

Ohio House Committee on Civil Justice  
March 22, 2022

Senate Bill 21  
Testimony by Jeanne Ogden  
Resident of Dublin, Ohio

Ohio House Committee on Civil Justice

Chair Hillyer, Vice Chair Matthews, Ranking Member Galonski, thank you for considering my testimony today.

My name is Jeanne Ogden and I oppose Ohio Senate Bill 21. I have been a resident of Ohio since I was born. My husband and I have raised three children here. We have always been proud of our home state. That is changing.

Senate Bill 21 gives the Ohio Governor, Senate President, and House Speaker each the ability to hire private legal counsel, at taxpayers' expense, to represent, and intervene on behalf of, the Governor, House, and Senate respectively, in any "judicial proceeding that involves a challenge to the constitution or laws of this state and that is an important matter of statewide concern. The [Governor, Senate, and House] may intervene in any such judicial proceeding at any time as a matter of right. Intervention under this division shall be in accordance with Rule 24 of the Ohio Rules of Civil Procedure or with Rule 24 of the Federal Rules of Civil Procedure, as applicable.

With regard to the ability to hire private counsel, current state law requires the Ohio Attorney General to represent the state in such matters, utilizing outside counsel if necessary, and requires the Governor, Senate President, and Speaker. The requested change concerns me for the following reasons:

1. There are no limits on who the Governor, President, and Speaker can hire. Conceivably, legal lobbying groups who helped to write and push proposed bills or state laws could be hired to defend them in federal court. Such legal fees could then be used by the same lobbying groups to lobby for other state laws our legislators want passed. We are already embroiled in similar corruption in the Householder case and we should guard against it.
2. What happens if the Attorney General, Governor, Senate President, and House Speaker all hire their own attorneys? Who speaks for the state? This could wreak havoc on judicial proceedings.
3. The issue of attorney-client confidentiality has been mentioned as a concern. Would there be attorney-client confidentiality in conversations between the Attorney General and Governor, Senate President, or House Speaker? I am not sure of the law in this area, but as a voter, I prefer transparency wherever possible.

With regard to the sought-after automatic right to intervene in court cases, Senator McColley, during a previous hearing, asserted that (paraphrasing) the Senate is already usually permitted to intervene and that this law doesn't change anything. These answers are disingenuous.

The addition of a reference to Rule 24 of the Ohio and Federal Rules of Civil Procedure after the February public hearing, which included a discussion of their unconditional right to intervene, belie the fact that he knows there is a difference between general practice and a statute conferring that right, and that difference matters.

Rule 24 requires a federal or state *law* granting their unconditional right to intervene be in place for the court to honor that unconditional right. Without it, the Governor, Senate President, and Speaker must rely on the court's judgment, and that judgement is a necessary check on the executive and legislative branches of power. Without it, a citizen or business of Ohio who challenges the constitutionality of a state law or provision of the Ohio Constitution, could be looking at fighting the Attorney General, the Governor, the House, and the Senate, who would have an unlimited right to participate in the defense of the laws *they* wrote. The imbalance of power between a citizen and the government would be astronomical, so much so that the case may be unwinnable before it begins.

There are several laws our legislators have proposed or just passed that they anticipate constitutional challenges. The abortion ban. Healthcare access for transgender children. Application of Title IX.

However, the court case that popped up upon investigation in which a legislature's right to intervene was at issue, was a VOTER ID law challenge in North Carolina. I am concerned that Senate Bill 21 may have been proposed to fight constitutional challenges to Ohio's new Voter ID law.

With Senate Bill 21, legislators in this state would secure the right to hire private counsel, with no say on who was hired or how much was spent, to defend Ohio's Voter ID law in court—a law they did not justify or defend in good faith, in open public debate, before they passed it. There is no sponsor testimony for House Bill 458's Voter ID amendments, which were rushed through in a lame duck session in the middle of the night, while groups like AARP and Ohio veterans opposed it.

As a voter, I am appalled. Separation of powers is supposed to guard against that and the law here in Ohio currently take that position.

There are too many ways this law could lead to corruption or an abuse of power against an Ohio citizen who is fighting for their constitutional rights to be protected. I am a mom of a transgender daughter, and this law increases my fear that my family's days as Ohio citizens are numbered.

Please vote no on Senate Bill 21.