



House Bill 308
Opponent Testimony
Ohio Senate General Government and Agency Review Committee
June 3, 2020

Chairman Schuring, Vice-Chairman Rulli, Ranking-Member O'Brien and members of the Ohio Senate General Government and Agency Review Committee, my name is Sue Roudebush and I serve as Counsel for the National Federation of Independent Business (NFIB) in Ohio. I am a Partner at the law firm of Bricker & Eckler LLP where I focus my practice in the areas of workers' compensation, employment law, and OSHA. I am here testifying before you on behalf of NFIB's 22,000 governing members in Ohio to express their opposition to substitute House Bill 308 (HB 308), which would eventually erode the physical requirement for mental injuries in Ohio's workers' compensation system.

As you know, under current workers' compensation laws, an individual cannot seek workers' compensation benefits for a psychological condition without an accompanying physical injury. The language proposed in HB 308 would permit a select group, specifically first responders, to receive workers' compensation benefits without an accompanying physical injury. Not only is this proposed change drastically altering the scope and purpose of our workers' compensation system – a system that has worked for over 100 years – it also violates the Equal Protection Clause.

It has been said that the Equal Protections Clause is at the core of the 14th Amendment, an amendment passed to remedy injustices. While racial discrimination was the original basis for the Equal Protections Clause, *any* unjust government classification favoring one group over another can constitute a

constitutional violation. Here, the violation is clear, as first responders are treated differently than other classes of workers, and it would be impossible to explain why only a select class of workers deserve a more generous benefit than others with the exact same psychological condition. NFIB urges you to consider the ramifications of HB 308 on the workers' compensation system, as we believe it is one court case away from being turned on its head to permit psychological injuries without an accompanying physical injury for all employees, not just first responders as this legislation intends.

Consider the testimony of the Ohio Association for Justice (OAJ) on May 30, 2019 in support of House Bill 80 regarding this same issue. Paragraph five of the written testimony states, "[w]e would prefer this psychological coverage be extended to all workers, and not just first responders, but we recognize the political viability of this provision depends upon this limitation." The OAJ is already planning its next move to challenge the constitutionality of this bill, and I can tell you firsthand, we are already seeing mental only workers' compensation claims being filed to set that stage. It is only a matter of time before the legislative intent of this bill is unraveled.

NFIB sincerely appreciates the very unique challenges faced by first responders every day. And, that is why they have been diligently working to find a solution that cares for these individuals outside of the Ohio Bureau of Workers' Compensation. This solution was recently introduced in the Ohio House in the form of House Bill 556. This bill would create a separate fund at the Department of Public Safety to provide benefits to first responders with Post Traumatic Stress Disorder without an accompanying physical injury. Not only would this separate fund ensure first responders can get the assistance they are seeking, it would preserve the workers' compensation system from a costly expansion of coverage – an expansion that 90% of small business owners strongly oppose.

In conclusion, NFIB feels that the legislation before you could quickly become very problematic and costly for Ohio's small businesses. Therefore, NFIB respectfully requests that the legislature carefully consider a separate fund solution, like the one found in House Bill 556. Thank you for your time and the opportunity to testify regarding this bill. I am happy to answer any questions the committee members may have at this time.