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Chairman Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the Judiciary Committee, thank you for the opportunity to provide Interested Party testimony regarding House Bill 386.

I am a private attorney in Toledo, Ohio. I am a solo practitioner with more than four decades of practice, primarily with nonprofit law firms, but more recently as a one-man law office.

My interest in H.B. 386 concerns its potential obstacles to the fundamental right to marriage under the United States Constitution. The Supreme Court of the United States has repeatedly held that there is a fundamental right to marriage under the Constitution and that obstacles to that right will face strict scrutiny under the Due Process clause of the U.S. Constitution if those obstacles interfere with that right.¹

In 2024 over 120,000 people entered marriage in Ohio. Neither Sponsor testimony nor Proponent Testimony identified any specific evidence of the abuse of the marriage license process in Ohio, but stated one Ohio Probate Judge was uncomfortable requiring only a document showing the applicant's age as sufficient proof of who the person was. Without any more evidence of a problem than this uneasiness I believe H.B. 386 will in many cases make Probate Courts' issuance of marriage licenses more difficult, without any compensating benefits, and violate marriage license applicants' constitutional right to the fundamental right to marriage.

Specifically, H.B. 386's requirements pose problems for both U.S. citizens and immigrants. Many U.S. citizens may not have currently valid driver's licenses, state IDs or U.S. passports, especially low-income people, persons from certain religions, and the elderly who no longer drive. U.S. citizens may be seeking to enter marriage with someone who does not have those documents. The problem for immigrants is that they may not have a current and valid passport or USCIS document that appears current and valid, even though the USCIS document may be considered automatically renewed if the immigrant filed for a renewal before the expiration of the document.

An immigration-related example is that there are automatic extensions of employment authorization documents (EAD) for up to 540 days if the immigrant filed for a renewal before the expiration date listed on the document. There are currently 18 – **repeat, 18** - different USCIS statuses that carry these automatic EAD extensions. <https://www.uscis.gov/eadautoextend>

Similarly, USCIS has extended green card (Lawful Permanent Resident status) validity for 36 months if the lawful permanent resident filed to renew an expiring or expired Green Card. <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-extension-to-36-months-for-green-card-renewals>

The EAD and green card renewal immigrants may not have applied for new passports from their home countries or have current and valid driver's licenses or IDs. Some immigrants don't have cars and drive or didn't have the money to pay for IDs and relied on the USCIS document to show law enforcement if their status was in question.

These immigration-related issues impact U.S. citizens who seek to marry the immigrant. While the Local Impact Statement about H.B. 386 states there is no impact and imposes minimal cost, the truth is that Probate Court employees responsible for the enforcement of an enacted H.B. 386 will have to

¹ See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *Zablocki v. Redhail*, 434 U.S. 374, 383–87 (1978).

parse through documents that they are not familiar with and their actions could result in litigation against the Probate Judge.

As the Committee knows, immigration status is one of the factors in the issuance of driver's licenses and IDs by the Ohio Bureau of Motor Vehicles. The BMV has personnel in Columbus assigned to advise Deputy Registrars about immigration-related driver license and ID issues. The Probate Courts in Ohio will face similar challenges. Additionally, the state's interference with the fundamental right to marry is more problematic for Probate Courts than Deputy Registrars' issues regarding the privilege of obtaining driver's licenses or state IDs. Violations of the Due Process fundamental right to marriage could result in litigation against Probate Court judges as their issuance of marriage licenses is not a judicial activity, and therefore the Probate Judges are not entitled to immunity from suit.

In conclusion, I strongly recommend that you consider the necessity of this bill that will likely interfere with Ohioans accessing their fundamental right to marriage and also cause added burdens to Ohio's Probate Courts.

Sincerely,

s/ Mark Heller
Attorney at Law