

April 25, 2017

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Re: Amendment HC 1793 to HB 49 (Budget Bill)
Expansion of Probate Court in Relation to Parks by Amendment to ORC § 1545.06

Dear Chairman Smith and Finance Committee Members:

I provide this written testimony on behalf of myself only. I respectfully request that HC 1793 be removed from the Budget Bill.

HC 1793 proposes to amend ORC § 1545.06 (“Removal of park district commissioners; vacancy), which currently grants the power to Probate Court judges to remove park district commissioners and to fill vacancies on park boards. The substance of this statute has been unchanged since it was enacted in 1917 (see former Ohio General Code § 2976-10c). Why is a proposal to amend ORC § 1545.06 before you now? In short, because of one judge in one county – Geauga County Probate Court Judge Timothy Grendell.

For a century in the State of Ohio, and for over 55 years in my county, Geauga, local park districts established under ORC Chapter 1545 have been managed by boards of commissioners appointed by the probate judge in each county. The existing statute gives the probate judges power to appoint and remove park commissioners. No other powers over the day-to-day operations of park districts are granted by the statute, and over all that time, there has been no need for additional grants of powers. Throughout the history of the county and township parks in Geauga County, until recently, the probate judges have appointed knowledgeable and competent commissioners who have managed the parks well, in accordance with each park district's mission and bylaws. Everything worked smoothly until Timothy Grendell became the Geauga County Probate Court Judge.

I live in Russell Township in Geauga County, literally steps away from adjacent Chester Township. I believe that the subject amendment to ORC § 1545.06 is the direct result of disputes involving Judge Grendell and 3 different Chapter 1545 parks – Geauga County Park District, Russell Township Park District, and Chester Township Park District.

Although I am least familiar personally with the situation in Chester Township, there is litigation pending there that has generated some discussion in judicial opinions about the powers of probate judges in relation to parks. One news source (WKSU), in a report on the subject amendment states: “A spokeswoman for Judge Grendell says the new legislation simply codifies powers already granted to probate judges, which were affirmed by a 2016 Ohio Supreme Court ruling.” Representative William Seitz, who is sponsoring the amendment, stated to the Geauga County Maple Leaf, a local newspaper, that his proposal “merely clarifies and codifies an April

2016 Ohio Supreme Court decision.”

What was the 2016 Supreme Court opinion mentioned by both Judge Grendell’s spokeswoman and Representative Seitz and why does Judge Grendell want it codified so badly that it was brought forward in the budget bill rather than as its own bill? In *State ex. rel. Chester Township v. Judge Grendell*, the Supreme Court denied the Chester Township trustees’ application for a writ of prohibition against Judge Grendell, sending the underlying matter back to the lower courts, where it is still pending. In dicta that is not binding, the Supreme Court discussed the powers of probate judges in relation to parks in general. Judge Grendell then used the dicta in the Supreme Court decision to justify certain orders that he made in the matter following the Supreme Court decision. Subsequently, in an opinion in the same matter written by Judge John J. Lohn, who was assigned to the case after Judge Grendell recused himself, Judge Lohn called into question Judge Grendell’s claim to expansive powers over the parks based on the Supreme Court’s dicta. For example, Judge Lohn’s opinion states: “The Supreme Court decision did not authorize Judge Grendell to threaten the trustees and their attorneys with jail time or fines or civil judgments.” Judge Lohn’s opinion is critical of other powers claimed by Judge Grendell.

I believe that the amendment before you is, first and foremost, Judge Grendell’s attempt to codify powers that he would like to have, powers that his spokespeople claim the law already gives him, but which have been called into question by a highly esteemed member of the judiciary. Surely, this unusual situation, unique to one judge in one county, cannot be the basis for expanding the powers of all probate judges in all counties, at least not without fuller consideration by the Legislature as its own bill, subject to hearings before the proper committees.

I am personally involved as a citizen in the disputes in both Russell Township and Geauga County involving those park districts. In a matter involving the Russell Township Park District, I personally witnessed a hearing held by Judge Grendell in which he subpoenaed former and current park commissioners, representatives of a local land conservancy organization, and a local property owner to appear before him, ostensibly because he had heard complaints about the current park commissioners, but in reality, in my opinion, to attempt to influence a decision whether or not to purchase certain land for a new park. I have been in courtrooms many times, and I have never witnessed such a hearing. Judge Grendell acted as prosecuting attorney, grilling witnesses (who were not permitted to hear each other’s testimony), making assumptions, offering evidence himself, even gratuitously mentioning my name twice, for no other reason that I can think of than to attempt to intimidate me. (I was merely a spectator, not a witness.) He then wrote his own opinion in the matter – thereby acting as both prosecutor and fact-finder.

This is why the subject amendment scares me personally. If a probate court has the power to conduct a hearing such as the one I witnessed and then to “impose duties or restrictions on a person or party who [in the Probate Judge’s opinion] interferes with the park district’s purposes...” then I could be fined, or perhaps even jailed, for speaking against actions or policies of a park district, writing a letter to the editor, or making a public records request. This amendment will stifle public participation and dissent, and in fact, I believe, is meant to stifle public participation and dissent. That is very scary to me and fundamentally un-American.

As for the Geauga Park District, since Judge Grendell took over the appointment/removal of park commissioners in Geauga County, we have seen instability in the county parks, as 11 different commissioners have served on the 3-person board in a 3-year period. A group of concerned citizens has organized a nonprofit group (Protect Geauga Parks) due to concerns about Judge Grendell's unilateral decision to use his position to substantially alter the primary mission of the park district. He has taken an active role in the everyday management of the parks. It is my belief, based on my personal contacts with Judge Grendell, that he is unhappy with criticism from citizens of Geauga County regarding the county parks. It would not surprise me if he believes that the very existence of citizens who are critical of the park district's management decisions constitutes interference with park management, subjecting such citizens to his jurisdiction. The amendment to the Budget Bill that you are now considering would give Judge Grendell the power to muzzle park district critics. To my knowledge, no other probate judge in the state has asked for or desires such broad powers.

Therefore, I respectfully request that you remove HC 1793 in its entirety from the Budget Bill.

The probate judge's direct involvement in parks is not limited to the county parks. He has also directly involved himself in the management of 2 township park districts, one of which is involved in litigation that grew out of his interference. He -- one person in one of 88 counties in Ohio -- is behind this statutory amendment that's specifically designed to retrospectively validate his ongoing interference in management of the parks and give him further powers in the future to quell dissenting voices. That is the 1st Amendment issue that you asked about. Will those of us who regularly speak out in opposition to actions taken by the park district be dragged into court for hearings to determine whether we have interfered with the park district? If the judge (who will be the sole person determining who should be brought in for hearing and who should be punished) decides that someone has interfered, will that person be fined? Jailed? Punished in some other way to be determined by the judge, without any checks or balances on the judge's powers? Punishing people for speech is a 1st Amendment violation. Furthermore, if this law passes, I'll be afraid to speak publicly about the parks, and that chilling effect is a 1st Amendment violation.