

TESTIMONY OF ANDREA R. YAGODA OPPOSING SB 185
HOUSE GOVERNMENT OVERSIGHT COMMITTEE

Chair Wilken, Vice Chair White and Ranking Member Brown, my name is Andrea R. Yagoda. I have been a resident of Ohio for forty eight (48) years. I am also a conceal carry permit holder and have been one since the law went into effect. I am here today as a private citizen to oppose SB 185 as I believe it is overly broad, vague and affords special treatment to gun owners, gun store owners, firing range operators and all things gun related giving them rights denied to every other Ohioan under the law and therefore a violation of the equal protection of the law.

Senator Schaffer, the sponsor of the Bill as other proponents of this Bill, limited their testimony supporting this Bill to designating gun shops, firing ranges, etc as “essential businesses during an emergency. He stated:

The bill defines these rights as essential and life sustaining and prevents both local and state governments from infringing on these rights under the declaration of emergency. It covers firearms commerce, concealed carry license processing, firearms training, access to firearm ranges, as well as hunting and fishing related businesses.

During the COVID pandemic, it became evident that local, state, and federal governments have wide powers to declare an emergency and implement restrictions on citizens’ rights. Fortunately, in Ohio, these powers were not used to infringe on second amendment rights.

However, this was not the case in other states. In Michigan, Governor Whitmer issued Executive Order 2020-42, which closed firearm and ammunition retailers, deeming them as nonessential businesses. She has since gone on to state that she implement these kind of restrictions again. This type of overreach should never be permitted to occur in Ohio.

John Weber of the NRA also limited his testimony to the “essential business” aspect of this Bill.

This is an essential bill, recognizing that firearm possession, transportation, carrying, commerce, training range access, as well as hunting and fishing are life sustaining, essential activities.

All proponents acknowledged that this was not an issue in the state of Ohio as such businesses were not closed during the pandemic and were deemed "essential". So once again, rather than addressing the real problems facing us in Ohio we are here looking for a solution to a problem that does not exist here.

However this bill goes further that merely declaring gun shops, sales of guns, shooting ranges, etc as "essential businesses" during an emergency.

Current law provides:

*The chief administrative officer of a political subdivision with police powers, when engaged in suppressing a riot or when there is a clear and present danger of a riot, may cordon off any area or areas threatened by the riot and prohibit persons from entering the cordoned off area or areas except when carrying on necessary and legitimate pursuits **and may prohibit the sale, offering for sale, dispensing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to, or from the cordoned off areas.***

This bill includes the ability to cordon off an area for a "mob". ORC 3761.01 defines mob.

"Mob" means a collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, or pretending to exercise correctional power over other persons by violence and without authority of law.

This bill however removes the ability of law enforcement to prohibit the sale, offering for sale, dispensing, or transportation of firearms or other dangerous weapons, **in, to, or from the cordoned off areas.** It removes all the language in red above.

Whether we like it or not, no constitutional right is absolute and all those rights are subject to a compelling state interest. I have been a conceal carry permit holder since the law went into effect yet I am prohibited from carrying a weapon into the Statehouse. Why? For the protection of the legislators, their staff, those visiting the Statehouse and myself. Hearings on bills can get emotional and contentious so for the safety of the public these restrictions are in place.

Can this body not conceive of any circumstance in which law enforcement would be justified in closing a gun shop in the middle of a riot or a mob especially when situated in the area cordoned off? Would this body rather that rioters or members of the mob overtake the gun shop and further arm themselves? Or try to confiscate weapons if violence broke out in the cordoned area? Should police officers or those in authority have to second guess themselves before taking action to protect individuals from harm? Do we want people selling deadly weapons during a riot or a mob in the cordoned off area? Really? This bill effectively provides that the sale of guns cannot be prohibited in any circumstance even if to protect the public. One may have a right to “bear” arms but that does not necessarily mean that individual has the right to purchase those arms during a riot in a cordoned off area. Reasonable restrictions on any constitutional right is permissible if a compelling state interest to do so exists. A compelling state interest should include the safety of the public. This bill is too overbroad.

Further, This bill is also vague. This bill provides:

*A person, **group**, or entity **adversely affected** by any manner of law, ordinance, rule, regulation, resolution, practice, or other action enacted or enforced in **violation of this section** may file an action for damages, injunctive relief, declaratory relief, or other appropriate redress...ORC 5502.411(E)(1)*

The bill does not define “adversely affected” nor what constitutes a “group”. By reviewing some of the testimony submitted it is unclear whether a cause of action under the bill would apply to ORC 3761.01 which was amended by this bill but is not technically part of ORC Section 5502.411. This section also provides for a cause of action even if the order, etc is not enforced. One would think the courts have enough on their plates rather than encourage lawsuits such as those contained herein. Yes a gun store owner may suffer a loss if his shop is closed down but every store which may be closed down would suffer a loss. What constitutional right do gun store owners have over clothing stores, toy stores, etc.

What damages would a person have who was merely denied the opportunity on a certain day to purchase a gun? The only ones getting rich here are the attorneys at taxpayer expense.

There is a troubling trend coming out of this gun happy General Assembly. Whenever guns are involved, attorney fees and expenses are provided for if the gun owner/advocate wins. Yet, if s/he loses why are they not required to compensate the taxpayers for their fees and costs to defend these suits? If a gun owner mishandles a gun and shoots me and I sue for my personal injuries, why am I not granted attorney fees and “reasonable expenses” whatever that is as not defined in this bill? No, I have to pay my fees and expenses out of the damages awarded to me **as compensation for my injuries**,. How is this fair?

How is this not a denial of equal protection? If this body is going to single out gun actions for special treatment how does this not violate the constitution providing for all citizens to be treated equally. Why not just pass a law that says whoever succeeds in a civil action pays the attorney fees and “reasonable expenses” of the party that prevailed?

Ohio citizens, everyday file for injunctions, file for declaratory judgments, file for anti stalking orders, file civil actions for intentional torts committed against them, file for negligence claims and none are awarded attorney fees and “reasonable expenses” so why are these cases treated differently?

I would ask that this committee vote no on this bill.

Thank you,

Andrea R. Yagoda