

Ohio House State and Local Government Committee
Testimony of Melanie Elsey
Sub.S.B.311
November 19, 2020

Chairman Wiggam, Vice-Chair Stephens, Ranking Member Kelly, and members of the House State and Local Government Committee, I appreciate the opportunity to provide testimony in support of Sub.S.B.311.

My name is Melanie Elsey. I serve as the Legislative Director for the American Policy Roundtable. As millions of Ohioans have been affected by the COVID-19 pandemic and statewide policies enacted to address this virus, we have been focused on finding a balance between policies that protect Ohioans and policies that protect guaranteed Constitutional liberties.

Sub. S.B.311, as it has been revised by the Ohio Senate, restores necessary and appropriate legislative oversight to our state's response to this virus in the present and sets up this constitutionally required role for the legislative branch to address future pandemics.

The Ohio Constitution, Article II, § 26 states that all laws of a general nature are prohibited from being passed to take effect upon the approval of any other authority than the General Assembly. Yet Revised Code 3701.13 confers "ultimate authority" to a single executive branch agency to make, modify, abolish policies which carry the enforceable weight of law without limitations and without any legislative oversight. While this statute was enacted in 1886 with somewhat different language, it has never been applied as it has this past year.

Since Governor DeWine issued Executive Order #2020-01D on March 9, 2020, there have been more than 75 public health orders issued by the Ohio Department of Health related to COVID-19. These orders have had the effect of stripping healthy Ohioans of fundamental rights to worship freely, to peaceably assemble, and to not be deprived of property without due process of law. We have seen educational experiences necessary for all Ohio children, and especially children who were already at risk, be relegated to "zoom" meetings with teachers with no realistic expectation for academic growth. We are aware of the loss of life to suicide as lifelong work in owning a business and/or extended unemployment were forced on vulnerable Ohioans.

We know now that this is a virus that is definitely contagious but has a survival rate for almost every age range of more than 95% and for most more than 99%.

Sub.S.B.311 resolves the executive overreach and re-establishes a constitutional balance of power. It will serve Ohioans well to compel the Ohio Department of Health to operate with understanding that the General Assembly, whose members are elected representatives of the public, may need to help shape these policies in the future.

There are additional concerns not addressed in Sub. S.B.311 as we examine steps that have been taken to track and mitigate the spread of infection. These concerns relate

to medical decisions and medical privacy. We would respectfully suggest that a revision to Ohio law will be necessary (either as an amendment to Sub.S.B.311 or approved through additional legislation) to require informed written consent for an individual to be tested for the presence of a disease or infection or for the presence of an immune response to such disease or infection. In addition, any biometric record of a tested person's DNA sequence, whether partial or complete, should not be stored or made available to any entity without express written consent of the individual.

Thank you again for the opportunity to provide testimony in support of Sub.S.B.311. I would be glad to be available for any questions you may have. I may be reached at melanie@thepublicsquare.com.