

April 25, 2017

Representative Ryan Smith  
Chair, Ohio House Finance Committee  
District 93  
77 S. High St. 13<sup>th</sup> Floor  
Columbus, OH 43215

RE: H.B. 49 Ohio Budget Bill and Amendment HC 1793 Expanding Powers under RC 1545

Dear Chairman Smith and Finance Committee Members,

Thank you for the opportunity to speak today regarding the proposed amendment to the Ohio Budget Bill that would greatly expand the powers of the probate court in matters relating to a park district established under RC 1545.

Taken in the context of the Ohio Budget Bill, this small and seemingly innocuous proposed change may seem trivial, but I submit to you that it has far greater implications on the freedoms and liberties of the citizens of the State of Ohio than you may first realize.

Ignore what some may be telling you regarding the 'intent' of this proposed legislation. Read the language and ask yourself:

- 1) Would this change inhibit the right to free speech?
- 2) Could it be used to intimidate citizens and suppress free speech?
- 3) Would this change negatively impact due process?
- 4) Would this change violate constitutional separation of powers?

If you answer yes to any of these questions, then the proposed change should be rejected.

### **BACKGROUND**

It is important for each of you to understand the context in which this language is being proposed. I have the honor and privilege of serving as trustee for the citizens of Chester Township in Geauga County. I am currently in my second term of office.

For more than thirty years, Chester Township has had an agreement with the Chester Park Board to manage township-owned lands known as Parkside. Last year, I voted against executing a new agreement because it contained terms and conditions which could have placed me in contempt of court.

Because of our county probate judge's ongoing interference in a relationship between the township and the park board, I was also compelled to terminate the existing agreement with the park board; one that had been in place for more than 20 years.

In response to my lawful actions on these agreements, the probate judge has accused me of intimidation, fraud and violating his constitutional rights. By refusing to submit to the probate court's directives and with nothing properly before the court, civil and criminal investigations were initiated against me personally by the probate judge. If the proposed amendment were in effect two years ago, I could be in prison now, having been found guilty of a 3<sup>rd</sup> degree felony and facing jail time of up to five years.

The job of prosecutor is not the proper role of the probate court. If this language becomes law, the probate court will be the investigator, prosecutor, judge, jury and executioner all in one; violating several constitutional protections. For this reason alone, this language should be rejected by this committee.

### **WRONG PLACE, WRONG TIME**

You are being misled if people tell you HC 1793 simply codifies language of a unanimous Ohio Supreme Court decision regarding the powers and authority of the probate court. The only matter decided by Ohio Supreme Court was whether the probate judge patently and unambiguously lacked jurisdiction.

The Supreme Court's ruling did not grant a probate judge the powers that are proposed in HC 1793. In fact, the scope of authority of a probate judge over a township board of trustees is a matter currently under appeal at the 11<sup>th</sup> District Court of Appeals. Any change in existing law would be improper at this time.

Ask yourself, if 87 of 88 counties have no issue with the current law, why is this change being proposed? It should be noted that the state representative who filed this proposed change also filed an amicus brief on behalf of the Geauga County Probate Judge in the matter that was before the Supreme Court. The media has also reported that HC 1793 was initially drafted by this same probate judge. The drafting of legislation is the responsibility of this body, not of the courts.

If HC 1793 is good law, it should be able to stand on its own, and survive public scrutiny and in accordance with the normal procedures of the lawmaking process. Burying it in the Ohio Budget Bill provides political cover and is a disservice to the citizens you serve.

**A MECHANISM ALREADY EXISTS**

Under RC 2101.06, a probate judge already has the authority to appoint a special master commissioner in any matter ‘pending before the judge’. The proposed change adding this authority under RC 1545 is unnecessary.

‘Pending before the judge’ is critical language, because if nothing is properly before the judge, he or she cannot appoint a master commissioner. The proposed language would allow for a judge to unilaterally initiate an investigation and compel anyone to be a party to the proceedings. It should be cause for concern to each of you that this proposed language joins executive, legislative and judicial powers under the probate judge. Is that this Legislature’s intent?

An RC 1545 park board is a separate political subdivision. A township board of trustees is a separate political subdivision and individuals are citizens with certain protected rights. Under current law, a park board can file its own action in court if it believes a party was interfering with the park district’s purposes. HC 1793 would bypass this responsibility of the park board, enabling a judge to unilaterally take action without a matter being properly before the court.

**THE LANGUAGE CONFLICTS WITH EXISTING LAW**

Without a clarifying definition in HC 1793, we are left to the potential vindictive whims of a probate judge to decide if someone is ‘interfering with the park district’s purposes’.

HC 1793 is also in direct conflict with current law. Under RC 1545.36, citizens may petition the court to place onto the ballot a motion for dissolution of a park district. Dissolution of a park district certainly could be interpreted as ‘interfering with the park district’s purposes’ and therefore, citizens lawfully petitioning their government could be found guilty. Again, is that this Legislature’s intent?

Each of you has taken an oath to uphold and defend the Constitutions of the State of Ohio and the United States. I respectfully ask that you adhere to your sworn oath and strike this unconstitutional language from the Ohio Budget Bill. Thank you for this opportunity to speak.

Yours in service,

*Ken Radtke, Jr.*

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