

OPPONENT TESTIMONY - SB174

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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—once again—to provide opponent testimony on SB174.

First, I want to acknowledge that the sponsors of this bill have amended the bill since the last opponent hearing and while my position has not changed, my statements today do take into consideration the adopted amendments from the last two weeks.

I am urging this committee to keep asking hard questions. Please do not skate this bill through without truly studying the language used in this bill. A 400 page bill requires thorough consideration and should be properly vetted, with parental rights being affected and judges being so involved in authoring and lobbying this bill.

During the hearing on October 8th, Senator Hicks-Hudson quoted from my written testimony where I'd said [and I'm paraphrasing] *"It is not in the best interest of children to erase parental rights in favor of the court's authority. Yet this is the entire essence of SB174."* While my statement may have sounded outrageous, even with the recent amendments, I stand by it.

Last week, this committee adopted an amendment to re-insert the words "parental rights" back into the language of this bill. While I acknowledge the change, that particular issue merely confirmed the true and consistent underlying nature of the whole bill, which still remains unchanged and which still erodes the fundamental rights of parents to control the upbringing of their children without undue governmental interference.

This bill continues to be court-centered rather than child-centered, reinforcing the power of the courts to decide the fate of children at their discretion with no guardrails or accountability.

What's STILL in SB174?

The recent amendments continue to ignore the multitude of serious problems with this bill, particularly the way SB174 grants courts “*complete discretion*”¹ to order *anything*² they feel is best, and by giving them the authority to consider “*any other factor*”³ when reallocating or restricting parents’ rights, even so far as transferring the parents’ custody to someone else under a mere preponderance of evidence⁴.

Outrageous.

These ambiguous “blank check” statutes provide no accountability or guardrails for courts, even if they provide written findings. Furthermore, policy statements are meaningless when the court has the discretion to decide if or when to follow them.

While we expect those who make a living in family law to fully endorse this bill—and they do—Ohioans deserve better than that.

In point, SB174 STILL consistently emphasizes the *court’s authority* as paramount over the authority of fit and loving parents. There is nothing child-centered about a bill that defers decisions to the court over the child’s parents, simply because the court feels a better decision could be made.

Care, control, access, authority, the right to association and decision-making— are all recognized parental rights⁵. But this bill explicitly places these same fundamental rights at the complete *discretion* of the courts.

Since when are fundamental rights completely discretionary? And if they should be discretionary, why aren’t we at least applying strict scrutiny with least restrictive means, or requiring clear and convincing evidence to protect these fundamental rights from undue governmental interference?

Denying or restricting parental rights without strict scrutiny and due process is an infringement upon those rights.⁶ Yet this bill enshrines judicial discretion under a preponderance of the evidence as the gold standard.⁷

SB174 is also in conflict with Ohio’s existing laws requiring clear and convincing evidence for juvenile cases.⁸ Parents using medical marijuana are also protected by the clear and convincing threshold,⁹ but in

¹ SB174 as introduced, Section 3109.0412

² SB174 as introduced, Sections 3109.042, 3109.044

³ SB174 as introduced, Section 3109.0430, 3109.0456

⁴ SB174 as introduced, Sections 3109.0412, 3109.0414, 3109.0416

⁵ 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)

⁶ See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982), *Rivera v. Minnich*, 483 U.S. 574 (1987)

⁷ SB174 as introduced, Sections 3109.0412, 3109.0414, 3109.0416

⁸ O.R.C. 2151.415(C)(1), “A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child...”; O.R.C. 2151.415(D)(1), “The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child...”

⁹ O.R.C. 3796.24(B) “Unless there is clear and convincing evidence that a child is unsafe, the use, possession, or administration of medical marijuana in accordance with this chapter shall not be the sole or primary basis for any of the following: (1) An adjudication

ordinary uncontested cases with an absence of harm or unfitness, courts can apply the lowest evidentiary standard with complete discretion? It's almost like the judges came up with these ideas themselves.

Two weeks ago, during this Committee, I heard Senator Gavarone challenge a new bill whose language would have restricted a person's second amendment rights based on a past "charge" instead of a "conviction." Senator, I happen to agree with you on that. However, in this bill, a mere *allegation* is enough—and a formal charge isn't even required— to restrict a parent's rights. In fact, "*any other reason*"¹⁰ the court finds relevant is completely acceptable.

"Best Interest of the Child"

The best interest of the child is not a measurable standard and it was not meant to be used as a catch all replacement for parental judgement or authority.¹¹ This approach has failed Ohio's families, and merely adding to these subjective factors without guardrails is a recipe for disaster. We need thoughtful reform, not window dressing of decades old/failed policies. Courts can't even agree with *each other* on what is in the best interest of children. Yet, this bill will allow courts to continue as usual with more power.

SB174 is insulting to Ohio's families

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 more collaborative if they're called the "designated" parent instead of the "residential" parent? Good parents will still be forced to continue fighting over that designation just as they do now.

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.

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.

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under section 2151.28 of the Revised Code determining that a child is an abused, neglected, or dependent child; (2) An allocation of parental rights and responsibilities under section 3109.04 of the Revised Code; (3) A parenting time order under section 3109.051 or 3109.12 of the Revised Code.

¹⁰ SB174 as introduced, Section 3109.0456

¹¹ *Troxel v. Granville* 530 U.S. 57 (2000) *Ibid.*, 969 P. 2d, at 31 "As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made".