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OPPONENT TESTIMONY - SB174
TESTIMONY OF DONALD C. HUBIN, Ph.D.
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JUDICIARY COMMITTEE
OHIO SENATE, 1365TH GENERAL ASSEMBLY
November 5, 2025

Chairperson 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 the amended SB174.

I'm sorry that I can't be there in person to give oral testimony. In lieu of that, I wanted to communicate to the entire Senate Judiciary Committee concerns I previously shared with the sponsors of SB174 and Senator Manning. These comments will explain why, despite the amendments that have improved SB174, National Parents Organization continues to oppose passage of the bill.

The amendments, welcome as they are, have failed to address multiple serious concerns that NPO has about the effects of SB174. While the amended bill would make some desirable changes to current law, especially in the addition of several factors courts are to consider in determining parenting plans that are in children's best interest, it falls short of establishing a rebuttable presumption that keeping both parents maximally involved in their children's lives after separation is in children's best interest—this despite more than 40 years of research supporting that conclusion.

The fact that, as of now, more than half of Ohio's domestic relations courts apparently believe, based on their local parenting time rules, that it's usually in children's best to have one of their parents marginalized in their lives means that these courts will be unmoved by the public policy statement at 3109.401(B). That policy statement, without any binding force at any rate, only encourages courts to do what they think is in the children's best interest, which we certainly hope they are already doing.

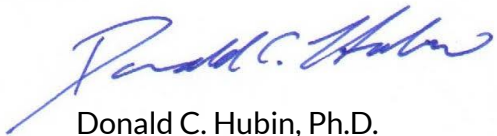
NPO continues to believe that Ohio children deserve a presumption that, should their parents separate, they will not see their relationship with either parent diminished more than necessary. Ohio should follow the lead of Kentucky, Arkansas, West Virginia, Florida, and Missouri and enact

a rebuttable presumption of equal shared parenting, which involves substantially equal parenting time and both parents retaining decision-making authority unless it is shown that this would be harmful to the children. Those changes in those states have received bipartisan support and are popular with the public. A 2018 poll in Ohio, conducted by an independent polling firm, found that 77% of Ohioans supported "a change in Ohio family law that would award children equal time with fit and willing parents in instances of divorce." Only 8% opposed such a change. (Report available by request.) And equal shared parenting laws are popular after passage. In Kentucky, the majority of respondents approved of Kentucky's creation of a rebuttable presumption of equal shared parenting; only 10% opposed this change. (Report available by request.) Presumptions of equal shared parenting reduce parental conflict, something everyone recognizes is harmful to children, and something that, unfortunately, sometimes escalates to physical violence.

I'm adding below a document I shared with Senators Gavarone, Hicks-Hudson, and Manning last month that provides more details concerning NPO's opposition to SB174. That document was produced before the recent amendments to the bill but, as will become readily apparent, most of NPO's concerns have not been addressed by these amendments.

Thank you for the opportunity to provide written testimony in opposition to sB174.

Respectfully,

A handwritten signature in blue ink that reads "Donald C. Hubin". The signature is written in a cursive style with a long, sweeping underline.

Donald C. Hubin, Ph.D.

NPO Issues with SB174

October 13, 2025

- **Policy Statement:** The policy statement at 3109.401(B) (lines 6851-6863) is conditioned on the elements ((1)-(3)) being in a child's best interest. This means that these are not presumptions about what is in a child's best interest. And, *if taken literally*, would not guide the court in any way that it isn't otherwise guided. That is to say, the header of this clause ("It is, therefore, the public policy of this chapter, when it is in the child's best interest") could be followed by absolutely anything and be true. Presumably, because the bill—and current law, I believe—requires all child-related decisions to be made consistent with the best interest of the child, the additional portions of the clause don't literally add anything. A substantive policy statement would not make the policy contingent on an antecedent determination that it is in the child's best interest; it would be a policy about what is typically in a child's best interest. A good example is Vermont. Vermont statutes include a policy statement that “after parents have separated or dissolved their civil marriage, it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact.” [VT. STAT. ANN. TIT. 15 § 650](#). This is a policy statement directing the court's thinking without presuming an antecedent judgment about what is in a child's best interest and, then, telling the court that it's state policy to do that.
- **Designated Parent Issues:** The language in the proposed 3109.044(B) seems unclear. It says that the parenting plan will designate “a parent or legal custodian as the designated parent and legal custodian for the following purposes” and then lists 5 functions which, presumably, cannot be assigned to both parents (lines 4752-4764). Does this imply that one parent must be designated for all five? And, if not, what is in the bill to prevent courts from reading it that way? It might be best in a given case for one parent to be the designated parent for school placement and the other to be the designated parent for providing health care coverage. The ambiguity could be reduced, to my ear at least, by rewording the clause to say: "For each of the following purposes, the designation of one parent or the other, or a legal custodian, as the designated parent: ..."
- **BIC Factors:** As I mentioned in our conversation, the expansion of the best interest of the child factors, especially (10), (12), and (13) is a welcome change. (10) provides a family-law-based deterrent for false allegations of abuse and (12) & (13) are what we label "friendly parent factors" and they are desirable in encouraging good behavior. However,

there is a concern about factors (3) and (4) in the context of a nonmarital case. Sometimes a father doesn't know that he has a child until there is a paternity action or he has been denied any access to his child. There needs to be an "on ramp" for such cases. This is something recognized by Stark and Summit Counties. These counties are unique in offering an explicit "Transitional Parenting Time Schedule" option. These schedules (Stark's "Schedule #4" and Summit's "Schedule E") are designed to provide a transition, over a 12-week period, from a situation where a parent is exercising no parenting time to a standard parenting time schedule. (I believe that some states have such a provision in their BIC factors.) The situation where there are not the established relationships referred to in factors (3) and (4) but where there is every reason to believe they will develop needs to be recognized because, in the case where a father has been kept out of the life of his child, the past is not a good indicator of the future and it's the child's future that we are trying to protect. This could be handled by revising both (3) and (4) to add something along the lines of: "or the capacity for those relationships to develop."

- **Parenting Time Enforcement:** Appropriate remedies for parenting time interference—which can often start a downward spiral in relations between the parents—are long overdue. They were recommended in the 2001 Task Force Report and never enacted in legislation. So this element of SB174 is welcome. But a better model is presented by Missouri with its [Family Access Motions](#). Because these are explicitly designed to be handled by parents without counsel, they have a low barrier, which makes them a more credible deterrent to parenting time interference. Missouri has had these in place for more than a quarter of a century. I spoke with the administrative officer of the St. Louis family court years ago about these and she reported to me that they have not flooded the courts but, instead, serve as an effective deterrent. She said that when there are issues with compliance with the parenting time order, they bring the parents in for counseling and mediation. Some parents are amenable to the counseling portion. But for those who take an "or what" stand, the mediator says, "the other parent can walk down the hall and fill out a short form and you'll wind up paying the court costs, giving compensating time, and paying a fine." She told me that this response got the attention of the noncompliant parent. A right-sized tool would be low-cost, timely, and *pro-se*-friendly. The 2001 Task Force Report included specific recommendations that suggest an approach more friendly to *pro se* litigants. (See [Appendix A, Section 14, p. A-11 of that report](#).)
- **Temporary Orders:** Under current law, as I understand it, temporary orders do not create a presumption for final orders, which is proper, of course, because temporary orders are issued based on unchallenged affidavits and, possibly, a brief and cursory court appearance. SB174 reiterates this saying, "In allocating or approving parenting responsibilities in a parenting plan, the court shall not draw any presumptions from a temporary parenting order or consider it as a factor in making a final decision" (§ 3109.0411, lines 4847-4850). It's unclear how the language of SB174 makes any substantive change here. In any case, as I said in my oral testimony:

What temporary orders do create is a *de facto status quo* that can be difficult for a parent who wants to care for the child more than is provided under temporary orders to overcome if the other parent objects to the change. In oral testimony Judge Fuller claimed that "Senate bill 174 says that you can't have anchor bias or you can't have the temporary orders dictate or affect what your ultimate outcome in the case is." It would be terrific if it were this easy to overcome anchor bias (and also *status quo* bias). It is not! You cannot legislate human psychology. We are all subject to anchor bias and *status quo* bias. A parent who is marginalized in temporary orders and wants equal parenting time is asking the court to take a bet in final orders on a parenting arrangement that it hasn't seen working. And if the other parent objects to equal parenting time, that parent has every incentive to make it appear to the court that equally shared parenting time can't work.

Courts shouldn't be sidelining one parent before they know much of anything about the family's situation. Temporary sole custody establishes a perverse incentive. The parent with temporary custody has every incentive to try to demonstrate to the courts that the parties are unable to cooperate in a manner that would facilitate shared parenting. And the other parent is in the position of arguing to the court that it should make a bet in its final orders on an arrangement that it hasn't seen operate. Courts obviously have an incentive to be cautious about doing so. Temporary orders provide a period where, absent a special reason to think it would be dangerous or unworkable, equal parenting time should be tried out. It is a test period. And, if one parent seeks to undermine it in order to win sole custody, that goes to one of SB174's proposed BIC factors. (I'm attaching an old handout NPO created on this matter called "NPO Explanation of Alaska-Kentucky Approach to Temporary Orders (Ohio)".)

- **Local Parenting Time Rules:** SB174 would remove the mandate for courts of common pleas to have a local rule including "standard parenting time guidelines." ("On or before July 1, 1991, each court of common pleas, by rule, *shall* adopt standard parenting time guidelines. A court shall have discretion to deviate from its standard parenting time guidelines based upon factors set forth in division (D) of this section," (ORC 3019.51(F)(2), emphasis added).) This would be deleted by SB174 at lines 6011 through 6015. In its place, SB174 says this:

Upon the enactment of this act, the General Assembly *requests* each court with jurisdiction over domestic relations matters to review and update the court's local rules regarding parenting time to comply with the act's provisions, including section 3109.401 of the Revised Code. (Lines 12192-12196, emphasis added.)

The language is stronger than permissive but it is not mandatory as is the current provision that SB174 would remove. Senator Hicks-Hudson raised a concern about separation of powers issues but, to my knowledge, that has not been raised with respect to the existing provision

- **§ 3109.046 & 3109.047:**
 - **Poor Wording:** Both sections attempt to set up a necessary condition for a court to deny a request from parents, jointly, or a parent, individually, for a substantially equal shared parenting time plan. Alas, taken literally, they set up a *sufficient* condition, not a *necessary* condition. This is, unfortunately, common in legislative drafting, but it should be avoided. What the bill means to say is that "a court may object to the provision *only if* the court determines..." However, it's probably safe to assume that most courts and attorneys will understand the current language in SB174 to *require* such a determination and the accompanying written findings even though that's not the literal meaning of the clauses.
 - **Vagueness:** More problematically, it is unclear in both clauses what will constitute a sufficient written finding to support the court's determination. With respect to § 3109.047, would it be sufficient for a court to write: "This court finds that substantially equal parenting time is not in the interest of the children because one of the parents objects to this arrangement"? Given the abuse of discretion standard that appellate courts employ and the fact that SB174 would grant trial courts "complete discretion over the approval of a parenting plan" (§ 3109.0412), it's difficult to see how the appellate court could have grounds to overturn such a decision. Perhaps more fancifully, with respect to § 3109.046, would it be subject to override on appeal for a court to write, inspired by former Justice Paul Pfeiffer's testimony against HB14 (135th GA): "This court finds that substantially equal parenting time is not in the interest of the children because it is unnatural"? (Yes, he actually described equal parenting time arrangements as "unnatural". It surprised me to know that my ex-wife and I were, long after our marriage ended, engaging in unnatural acts together!) Again, appellate courts give domestic relations courts extremely wide discretion, which SB174 appears to widen with the "complete discretion" language.

The problem could be ameliorated slightly, at least, by revising the last sentence of both clauses to read: "...and provides written findings of fact specific to the case to support the determination." And § 3109.046 should contain this provision: "One parent's objection to substantially equal parenting time is not a sufficient basis for rejecting such a plan." South Dakota statutes do something similar by expressly permitting the court to "order joint physical custody in such proportions as are in the best interests of the child, notwithstanding the objection of either parent." [S.D. Codified Laws § 25-5-7.1](#)

- **Inconsistent Requirements for Written Justification:** It's unclear whether the requirement for written findings applies only to the element of the parenting plan that proposes substantially equal parenting time. So, for example, suppose a parent submits a shared parenting plan that includes equal parenting time and either

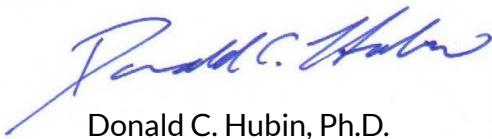
shared decision-making responsibility or split decision-making responsibility (with one parent having that responsibility with respect to medical treatment, for example, and the other having it with respect to education). If the court rejects this plan and chooses one by the other parent or one of its own devising that has unequal parenting time and gives all decision-making responsibility to one parent, do the written findings have to address both the basis for the rejection of equal parenting time *and* the rejection of the shared or divided decision-making responsibility or only the shared parenting time issue? And, suppose a parent submits a plan that has unequal parenting time, perhaps because the parents must live too far apart, but has shared or divided decision-making responsibility. If the court rejects this plan, it looks like there is no requirement for the court to explain why it is curtailing that parent's rights to make decisions with respect to the child.

- **Constitutional Issues:** Finally, the elephant in the room is the issue that several witnesses raised in their written and oral testimony: constitutional compliance. Giving a court the power to substitute its own parenting plan for a parenting plan that is freely agreed to by both parents without a specific determination of likely harm to the children is, I believe, unconstitutional given the more than 100 years of U.S. Supreme Court dicta asserting that parental rights are fundamental constitutional rights. Under the *parens patriae* doctrine, the state has a right (and a duty) to protect children from harm, even from their parents. But it doesn't have a right to direct parents in the raising of their children absent determination that the parents conduct would be harmful to the children. That the court believes that the parents' plan is not in the child's best interest is not sufficient.

And, even when the parents are not in agreement, the court should have to show that there would likely be harm to the children if both parents were to continue to have decision-making responsibility and that there is no feasible way to prevent that harm without restricting one parent's decision-making responsibilities. (In connection with these constitutional issues, I'm attaching my 1999 paper, "Parental Rights and Due Process".)

I'm happy to further explain any of the above concerns, either in writing or by meeting with relevant people, if that would be of any help.

Respectfully,



Donald C. Hubin, Ph.D.