

**Senate Bill 22 Proponent Testimony**  
**House State and Local Government Committee**  
**March 9, 2021**  
**Fr. Gabriel Lavery**

Chairman Wiggam, Vice Chair John, Ranking Member Kelly, and members of the House State and Local Government Committee, thank you for the opportunity to testify in support of Senate Bill 22.

A month ago I gave testimony in support of this bill before the Senate committee. It is my understanding that since then a number of very important provisions from HB90 have been or will be amended into SB22. I hope that is the case especially for the provision regarding automatic rescinding of emergency orders after a specific time and the provision against reissuing orders with the same restrictions when the old ones expire.

I have listened to and read a considerable amount of the testimony against this bill from the medical community and officials from the Ohio Department of Health. The general theme of their testimony is that they are the experts who know what is medically or scientifically best for Ohioans. The rest of us are not experts and therefore are unqualified to have an opinion on the matter. We may not like what has happened the last 12 months but it was for our good and we should learn to accept that.

The fundamental problem with that line of reasoning is that it considers the problem solely from a medical or scientific point of view. It fails to consider value judgments on what is important in our lives.

Dr. Zubin Damania whom I think Dr. Vanderhoff would consider a reliable source said: “You have all this *science*. The question is: What as a culture, as a people, politically do you decide to do with it? And that is a *value* judgment. That’s why when people say, “Follow the science...” You can follow the science. You can get that data, but that doesn’t actually *make the decision* for you. Ok, now I know the data. What do I *value*? Do I value education, schools, economy, poverty, hunger? Do I value as many lives saved from covid as I can? These are the questions you have to ask.”

<https://fb.watch/45Tu8LqvLd/>

In making this judgment the people of Ohio are just as much experts in the field as doctors are. In fact, we are more qualified to speak on these values than the doctors are because we are the ones whose lives are affected by the mandates and restrictions. The State of Ohio is not a hospital. The Ohio House and Senate are not medical boards. You are not here to make medical decisions but to give the people of Ohio a voice in what they value. And when I say “value judgment” I do not mean we are putting a value on life itself. The values we are comparing are the *risk* to life vs. how much harm the avoidance of that risk will cause. How far are we willing to go to avoid a *risk*?

Perhaps grandparents put more value on their grandchildren living a normal life, on being able to attend school, in being able to see faces and learn to read facial expressions than

on eliminating a small but not insignificant risk to their own lives. Perhaps they would rather their grandchildren were able to use the playgrounds last spring instead of shutting them down out of a misplaced fear of somehow catching covid on a swing set. Perhaps families whose elderly relatives died alone in nursing homes would have rather taken a chance in order to give them joy in their last year of life. Perhaps families that worked hard to establish and maintain a business and have their life invested in it do not want to see it crushed by restrictions that have limited value in reducing their risk from covid.

I had some elderly parishioners who initially last March decided to stay home from Mass but soon returned because Mass was more important to them than fear of covid. I remember the huge disappointment on the faces of one mother and her children when after Sunday Mass we heard the announcement that DeWine shut everything down and ordered a lockdown. They thought that included churches and were practically in tears at the thought of being deprived of Mass and Holy Communion.

Instead of having a voice in these value judgments the people of Ohio have simply been told that ODH knows what is best for them. We have been treated as if Ohio is one big hospital and we are the patients. Yet even in the medical world a fundamental principle of treatment is patient consent. Patients are allowed to choose their doctor and make an informed consent on treatment or refusal of treatment, not because the patients know more than the doctor, not because they are medical experts, but because it is *their* health and *their* life. The past year has been one giant medical experiment with involuntary participants, no opportunity to withhold consent and no compensation.

Moreover, if the predictions and decisions of Gov. DeWine and ODH had proven accurate the people of Ohio might have been much more willing participants. Instead, there has been one error after another in the statements of Gov. DeWine, Dr. Amy Acton and Dr. Vanderhoff.

First there was the erroneous claim of Dr. Acton that we had “at the very least” 100,000 cases of covid on March 9.

“We know now, just the fact of community spread, says that at least 1 percent, at the very least, 1 percent of our population is carrying this virus in Ohio today. We have 11.7 million people. So the math is over 100,000. So that just gives you a sense of how this virus spreads and is spreading quickly.”

<https://youtu.be/MiUyGfDJ76g>

<https://www.youtube.com/watch?v=mXoFyZw1rQE&t=9s>

That claim was used to shut down Ohio earlier and harder than practically any other state. Yet it was based on a terrible error. Acton took Harvard Prof. Lipsitch’s model of cases covering 12 to 18 months and assumed all of those cases would occur in a *single month(!)* in Ohio between last March and April. That assumed *7 million* Ohioans would have had covid by mid-April of last year. She then worked backward from that absurd number to make the 100k claim. *No expert* should have ever made that error. I am not a medical

expert. Why should I be the one to have spotted her error and *not one person* from ODH caught it when she explained how she got the number?

She claimed by locking down we would move the peak of the spring wave and that proved false. On March 17 she said: "...we might peak at late April, mid May...based on no interventions... We will slow it down." Then on March 30 she announced that we succeeded in slowing it down and had moved the peak out to mid-April. Yes, mid-April is *not later* than the end of April.

Businesses were locked down and gravely harmed financially last spring yet we kept them open last fall when spread was vastly higher. Why were they left open in the fall? Because the spring lockdown was a mistake we weren't going to repeat. But no businesses had a choice last spring.

We were told last spring that everything needed to be sanitized multiple times per day. It turned out to be a totally unnecessary burden and expense on businesses as the CDC and various experts later admitted that surface spread was not a significant factor in spreading covid. Shutting down the playgrounds where sunlight sanitizes surfaces was an even worse unscientific decision.

Dr. Vanderhoff of ODH recently made a completely unsupported statement on the accuracy of antigen tests for covid:

"We know now... that a positive antigen test is highly reliable. You could take a positive antigen test essentially to the bank."

<https://youtu.be/4pSD0W0FcJw?t=2328>

The most recent guidance of the CDC on the use of antigen tests completely contradicts this claim of Dr. Vanderhoff. The CDC says the lower the likelihood of covid is in an area the more unreliable the tests are especially for the asymptomatic and they should be not be accepted until confirmed with a PCR test.

"Because of concerns about false positive results when pretest probability is low, a positive antigen test result in this circumstance should be followed by a confirmatory NAAT, recognizing that the person will be tested at a later timepoint in their illness if truly infected."

"CDC considers low prevalence to be when NAAT positivity over the last 14 days is less than 5%... In general, the lower the prevalence of infection in the community, the higher the rate of false positive test results."

<https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antigen-tests-guidelines.html>

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-antigen-testing.html>

Ohio is well below 5% positivity and many of the antigen tests are being done on completely asymptomatic individuals via mandatory testing at college campuses and medical facilities once or sometimes twice per week.

A study published by the CDC this January explored the error rate of antigen tests on college campuses and found that 66.7% of the positive results among asymptomatic subjects were false when compared to a PCR test of the same individuals. The overall error rate among all tested individuals, symptomatic and asymptomatic, was 1.5%.  
<https://www.cdc.gov/mmwr/volumes/69/wr/mm695152a3.htm>

It is worth noting that at current testing rates (35k per day average) a false positivity rate of 1.2% is enough to indefinitely keep Ohio above DeWine's metric for removing the mandates even if there are no true positive covid cases.

University Hospitals moved away from antigen testing last fall because of the unreliability of the tests, not only for covid but for flu as well.  
“Antigen tests are notoriously plagued with issues of accuracy. In fact, at UH we have been moving away from all rapid viral antigen tests... Because of the issues around accuracy... It's a test that really does struggle with accuracy” (Dr. Amy Edwards, UH Cleveland, interview, Aug 7, 2020)  
<https://www.facebook.com/Cleveland19News/videos/332846311079403/>

Another erroneous claim was made in the press conference last Friday when Dr. Vanderhoff claimed that the vaccine is “winning.”  
<https://abc6onyourside.com/news/local/ohio-coronavirus-update-march-5-2021>

Regardless of whether the vaccine contributes to preventing another wave of covid cases in the future, it is simply false to claim the vaccine is a major cause of the plummet in cases we have seen since mid-December. That plummet began when hardly anyone in Ohio had been vaccinated. Moreover, as of early February only a small percentage of Ohioans under age 60 had been vaccinated. From the graphs I provide below it is obvious the drop in cases for that age range followed an identical pattern with the older age range. That cannot be due to vaccine efficacy. It is very clear the main reason covid has plummeted is simply natural seasonality. This is what a number of experts are saying such as Harvard professor of epidemiology, Michael Mina. This is also why the same sharp drop in cases has occurred all over the country despite differences in mandated restrictions or vaccination rates.

Lastly, regarding masks, there have been many false, exaggerated or unproven claims of DeWine and Dr. Vanderhoff.

Dr. Vanderhoff recently claimed masks are what eliminated flu. That explanation completely fails to take into account the fact that flu disappeared *everywhere* including states and countries that did not have a mask mandate. You can see in the graphs below that flu cases disappeared in Sweden last spring the same as they disappeared everywhere else. Sweden was not wearing masks.

It also fails to take into account the many studies and decades of research showing masks do not make any significant dent in the rate of spread of flu. The *Policy Review* published

by the CDC last May included a study on masks and flu which came to the following conclusion:

“Although mechanistic studies support the potential effect of hand hygiene or face masks, evidence from 14 randomized controlled trials of these measures did not support a substantial effect on transmission of laboratory-confirmed influenza.”

“In our systematic review, we identified 10 RCTs that reported estimates of the effectiveness of face masks in reducing laboratory-confirmed influenza virus infections in the community from literature published during 1946–July 27, 2018. In pooled analysis, we found no significant reduction in influenza transmission with the use of face masks (RR 0.78, 95% CI 0.51–1.20; I<sup>2</sup> = 30%, p = 0.25).”

“We did not find evidence that surgical-type face masks are effective in reducing laboratory-confirmed influenza transmission, either when worn by infected persons (source control) or by persons in the general community to reduce their susceptibility.”

[https://wwwnc.cdc.gov/eid/article/26/5/19-0994\\_article](https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article)

Many experts speculate that the real reason flu disappeared is because of viral interference. That seems to have good scientific reasons to support it. Dr. Vanderhoff’s claim, on the contrary, that *masks* eliminated flu is just a baseless oversimplification. There is no reason Dr. Vanderhoff should have made that claim.

Gov. DeWine has repeatedly made completely unsupported and irresponsible claims regarding the effectiveness of masks. Last summer he stated that masks would run covid into the ground in 4-6 weeks. That claim was strongly contradicted by various experts at the Center for Infectious Disease Research and Policy out of the University of Minnesota. That is an organization Dr. Vanderhoff would no doubt consider prestigious and very authoritative on the matter. Dr. Osterholm from that organization has been extremely vocal in criticizing sweeping claims of the usefulness of masks. I quote him because he is one whom most people in Dr. Vanderhoff’s camp would consider an expert and because he was in favor of the various restrictions. In fact he was chosen by Biden to assist in covid policy preparation. Yet despite not being in the camp of those who oppose all the government restrictions he felt it was in the best interest of science and public safety to refute the many wild claims about mask effectiveness:

**Osterholm Update: COVID-19, Special Episode: Masks and Science, June 3, 2020:**

“Please know that the vast majority of information you’re hearing every day in the popular literature or even in the news about cloth masks is not coming from anyone with any expertise in aerosol science. It amazes and disappoints me how many of my professional colleagues have no real understanding of aerosol science and the physics of respiratory virus transmission, but are very willing to present themselves to the media as such experts.”

“Never before in my 45 year career have I seen such a far-reaching public recommendation issued by any governmental agency without a single source of data or information to support it. This is an extremely worrisome precedent of implementing policies not based on science-based data or why they were issued without such data.”

“If these cloth masks do little to reduce virus transmission due in large part to their lack of protection against aerosol inhalation or exhalation, do we not have an obligation to tell the public of this potential limitation? How many cases of COVID-19 will occur when people using cloth masks and not understanding the limitations of their effectiveness participate in activities with others where virus transmission does occur? I believe this cloth mask recommendation situation represented the other low point in CDC’s response to COVID-19...”

[https://www.cidrap.umn.edu/sites/default/files/public/downloads/special\\_episode\\_masks\\_6.2.20\\_0.pdf](https://www.cidrap.umn.edu/sites/default/files/public/downloads/special_episode_masks_6.2.20_0.pdf)

Another expert from CIDRAP who warned against unfounded claims of mask efficacy is Dr. Lisa Brosseau, Sc.D., a nationally recognized expert on respiratory protection and infectious diseases. Among many other credentials from her 23 page curriculum vitae we see she is on the editorial review board for a number of scientific journals including: American Journal of Infection Control, 2016-present.

She has been a peer reviewer for: American Journal of Infection Control, American Journal of Respiratory and Critical Care Medicine, Emerging Infectious Diseases, International Society for Respiratory Protection Journal, Journal of Occupational and Environmental Medicine, National Academy of Sciences, New England Journal of Medicine, etc.

[https://static1.squarespace.com/static/5f6cf63c11be4a134cb39b33/t/5f6fcb4b4278c74ee0ccd6db/1601162060970/Brosseau\\_CV\\_March2020.pdf](https://static1.squarespace.com/static/5f6cf63c11be4a134cb39b33/t/5f6fcb4b4278c74ee0ccd6db/1601162060970/Brosseau_CV_March2020.pdf)

Her warnings about the ineffectiveness of masks completely contradict Gov. DeWine’s and Dr. Vanderhoff’s claims:

**Excerpted remarks from Dr. Lisa Brosseau’s interview with Infection Control Today, April 25, 2020, *Infection Control Today*, June 2020, Volume 24, Issue 5:**

“First of all, for healthcare and community, but also do they work as source control? Or do they work as personal protective equipment? Or both? And at the end of the day, cloth masks in my opinion don’t work in any form.”

“My biggest problem with telling people they can wear masks is it gives you this false sense of security. And it might even encourage you to think that now you’re protected and you’re protecting people around you.”

“I don’t have a problem with people wearing them. I just want them to understand that they aren’t very much more protective than if they weren’t wearing them. And they’re really not doing a whole lot of good for the people around them.”

“So, I don’t understand the CDC’s recommendations for this. My guess is that there’s a lot of political pressure. And no government agency is entirely immune from political pressure. There’s pressure to open, right? There’s pressure to restart the economy. I understand that entirely. And so I think the feeling was, probably if we give everybody a mask, we can just reopen and everything’s going to be fine. I think we’re going to be shocked to find that that’s not going to work. And I mean, I won’t be shocked, but there will be lots of people who will be shocked. And in fact, I read an article recently about a

funeral. A number of people who attended the funeral. They were all wearing masks. They were taking photos next to each other. They were talking and a number of people got infected. So, it's very clear these things do no good."

"My conversations with people these days, I often point out that what we're seeing is a lot of magical thinking. A lot of wishful thinking. Cloth masks are wishful thinking."  
<https://www.infectioncontrolday.com/view/cloth-masks-are-useless-against-covid-19>

What Dr. Brosseau said is exactly what happened. Despite around 90% mask compliance according to DeWine's own numbers we had a large spike in November and December. This spike occurred nearly everywhere regardless of whether states or countries had mask mandates. You can see this by looking at the cases and deaths of the Czech Republic which overtook Sweden's death count by thousands of deaths despite being fairly equal in population. The Czech Republic was hailed as a mask success story last May and June yet it turned out to be a complete failure with one of the worst death counts in Europe despite universal masking.

Ohio was no better. I said early last May when Sweden had thousands more deaths than Ohio despite similarly sized populations that we would catch up to Sweden in deaths per capita and even surpass them. That turned out to be true. We had thousands more deaths than Sweden last fall and winter and have exceeded their death total by about 4000 deaths. That all happened *after* mask compliance in Ohio was well over 90%. How does DeWine call that a success story? How can he claim masks worked? Even if they made a marginally significant difference we should see that in the data, yet the huge spike came long after masks were in place.

Recently DeWine said the mask mandate created a "significant drop" in cases after it was put in place. Yet, if masks brought cases *down* in the summer why did a much higher mask compliance rate not prevent cases from going *up* in the fall? This is completely inconsistent.

The CDC study published just a few days ago found at the very best a 1.9% reduction in covid rate of spread after 100 days. That is no where close to justifying the claims DeWine has made about the "power" of masks or his claims that we know they are "really, really" effective. It is not even a percentage high enough to make a meaningful difference in the spread of the virus.

[https://www.cdc.gov/mmwr/volumes/70/wr/mm7010e3.htm?s\\_cid=mm7010e3\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7010e3.htm?s_cid=mm7010e3_w)

In conclusion, Gov. DeWine and the Ohio Department of Health have not only failed to give Ohioans a voice in making value judgments on the emergency orders, but they have altogether failed to provide *any evidence* that those orders accomplished any *significant good*. The end result of all the suffering the mandates and restrictions caused is Ohio fared far *worse* than Sweden despite *many more* restrictions and near universal masking.

Even if it is true that to some degree the shutdown and restrictions have managed to delay and drag out the course of covid spread, my personal opinion is that we have done the

greatest injustice to the elderly and vulnerable by doing so. I know elderly people who were extremely careful to isolate themselves for one or two months last spring to avoid catching the virus. They could not keep that up and eventually started going out. What good did their sacrifice of isolating do if we didn't allow the young and healthy in the meantime to develop population immunity? The young did the elderly no favor by living in fear of a virus that was of little risk to them at their age while the elderly waited for it to pass and *we would not let it*. That is a shame.

All of this needs to stop and needs to stop now. We need to return to our senses both in how we deal with the virus and in how our government functions. The abuse of emergency powers has been completely unjustified and has proven nothing but harmful.



# GRAPHS



