

OPPONENT TESTIMONY – SB 174

TESTIMONY OF Phil Creed

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SENATE JUDICIARY COMMITTEE

OHIO SENATE, 136TH GENERAL ASSEMBLY

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

I had testified previously in person on October 8 but felt compelled to offer follow-up testimony.

My stance against this bill and my shared parenting advocacy was not forged in the fires of adverse proceedings. My ex-wife and I had amicable, relatively inexpensive proceedings and share roughly equal time with our two daughters. Our kids have the “two parent privilege” that intact families have but too many children of divorce lack.

As Don Hubin pointed out in his October 8 testimony, the “best interest of the child” is better thought as a goal, not a legal standard.

A standard provides objective criteria for evaluation. In contrast, Ohio’s “best interest of the child” is a *determination* based on enumerated factors without statutory weighting guidelines. SB174 doesn’t provide statutory guidance on how to weigh them; it just doubles their number.

This is tantamount to justice by luck instead of the merits of the case.

This is why the public’s faith in the family court system has been hopelessly corroded.

One of the new “best interest” factors – whether a parent intentionally makes a false report of abuse or neglect – is a welcome addition but (1) should include intentionally false domestic abuse / violence allegations and (2) be listed under proposed ORC 3109.0456 for justifications for courts limiting parenting time. A parent filing ex parte protection orders under knowingly false pretenses – and thus lying to a court -- would certainly manipulate a child. A truly child-centric law would allow courts to minimize parenting time for those who resort to the [silver bullet custody strategy](#).

SB174’s requirements for parenting plans (proposed ORC 3109.044) add numerous criteria to current law, notably the nature of interparental and parent-child communication. These are

court-centric measures, not child-centric. Besides providing additional avenues of litigation through contempt hearings, the additional requirements add to pro se parents' burdens. These extra requirements apply to *all* parenting plans – even uncontested parenting planes for unmarried mothers with absent fathers.

SB174's nod to shared parenting advocates – a statewide policy to maximize the time with each parent if it's in the child's best interest – is noble but lacks teeth. SB174 would no longer *require* standard parenting plans through eliminating ORC 3109.051(F)(2)) but would also not *prohibit* their use either. Judge Randy Fuller said Ohio's Domestic Relations courts were [like 88 little different states doing 88 different things](#) in *proponent (!!)* testimony, so why shouldn't Ohio parents expect a continuation of the archaic alternating weekend plans, either unofficially or under that court's Local Rules?

Lastly, while SB174 takes the welcome step of requiring findings of fact for denying 50/50 timeshare, none of the amendments adopted by this committee on October 15 and 22 pertained to the "complete discretion" clause. We all agree the court must sign off on a parenting plan as spelled out under current ORC 3109.04 (D)(1)(b). If proposed ORC 3109.0412 merely restated this or said, "the court shall have discretion over the approval of a parenting plan", this maintains things as they are.

Instead, proposed ORC 3109.0412 reads, "the court shall have **complete** discretion over the approval of a parenting plan."

In plain language the word, "complete" means "total" or "absolute". NFL referees have always been granted a huge amount of *broad* discretion. But having *complete* discretion best describes NFL officiating prior to the use of instant replay where even the most awful calls stood.

The Ohio Revised Code only has **one use** of the term, "complete discretion", under the Preneed Recover Fund in ORC 4717.41(G). **The term, "complete discretion" does not show up in any ORC statute relating to judicial proceedings.**

"Complete discretion" renders findings of facts largely irrelevant when appealed. Appellate courts can only reverse/remand a lower court's decision if there's an abuse of discretion. How can a Domestic Relations court breach the bounds of discretion in the eyes of an appellate court if, by state law, they've got *boundless* discretion?

The consequences of this will be the largest expansion of court power in a generation and rendering Domestic Relations court rulings appeal-proof. Imagine a loving parent custody to a verified abuser. Now imagine the fit parent appealing and the abusive parent's attorney telling the appellate court, "You *must* let this ruling stand. Under ORC 3109.0412, the lower court was giving 'complete discretion' over the approval of the parenting plan that made my client the designated parent."

Or, imagine an amicable dissolution where both parents came in "eyes wide open", were both represented by counsel and mutually agreed to a parenting plan just to have a court offer a spurious reason to deny that plan and replace it with one of their own.

If you want to make the argument that adding the word, “complete”, somehow doesn’t affect the ability of the appellate courts to properly reverse/remand cases, it stands to reason if a word’s inclusion in the statutes has no effect, neither would its absence.

By any measure, the proper course of action is to either remove the word, “complete”, from ORC 3109.0412 or simply restate ORC 3109.04(D)(1)(b).

You can see why Ohio parents oppose this bill. The “best interest” factors have merely been added onto in number, but no guidance on how to weigh them. That leaves the *real* determining factor – the judge’s personal bias – in place, allowing for divergent rulings among similarly-situated parents. The requirements for parenting plans will be intrusive and drive up the frequency and cost of litigation. The “leveling up” of the courts’ powers to “complete discretion” will render appeals moot even in cases where they’re clearly warranted for a child’s best interest.

For the sake of Ohio’s children, reject this bill.

--Phillip J. Creed