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Sponsor Testimony on Senate Bill 108

Senate Judiciary Committee

March 20, 2019

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for allowing me the opportunity to provide testimony on Senate Bill 108.

This bill would repeal Section 1.49 of the Ohio Revised Code. This Section, enacted in 1972, specifically authorizes courts to determine “the intention of the legislature” when interpreting statutes. It goes on to list ways by which the courts may do this, including (among others) the “object sought to be attained,” the legislative history of the provision in question, and the “consequences of a particular construction.”

I am proposing a repeal of Section 1.49 for several reasons. First, I believe that when a court is interpreting a statute, it should apply the plain meaning of the statutory text. As Justice Scalia spent his career explaining, “it is the law that governs, not the intent of the lawgiver.” In contrast to this, the current statute is an invitation to judicial lawmaking. It is the responsibility of the *legislature* to weigh the consequences of a particular statute or policy. It is the role of the courts to say what the law is, consistent with the statutory language. It is not the role of the courts to render judgment on their preferred policy outcomes by weighing the alleged “consequences of a particular construction.”

I recognize that different courts may follow different interpretive methodologies, and that some judges may continue rely on legislative history or search for “legislative intent” when interpreting statutory language. They can, and some undoubtedly would, continue to do this without Section 1.49. However, the Ohio Revised Code should not codify an interpretive methodology that encourages judges to apply something other than the plain meaning of the statutory text that is before the court. It is the statutory text that is law—not after-the-fact attempts to divine the legislature’s supposed intent.

This legislation is a reintroduction of Senate Bill 307 of the 132nd General Assembly, which passed the Senate by a vote of 29 to 1 in November of last year.

Thank you again for the opportunity to testify on this legislation. I would be happy to answer any questions you may have at this time.