

Testimony of Daniel J. Dew
Pacific Legal Foundation
on HB 175
Ohio House Agricultural and Conservation Committee
April 27, 2021

Chair Koehler, Vice Chair Creech, Ranking Member Brent, and members of the House Agricultural and Conservation Committee, thank you for allowing me to testify in favor of House Bill 175.

My name is Daniel Dew, and I am the legal policy director at Pacific Legal Foundation. PLF is a nonprofit law firm dedicated to individual rights and limited government. PLF was founded in 1973 by then-Governor Ronald Reagan's staff to protect individual rights from government overreach, including property, economic, and speech rights that are increasingly under assault.

We have a dozen wins before the United States Supreme Court in 14 appearances with decisions, including several that raise issues regarding the reach of the federal Clean Water Act, such as the seminal case on that issue, *Rapanos v. United States*. And, just a few weeks ago, my colleagues argued another case before the Supreme Court involving private property rights, which is also implicated by HB 175. In addition to our work within the courts, we work with legislators at the state and federal levels to protect those same rights.

Thank you for taking time to address this important property rights issue in HB 175.

Ephemeral features, as defined in current law and clarified in the bill, are simply the places that rain falls or snow melts and then pools or runs off, with no remaining water after the precipitation has run off or evaporated. While the state has a clear interest in the bed and banks of actually navigable water bodies under established law, it has no similar interest in private property merely because rain falls on it or snow melts onto it, and then flows away or evaporates.

H.B. 175 recognizes this important distinction and the importance of private property to the people of Ohio, and properly withdraws general state regulation from ephemeral features. The state has no proper interest in regulating the use of private property merely because rain falls on it and then flows away, without more.

The State admittedly has an interest in controlling pollutants that end up in bodies of water, but the general jurisdiction over and regulation of ephemeral features is far too heavy-handed. Alternatively, the state can protect navigable waterways from those pollutants it deems dangerous, without regulating every puddle and runnel that appears after a rainstorm. By regulating pollutants rather than retaining overly broad jurisdiction over ephemeral features, the legislature can protect unwary citizens that may fill a dry hole or ditch with an innocuous substance like clean dirt or sand.

HB 175 is a good bill that recognizes recent and legally compelled changes to federal regulation of ephemeral features and ensures that Ohio can comply with federal water quality law without overregulating its own citizens.