again the innocent victims.

Further, countless parents in some way dissatisfied with their current parenting arrangements (or the amount of child support being paid) will immediately return to the courts if H.B. 508 were to be enacted. By changing the focus away from the best interests of Ohio's children and creating a brand new "detrimental to the child" standard, H.B. 508 encourages parties to seek modifications of their current parenting orders, whether issued five years ago, twelve months ago, or last week. Courts will have to review all prior orders under the new presumptive standard. The floodgates will open.

Undefined, Unachievable Standards

Another serious flaw in this legislation is that it uses vague and undefined terms to create an unachievable standard. H.B. 508 sets forth arbitrary presumptions that "equal decision-making" and "equal parenting time" are in the best interest of children, unless shown to be "detrimental" to them. But nowhere does this bill define "equal decision-making," "equal parenting time," or "detrimental."

What does "equal parenting time" look like? Is it every other week, every other day, every other hour? Is it two overnights per week to each parent and a split of weekends? It is all of these

things! H.B. 508 solves nothing but dividing children as though they were bank accounts. Even if the premise of "equal time" is accepted, parents will continue to litigate what form it should take.

"Equal decision-making" is no better. Does this bill contemplate that two parents who cannot reasonably speak with each other will have to discuss and agree with every parenting decision before it is implemented? Will parents have to agree on such things as a child's bedtime in their respective households, the child's breakfast diet, or when the child can begin spending overnights with friends? Quite recently, two Pennsylvania parents with an "equal decision-making" provision in their parenting plan fought a $10,000 court battle over the issue of whether their children should receive a doctor-recommended COVID-19 vaccine. (The parents themselves were both voluntarily vaccinated.) Similar situations would regularly occur under the provisions of H.B. 508 and parties will be returning to the courts to address minor parenting conflicts in ever-increasing numbers.

Finally, the term "detrimental" is left to broad interpretation in the context of this bill. Worse still, H.B. 508 appears to impose an impossible burden on a parent trying to rebut its arbitrary presumption by proving a negative. Parents, attorneys, and courts are given no guidance whether the standard that must be shown is that equal time and/or equal decision making are "not in the child's best interests," cause "concern for the well-being" of a child, or are "substantially certain to cause irreparable harm" to a child. Must a parent attempting to show a clear case of detriment still have to present expert testimony on the issue? The interpretation of "detriment" is once again left to be litigated throughout the courts of this state.

Inapplicable to Many Cases

A significant percentage of parenting disputes do not involve divorcing parents. Often, they involve situations where the parties never intended to become parents in the first place. H.B. 508 almost entirely ignores the children of these relationships and will impose "equal decision-making" and "equal parenting time" in all cases where the parties were never married to each other, regardless of:

- whether paternity has been established,
- whether a parent wants equal time,
- whether a parent has any established relationship with the child at all,
- whether a parent is seeking parenting time only as leverage in a support case.

The automatic and indiscriminate imposition of equal time also fails to consider many families' post-separation situations. H.B. 508 haphazardly applies to children of all ages, whether they are nursing, toddlers, or graduating teens. It fails to consider that children often become involved in one or two blended families, with step- and half-siblings (who may also be subject to unique parenting schedules themselves). It illogically presumes what is best for a child who is born as the result of an extramarital affair, especially when that child is forming established relationships with brothers and sisters.

Continually Rejected by States and the Family Law Community

Contrary to the implication of some, H.B. 508 is not the embodiment of an equal parenting time movement sweeping the nation. This notion of equal time has circulated throughout the statehouses of this country for more than a decade with the same resounding result—states recognize the need to promote and protect a child's interests is more important than creating a right of parental entitlement. By rough count, well over thirty (30) states have considered and rejected similar proposals in the past five years alone.

Of the states touted by some of the proponents of this bill as having adopted the equal parenting time premise of H.B. 508, only Kentucky has passed legislation calling for a presumption, rebuttable by a preponderance of the evidence, that equal time is not in the *"best interests*" of the child. The state of Arkansas makes no presumption of equal time at all; it only presumes that "joint custody" is in the best interests of a child.

Summary

House Bill 508 is a misguided attempt to address the perception that parents are treated unequally in this state's courts. There are better ways to address this perception. It will remove the critical discretion necessary when determining what is best for Ohio's children in the most highly contested cases, when it is needed the most. No matter how well intended, it will greatly increase not only the amount, but also the intensity of parenting disputes. It applies a tragically simplistic and overbroad standard in all cases, whether divorce, post-decree modifications, or private custody actions.

For these reasons, and for so many others, the states of this country have repeatedly and soundly rejected the idea that equal parenting time and decision-making should be legislatively mandated.

Thank you for permitting me to offer this written testimony in opposition to H.B. 508. As such, I strongly encourage this Committee to not favorably report this bill

I remain available to answer questions at any time should this Committee have any for me.

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