

Testimony of Brandon Ostrow
In support of HB90
House State and Local Government Committee
February 16 2021

Chair Wigam, Vice Chair John and ranking member Kelly as well as honorable members of the committee:

Thank you so much for taking the time to hear my testimony today.

I am here today to testify in support of HB90 on behalf of myself, and my wife, as well as many family members and friends across the state of Ohio living through situations just like mine. The Covid pandemic has effected many people across the state in ways, that prior to its onset I'm certain none of Ohio's constituents would have ever imagined, or otherwise ever considered or condoned. From the restriction of free travel, to months of curfews, mandatory masking, the restricting of access to medical care, closures of businesses and schools and even the banning of visitation to our very own family members during holidays, or at assisted living facilities. Never before have we seen such broad and unchecked power exercised upon the citizens of Ohio, with little to no avenue for scrutiny, oversight, or any tangible way to reign in the powers and orders of the governor or health director

These kinds of brazen overreaches fly in the face of the intent of the founding of our governmental system, whose purpose is plainly stated as "to protect the rights and liberties of the citizens". Nowhere in our government did the founders ever grant "ultimate authority" to any single person, none the less an appointed, unelected and largely unaccountable position such as a health director. James Madison, one of the most influential framers of the constitution and the author of the separation of powers therein, specifically spoke against just such concentrations of power in Federalist 51, not only in one place but in many.

He wisely stated " ...the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack.

Ambition must be made to counteract ambition.... In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

This last year our unrestrained and ambitious authority has been all too eager to control the governed while showing utter contempt at the idea of controlling itself.

Madison further writes. "A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the

private interest of every individual may be a sentinel over the public rights

He goes on to argue

"Justice is the end (purpose) of government. It is the end (purpose) of a civil society. It ever has been, and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger.. "

And then speaking of the opportunity to leverage the power of a majority he says

"If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful."

Madison again and again argued that concentrated power, such as the "ultimate authority" granted to the health Director and Governor under these emergency orders, if left unchecked, would inevitably lead to the wielding of the will of the powerful over and against the rights and liberties of the weak. He found this idea so crucial for early citizens to understand that he took the time to concentrate on it not only in Federalist 51 but also exhaustively in federalist 10. It is a sad notion that Ohio has had its rights and liberties curtailed by a majority of 2 over the last year. I believe HB 90 would restored the spirit of the checks and balances, and seperations of power Madison outlined when he framed them in our constitution, and give due power to the elected assembly, that they may both have voice at the table, and the power to insure the rights of Ohioans are never violated so egregiously again under the guise of the common good.

In closing I want to draw attention to several provisions I think are especially crucial to the design of this bill. The creation of a joint comitee and advising of the assembly leaders of actions to be taken in an emergency give nessasary oversight to all future orders. The establishment of a sunset clause ensure that Ohioans can have confidence that if the committee or assembly choose not to act and curtail what the public may consider oppressive or offensive directives, orders or restrictions, that those orders are not going to be extended needlessly or endlessly. finally the prohibition of the reissuance of orders acts decrees or restrictions struck down by the committee or assembly for 90 days ensure that when the will of the people is carried out by the legislature, it can not simply be invalidated.

Please Vote yes on HB90. Ohioans desperately need this bill.