

**STATEMENT  
IN OPPOSITION TO HOUSE BILL 339**

Before the House Civil Justice Committee  
Representative Brett Hillyer, Chair  
October 12, 2021

Chairman Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee. Thank you for the opportunity to present opponent testimony to House Bill 339.

My name is John Cobey. I joined my law firm, Cohen Todd Kite and Stanford in Cincinnati, as a clerk in 1968 and then passed the bar 52 years ago. I grew up in rural Morrow County and now live West of Vine Street in Cincinnati. I have been chairman of our Ohio Bar's Estate Planning, Probate and Trust Law Section Council's Committee on Electronic Wills for nearly 5 years and have been chairman of the Ohio Bar's Council's Electronic Wills Task Force that met on this subject for the last 18 months. Our Task Force has met at least once a week. But I am here in my capacity as a seasoned estate planning practitioner with serious concerns about the possible negative effects of H.B. 339 on the citizens of Ohio.

What is worse than not having a will? My experience is that if a will is fraudulent, or coerced, or wrongly signed by a vulnerable person under undue influence, it has a horrible effect on a family, and even can tear the family apart. From my experiences in life, I have come to know why many desire not to come to a lawyer for any reason. From my experiences as an attorney, I also know of the consequences of self-help without formalities to protect the testator's real intent.

When I passed the bar, the then President of the Ohio Bar Association told me that the most important service I can perform for a client is to carefully draft a will. In my time I have seen such is true and as a result of the impact that long-ago statement made on me, I often will draft a simple will for a client and not charge a fee for that service. I have drafted wills for first responders at no charge. I am now drafting a will for an immigrant and not charging for this document. It is part of what I can do for our community and is a privilege. I am sharing my personal history with you, but I am not alone in these actions. Many attorneys perform similar pro bono services for people who could not otherwise afford the services of an attorney.

A will does more than tell the executor how to distribute assets. Sometimes what is not said in a will is just as telling to the survivors, especially when someone is left out of a will, intentionally or as a result of fraud or undue influence. This is why there are safeguards in the law, There must be safeguards so that wills do not become fraudulently signed or that an older person does not become subject to undue influence by an opportunistic family member or even by a caretaker.

I have seen both family members and caretakers try to unduly influence a vulnerable person. The result of these terrible pressures on the older and/or vulnerable is more than economics or who gets grandma's silverware. The devastating effects of a will that does not reflect how a Testator feels are catastrophic for the survivors. For a person who is cut out of a will because of undue influence, the emotional impact of that rejection and the knowledge that the testator was coerced or misinformed causes deep psychological effect and tears. I have seen those tears in the eyes of a decedent's survivors and they are haunting. There is understandable depression, angst, and emotion, in the belief that a person you loved had been wrongfully influenced or that a will was fraudulently procured so that in your loved one's final document they forgot you and preferred another who they might not have loved. It is awful when a survivor believes they know the truth but can not prove it. Current Ohio law, requiring the physical presence of two witnesses at the signing of a will, goes a long way towards preventing these devastating consequences for the natural objects of a testator's bounty.

I also have seen what happens when a family fights as a result of a coercion and a thoughtless will. In my professional experience, one family fight I have seen has affected three generations of family members.

People sometimes go to great lengths to influence a testator in the signing of a will/ I have seen the testator kidnapped by an adult who tried to make her redraft a will to remove a rightful beneficiary. In a situation like this, remote witnesses outside the physical presence of the testator would not be able to determine this fact.

I have seen estates that have no guardianship provisions but with assets. The children in such estates are tossed from family member to family member all trying to get their hands on the minors' money. These issues could occur more likely when there is a remote will and remote witnesses as the proposed statute does not have the present Ohio Law's guardrails or standards to prevent misuses.

Sometimes I am called on to advise other lawyers regarding a matter of professional judgment. Recently I was consulted by a lawyer while his ill client was in his office.

The client said that his second spouse was insistent upon a large bequest, which would in effect disinherit the children. Because the client was very ill, the second spouse had psychological and physical leverage over the client. At the same time, outside that lawyer's office where this important consultation was being held, the second wife was waiting to make sure such was done. I advised that lawyer that this could be an instance of undue influence and he needed to proceed with caution or else the pressure from the second wife might cause issues for the estate and for him with his professional liability. Remote witnesses most likely would not have been unable to uncover the suspected undue influence that this lawyer observed.

What is important in drafting a will is the questions you ask of the client and the debate with a client that allows for a personal plan of success. For instance, for a minor, a will appoints the guardian of the person and of the estate. An attorney would ask should they be the same person. A person might be able to raise the child according to the Testator's desires, but may be a bad money manager. Often when I bring this up it is debated between me and the client, and a sound plan occurs. Again, the questions asked and debated helps the surviving beneficiaries get on with their lives. A self-drafted online will with remote witness who never meet the testator except over a Zoom meeting will not be able to help the client put his affairs in good order.

I am not opposed to change or the adoption of new technologies to help with the preparation of estate plans. I just want to see that it done in a way that protects our fine Ohio citizens. I oppose remote witnessing because in my 52 years of practice I have seen what can go wrong, and I fear that H.B. 339 would cause the flood gates of fraud to open wide for bad actors to prey on our citizens.

Thanking you for this opportunity to discuss this matter.

John G. Cobey