

OPPONENT TESTIMONY - SB174

**TESTIMONY OF ELIZABETH MCNEESE
Chair, Ohio National Parents Organization**

614-266-5088, ElizabethMcNeese@sharedparenting.org

JUDICIARY COMMITTEE

OHIO SENATE, 136TH GENERAL ASSEMBLY

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Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee, thank you for the opportunity to provide opponent testimony on SB174.

My name is Elizabeth McNeese, the Ohio Chair of National Parents Organization. I'm a very proud mother and step-mother of six children. And for the record, I did not come here with a personal vendetta or sad story. My kids grew up with the benefit of shared parenting and are grown now... but I am a stubborn advocate and co-author for the equal parenting bills introduced in the past two General Assemblies.

It's been very encouraging to see lawmakers attempt to tackle family court reform, but I sincerely urge you to keep asking the hard questions. Demand the checks and balances of the Judiciary that is bestowed upon you in the Ohio Senate.

First, it's important to note at the outset that SB174 was written and lobbied for by sitting judges with the Ohio Judicial Conference. This bill was not written by either task force in 2001 or 2005. In fact, this bill sidesteps major recommendations that came out of those reports and, instead, emphasizes the court's discretion above all else. This bill clearly highlights the lack of deference courts currently have towards separated parents and their belief that *they* truly know what's best for all our children.

Proponents would like you to believe that this 400 page bill was the result of decades of labor from various entities with the entire focus being "child-first." But as testified to last G.A. by Paul Pfeifer with the Ohio Judicial Conference, *"Since 2020 the Domestic Relations Judges have been working to get before you, [this] legislation.."* The truth is this bill was created as a *counter bill* to our citizen-led reform. When equal parenting was introduced with the overwhelming support of 87%¹ of Ohioans, and 61 Representatives signed on to co-sponsor it², the judges retaliated and this bill is the result. In short, this bill was written by sitting judges to protect the lucrative divorce industry, and it has nothing to do with the best interests of Ohio's children.

I would also like to note on record that while the judges and Bar Association demanded to participate in all of our interested parties meetings, our requests for interested parties meetings have been completely ignored this G.A.

¹ <https://www.sharedparenting.org/shared-parenting-polling>

² Ohio HB 508, 135th General Assembly

What's in SB174 exactly?

SB174 is not in any way shape or form a bill that would move courts to produce more equitable outcomes for fit parents – despite what sidebar conversations may promise. In fact, proponent testimony was carefully crafted to *omit* the serious problems with this piece of legislation, particularly the way SB174 deletes “parental rights,” repealing the entire concept of “shared parenting” and granting courts “complete discretion” to do whatever they feel is best by applying “any other relevant factor” the court would like to consider.

In point, SB174 consistently emphasizes the *court's authority* as paramount over the authority of fit and loving parents. By deleting the term “parental rights” at every opportunity—more than a hundred and fifty times!— it sends a clear message to Ohioans that courts don't recognize the fundamental rights parents have to the care and custody of their children. Instead, what the court sees are mere “responsibilities” that must be doled out at *their sole* discretion.

But parents *do* have a fundamental right to the care and custody of their children. The U.S. Supreme Court has reinforced that time and again.³ And fundamental rights require appropriate due process and strict scrutiny before they are infringed upon.⁴

Care, control, access, authority, association and decision-making— all fall under the umbrella of parental rights. But this bill would rather rebrand these rights as mere “responsibilities.” Ohio families deserve better than that.

These rights are not at the discretion of the courts absent findings of unfitness or a compelling state interest. A mere change in relationship status between parents does not meet the threshold of compelling state interest. Furthermore, denying or restricting parenting time or decision-making without strict scrutiny and due process is an infringement upon those rights.⁵ Yet this bill enshrines judicial discretion under a preponderance of the evidence as the gold standard.

Ohio judges are attempting to rewrite law to usurp parental rights altogether and appoint themselves as *the sole authority* in deciding what is best for Ohio's children—even when both parents are fit and even when parents are in agreement with one another. *This is tyranny.*

While it's true that Courts currently enjoy broad discretion, they wish to double down on this authority and expand the law to grant themselves “complete discretion.”⁶ Not only is this a vast overreach and daringly unconstitutional, it provides an insurmountable hurdle to appeal.

³ See, e.g., *Wisconsin v. Yoder*, 406 U. S. 205, 406 U. S. 231-233 (1972); *Stanley v. Illinois*, supra; *Meyer v. Nebraska*, 262 U. S. 390, 262 U. S. 399-401 (1923), *Troxel v. Granville* 530 U.S. 57 (2000)

⁴The Fourteenth Amendment's Due Process Clause has a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests,” *Washington v. Glucksberg*, 521 U. S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, e. g., *Stanley v. Illinois*, 405 U. S. 645, 651. Pp.63-66., *Troxel v. Granville* 530 U.S. 57 (2000), *Schneiderman v. United States*, 320 U. S. 118, 125 (1943).

⁵ See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982), *Rivera v. Minnich*, 483 U.S. 574 (1987)

⁶ SB174 as introduced, line 4851

It is not in the best interest of children to erase parental rights in favor of granting courts final, nearly un-appealable, authority over children, especially when the child has fit and loving parents and the state has no compelling interest in doing so. *Yet this is the entire essence of SB174.*

Parental rights matter and I don't see how those of you who voted in favor of the recent "Parents Bill of Rights" could possibly support this piece of legislation.

"Best Interest of the Child"

Many of the challenges in our family courts stem from judicial bias that is rampant due to the broad discretion they have and the very weak statutes to guide them. This bias was acknowledged in both Task Forces, and even former Representative Diane Grendell, who penned our "best interest of the child" statutes, admitted in public hearings that there is *still* a huge problem with bias in our courtrooms and to which Judge James Brown of Franklin County stated, *"This bias you speak of exists ... and is the nature of the beast when you have a courtroom and it's run by individuals."*

Judicial bias is real and no honest person could deny it. It also drives up litigation costs and pits parents against each other in desperation to find favor in the jurists' eyes. And yet, this massive bill that supposedly transforms family courts for the better, completely ignores this glaring issue of bias. By retaining the undefined and subjective nature of "the best interest of the child," SB174 allows judicial biases to continue and flourish.

There is no statutory guidance in this bill to guide courts as to what *is* in the best interest of children nor how to weigh the factors. The "best interest of the child" as written is not a measurable standard and still does not provide any guidance to courts on what to *do* with the facts presented in a case. Therefore, courts must apply their own ideas and opinions on what is best for children *over* the ideas and opinions of the child's fit and loving parents. Merely adding to these subjective factors without guardrails is a recipe for disaster.

Essentially, under current law, "the best interest of the child" requires courts to apply their own judgement over the judgement of fit and law abiding parents, and SB174 not only maintains it, it bolsters it with "complete discretion."

"Developmentally Appropriate"

Another problem proponents seem to be proud of is requiring courts to craft a "developmentally appropriate plan" for children. I have a unique perspective on this one, because I have child with significant disabilities. In fact, he's one of 12 patients in the world that we know of and all twelve are different from each other. His pediatrician has zero other patients like him. His specialists have never had another patient like him. Only his father and I know him, and yet, if we went to court, this bill would give the *courts* all the power to decide what is "developmentally appropriate" for him. You may say "well that's what GALs and Evaluators are for"... but to that I say, "if even his own lifelong physicians don't

understand him, why would a lawyer or evaluator know better than they—better than his own parents? Even if, as his caretakers we agree? And if so, why must we pay thousands of dollars to get those inexperienced opinions?” I hope you see how absurd these proposed changes are.

SB174 is Rhetoric not Substance

I think proponents and opponents all agree that Ohio’s current custody laws are completely ineffective at encouraging collaboration and decreasing conflict and the costs of litigation. But SB174 is the opposite of meaningful reform and will *increase* litigation, costs and family conflict.

Are we really expected to believe that parents will be much happier if they’re called the “designated” parent instead of the “residential” parent? Or that rebranding “parental rights” as mere “responsibilities” is going to do anything except undermine those fundamental rights that should be protected?

Courts can’t even agree with *each other* on what is in the best interest of children. The varying local parenting time rules reflect that fact. Therefore, creating an unenforceable policy statement about maximizing time isn’t going to do anything when the caveat is always, “IF” the court feels it’s best.

Policy statements are meaningless when the jurist is the sole decider of “if” and “when” to apply them. Current laws require courts to create a local rule that is in the best interest of children, and yet somehow we have 88 drastically different rules all presumed to be in the best interest of children.

Proponents keep using words like “child-centered” but there is nothing child-centered in this bill. This bill places the focus squarely on each jurist’s authority and children will be the collateral damage.

With SB174, courts will retain *and expand* their power to decide what is best for our children, even if parents are in agreement and even when no allegations have been made against either parent. This is what judicial tyranny looks like and I hope you can recognize it.

The only steps SB174 takes is completely backwards, so please do the right thing; table this bill and send the judges back to the Judicial branch where they belong.

Elizabeth McNeese