

AGAINST HB 248  
HOUSE HEALTH COMMITTEE  
TESTIMONY  
SUBMITTED BY ANDREA YAGODA, PRIVATE CITIZEN

Chair Lipps, Vice Chair Holmes, Ranking Member Russo my name is Andrea R Yagoda. I have resided in Ohio since 1974. Thank you for affording me the opportunity to present testimony opposing HB 248. I believe HB 248 is a dangerous bill, is an overreach by this legislative body and is not in the best interests of all Ohioans.

This Bill provides for injunctive relief if a violation is alleged. Ohio Courts have considered four factors as shown by clear and convincing evidence to obtain a preliminary injunction, including (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-68 (2000). However, when a statute grants a specific injunctive remedy, the general rule does not apply. *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56 (1978). In *Ackerman*, the Ohio Supreme Court found that when a statute grants specific injunctive relief, the state need not show irreparable injury. *Id.* In the case of a statutory injunction, the moving party need only satisfy the statutory conditions. *Id.* at 57. Additionally, unlike equitable injunctions, statutory injunctions do not require clear and convincing evidence. *State v. R&J Partnership, Ltd.*, 2nd Dist. No. 22162, 2007 Ohio App. LEXIS 6268, \*P22 (Dec. 28, 2007) (specifically applying a preponderance of the evidence standard to preliminary injunctions under Ohio Revised Code § 1716.16(B)); see *Stoneham*, 140 Ohio App.3d at 267-68. However, the court must still consider whether third parties will be unjustifiably harmed and whether it benefits the public at large if an injunction is issued. This Bill flies in the face of those two very factors. The vaccine mandates are intended to protect students, co employees, nursing home residents,

hospital patients, medical staff, maintenance staff, custodial staff, etc from an infectious disease which may be carried and spread by those who refuse to get vaccinated. This Bill fails to recognize the harm to OTHERS by the refusal of an individual to be vaccinated. Employers, nursing homes, businesses, hospitals, schools have a responsibility to keep everyone who resides in or works at those facilities safe. This Bill even prohibits an individual, business, etc from “requesting” that one be vaccinated. Makes it impossible for an institution to separate those who refuse to be vaccinated to protect others as not allowed to even inquire as to vaccination status. I cannot speak for Rep. Gross but I would not want my parent in an assisted living facility or a nursing home where the aides are not vaccinated. These were the most vulnerable population during the pandemic. Most families could not afford to remove them from these facilities to keep them safe. Families could not provide the assistance or did not have the facilities to keep their elderly family members safe like ramps, extended doorways to accommodate walkers, wheelchairs, etc. Structures like bars in the shower, etc. What does this Bill do to protect these Ohioans? What does this Bill do to protect the other students in schools, patients in hospitals, co employees? Nothing. It endangers them. One has a right not to receive a vaccine but you do not have the right to infect others and endanger their safety and well being.

Also it appears that this Bill gives anyone who wants to file a Complaint standing whether they are directly affected or not. This is not the law in Ohio. One must generally have standing to file a civil action. Further I find it offensive that this Bill awards attorney fees and court costs. Why is this treated differently than any other civil action? If I am brutally beaten and sue I am not awarded attorney fees and court costs. I would challenge Rep. Gross to point to a civil action beside civil rights where one is awarded attorney fees and costs. Further, this Bill gives a judge the authority to impose “any other civil penalty the court deems appropriate”. This gives a judge too much authority. I cannot think of any statute that gives a Judge this authority.

To argue that this Bill protects the poor and underserved and that it is intended to protect the medical rights of Ohioans is disingenuous. The majority party in the Ohio legislature has passed legislation which violates a woman's right to privacy and denies her the actual ability to make her own medical decisions; has placed in the budget a provision that those who are members of the LBGTQ community can be denied medical care; denying an Ohioan SNAP benefits because they have an operable automobile; have proposed that an employer can deny employment to one who has been prescribed and is following the medical advice of his treating physician by taking medical marijuana. No, this Bill is not to protect one's right. This bill is to satisfy the radical right anti vaxxers, the base and is purely political. No one is forcing any Ohioan to be vaccinated however, failure to do imperils others and as such could affect one's employment, school enrollment, etc. Employers should have the right to make hiring decisions, schools the right policy decisions, nursing homes, hospitals, etc based on what is in the business' best interests and the best interests of those associated with the institution.

I urge this committee to vote no on this dangerous bill which will take us back rather than move us forward. Have we not learned anything over the last year?

Andrea R. Yagoda