

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the Committee: I am Kimberly Burroughs. In November, I will mark my 10th year practicing law in Ohio. Throughout those 10 years, I have served the public as an Assistant Prosecuting Attorney and as an Assistant State Public Defender. I appear today to encourage this committee to reject HB 249. As a practical matter, this bill will divert significant taxpayer dollars away from the real problems facing Ohio's kids. As a matter of law, this blatantly unconstitutional bill is headed straight for the courts.

There are better ways to spend Ohio's resources

Ohio's Department of Children & Youth substantiated 93,844 cases of abuse, neglect, or dependency in 2021. The Children's Hunger Alliance reports that over 500,000 Ohio kids, or about 1 in 5, are food-insecure. Less than half of Ohio's students are proficient in reading and math.

But instead of solving these real problems, HB 249 will crowd Ohio's jails and overpopulate Ohio's understaffed prisons with "cabaret performers." Every version of this bill's criminal offense is an arrestable offense. That means officers, diverted from investigating real, violent crimes, will instead arrest "cabaret performers" and book them into local jails. The decision to arrest usually comes down to a single police officer. Judges and lawyers do not weigh in on legality until later.

Ohio's jails, ill-equipped to handle all but the most rudimentary medical issues, will suddenly encounter adults with unique, costly healthcare needs. If these local jails fail to keep gender non-conforming inmates safe from inmates accused of murder, felonious assault, or other violent crimes, Ohio's counties will face crippling civil liability in personal injury suits.

When charges follow arrest, local jurisdictions will burn through taxpayer dollars funding the public defense and court costs of those charged under HB 249. If a conviction results, either counties will bear the cost of 1-5 years of community control supervision, or the State of Ohio will pay \$38,000 a year to house, clothe, and feed cabaret performers sent to an Ohio prison.

This is all an extraordinary waste of taxpayer dollars just for a solution in search of a problem. Ohio's criminal justice system is not a playground for political gimmicks. Day in and day out, Ohio's judges, prosecutors, public defenders, and an untold number of other specialists do their best to find justice after tragedy through that system. HB 249 will only distract from this important work, and Ohio's taxpayers will notice.

Strict Scrutiny

HB 249 will also waste taxpayer dollars through endless litigation related to the unconstitutionality of the proposed bill. HB 249 is a content-based restriction of freedom of expression. Content-based speech restrictions are “presumptively unconstitutional.” They trigger strict scrutiny review, meaning they will very likely be struck down in both state and federal courts. These inevitable constitutional challenges will further waste public resources that could be better spent solving the real problems harming Ohio’s kids.

Vagueness

The bill is also unconstitutionally vague. What does it mean to “exhibit a gender identity that is different from” biological sex? And more importantly, who decides? Does a woman with a short haircut qualify? A man with a slender frame?

What is “a location other than an adult cabaret where minors may be present”? That strikes me as anywhere on earth. The underlying statute, 2907.39, provides defenses to adult cabarets for their reasonable efforts to exclude minors. But this bill provides none – even though, practically speaking, it is much more difficult to filter out minors when your venue is the entire world. I can think of no rational basis for that distinction.

Because of its vagueness, this bill will probably be used to persecute unpopular groups, like transgender and LGBTQ Ohioans. The constitution forbids vagueness because it allows the government to use its power to arbitrarily persecute disfavored groups. That is fundamentally unamerican. This country was founded by groups escaping government persecution. The promise of America has always been that if you walk a different path, whatever other difficulties you might encounter, government persecution will not be one of them.

Conclusion

Before I conclude, I ask this committee to remember its promise to protect and defend America’s constitution. As Justice Brandeis put it:

“Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

Passing HB 249 would breed contempt for both the law and the vulnerable people that HB 249 targets. In this era of constant crisis and division, the last thing we need is more contempt, either for the law, or for each other. I encourage this committee to reject this bill and turn its attention to matters that truly make Ohioans safer.