

Senate Bill 21
Testimony by Jeanne Ogden
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February 15, 2022

Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson and the rest of the Senate Judiciary Committee, good morning.

Thank you for allowing me to speak to you today. My name is Jeanne Ogden, and I am here today to oppose Ohio Senate Bill 21. Some of this testimony was included in my written testimony on February 7, while some is new.

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, Senate, or House] in any judicial challenge to the constitution or laws of this state. Their intervention is a matter of right."

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 to obtain permission from the judges presiding over such matters to intervene.

This new arrangement concerns me in a number of ways.

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. There is no financial analysis of how much might be spent on private counsel. Taxpayers could be looking at enormous bills for the state to defend itself from constitutional lawsuits filed by Ohio citizens and businesses.
3. 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.
4. 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.

5. It has been suggested that legislators would be best suited to represent the House or Senate regarding the laws they write. While acknowledging that the court does indeed, at times, allow the legislature to intervene, respectfully, as a voter, a legislator's advocacy for laws is supposed to occur during the open debate of those laws before they are signed. That's separation of powers. Which brings me to the reason I suspect this bill has been proposed now.

Last week I asked why now? Why is this one of the first bills to be proposed this session?

There are several laws our legislators might anticipate challenges. The abortion ban. Healthcare access. Application of Title IX.

The law I found, however, 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 when they did not do so in good faith, in open debate, before they passed the law. There is no sponsor testimony for House Bill 458's Voter ID amendments, which was 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 that the legislature could be guaranteed a platform, after the fact, to make their case for laws like House Bill 458 that were rushed through, passed and signed against huge opposition. 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 protected.

Please vote no on Senate Bill 21.