

**Testimony by Andrew M. Thomas, MD, MBA, on behalf of the Ohio State Medical Association  
House State and Local Government  
February 24, 2021**

Chair Wiggam and members of the House State and Local Government Committee, my name is Dr. Andrew Thomas and I am testifying today in opposition to HB 90 on behalf of the Ohio State Medical Association. I also serve as the Chief Clinical Officer and an Associate Professor of Clinical Internal Medicine at the Ohio State University Wexner Medical Center, but I am not providing this testimony on behalf of the University of the Medical Center. In addition, I serve as the Zone 2 lead for the state's pandemic response.

HB 90 establishes a process for the House and Senate to rescind certain orders and rules created by the Governor and Ohio Department of Health. The bill creates the Ohio Health Oversight and Advisory Committee, made up of members of both parties from House and Senate, which would oversee actions taken by the governor and health department during a public health state of emergency as well as actions taken to prevent the spread of contagious or infectious diseases. The committee would also have the ability, by majority vote, to rescind orders issued by the governor or department of health in response to a public health state of emergency, and the bill would limit ODH or the governor from issuing any similar orders from a period of 90 days after an order is rescinded.

The medical community has significant concerns about this legislation, especially as we are still in the midst of a worldwide pandemic. Substantially changing the way our state is organized to respond to the crisis in the middle of the pandemic is risky, would create unnecessary confusion for the public and the business community, and would further limit the effectiveness of actions taken to date to curb the spread of the virus and limit loss of life.

While I understand and can appreciate the frustrations of many who have been negatively impacted by curfews, closures, and other financial strain due to this crisis, I feel it is important to note that the state used a deliberate process in the Spring of 2020 to plan the rollback of restrictions as quickly and as safely as possible – this was done in collaboration with medical and public health experts, environmental engineers, and content experts from different categories of businesses like food service, retail, manufacturing, and personal services like beauty professionals to name just a few.

The decisions made by the state took into account an in-depth evaluation of the science that emerged in the early months of the pandemic about how to control transmission of the virus, the guidance of White House Coronavirus Task Force and other Federal officials, and an understanding of the major disruptions to the supply chain for personal protective equipment in the early months of the pandemic.

Even with the vaccine rollout underway in Ohio, we are not yet out of the woods yet. If they are needed, the State must continue to be vigilant and ready to proactively implement orders and rules as needed to combat the COVID-19 pandemic. While the daily case numbers and hospitalizations in Ohio right now appear much less worrying than just 6 to 8 weeks ago, the discovery of genetic variants of the virus could easily change the landscape very quickly as we have seen in other countries. Scientists estimate that the more contagious UK variant may be the dominant version of the virus in the United

States by the end of March. We don't know yet the impact of that on the course of the pandemic. If the state's hands are tied or their actions are at risk of being reflexively reversed, the confusion this would cause for businesses across the state and the mixed messages it would send to the citizens of our state would be incredibly damaging.

One purpose of the committee created by HB 90 is to consult with and provide advice to governor and department of health regarding necessary and appropriate action during the public health state of emergency. We applaud the spirit of that recommendation in the bill. Over the past year, I have participated in multiple briefings with legislative leaders from both parties and have found those discussions to be helpful even when there were differences of opinion among those involved in the conversations. Consultation, advice and feedback from a committee formed specifically for the purpose of monitoring health emergencies that includes interested legislators who develop a knowledge base on these issues could be incredibly valuable both for the remainder of this pandemic and in any future similar situation.

But, other aspects of this piece of legislation can only serve to paralyze health experts in their efforts to stop this or future pandemics and could put the lives of Ohioans at risk. This is why the Ohio State Medical Association stands in opposition to passing this bill.

For example:

- The bill allows the newly created joint committee of a total of ten House and Senate members – and not either full legislative body -- to rescind a public health state of emergency issued by the Governor. There is no mention of required hearings, standards for data or evidence that would be used by this committee to take such an action, or any process or protocol that the committee would use to make the determination to rescind such an order.
- Even more concerning, this action could be taken by the committee beginning on the 11<sup>th</sup> day of the emergency order and that the order or similar orders could not be reissued for 90 days.
  - Just to remind you of the timeline, the COVID-19 related public health state of emergency was declared on March 9, 2020. If this law had been in place at that time, it means that the public health emergency could have been rescinded as early as March 20<sup>th</sup> and could not have been reissued by the Governor until approximately June 20<sup>th</sup>.
  - By that time, Ohio would have had over 50,000 Ohioans diagnosed with COVID-19 and would have suffered approximately 7,000 hospitalizations and 2,800 deaths from the virus before the state would be allowed to enact a public health emergency.
- Even more concerning than that, this committee could also reverse any executive or standing order issued to prevent the spread of a contagious or infectious disease at any time -- and I assume that could mean the day that it was issued – with only a majority vote by members of this 10 person committee. By my understanding of the law, this could include orders related to masking, distancing in certain businesses, operations of nursing facilities, and other key public health interventions that have been proven to reduce transmission of the virus. Once again,

there is no mention of the need for hearings, use of data or expertise or even public deliberation prior to the committee taking such a vote.

- Another provision of the bill would limit a public health state of emergency to only 30 days unless explicitly extended by a concurrent resolution of both the House and the Senate. Currently such an order can be extended by executive action if it remains necessary to do so.
  - In the case of COVID-19, that 30 day mark would have occurred approximately April 9<sup>th</sup>. At that point, Ohio had experienced less than 10,000 of its approximately 925,000 total cases during the pandemic, approximately 2,100 hospitalizations out of our total of nearly 48,000, and only 300 deaths from amongst the nearly 11,800 COVID-19 deaths we've seen since March.

While many have been critical of some of the orders issued over the past year, the Ohio Department of Health has done their best to remain consistent with the recommendations from the White House Coronavirus Task Force, different Federal agencies and other established scientific experts in this field. If this bill were to be passed, it would tie the hands of the Governor and duly appointed leadership in state departments from enacting rules and orders to prevent the spread of an infectious disease and the unnecessary death of Ohio's citizens.

While we are opposed to this piece of legislation, we would request that if the legislature intends to create a committee with a means to consult on and an ability to rescind emergency orders issued regarding public health, that this committee must also include the expertise and representation of individuals from key professions directly impacted by the public health emergency and the state's response efforts. This could include adding professionals such as physicians with applicable training, credentialed public health experts, business owners and educators to the committee. These additional voices could share valuable, relevant insights on the specific impact of the public health crisis and any orders issued in response to it through the lens of the Ohioans working in those professions. This could help meet the goals expressed by the sponsors and ensure that the committee have robust, deliberative consideration of any orders issued by the governor or ODH.

In closing, I would just like to stress that although the health orders put in place in our state during the spread of COVID-19 may seem truly "unprecedented" to us as individuals, that is only because we have not faced a situation quite like this in most of our lifetimes. While COVID-19 is definitely not the same as influenza, the 1918-1919 worldwide influenza pandemic is the closest model we have for how a worldwide pandemic can occur in the modern age. Examining the historical documentation of pandemic responses in Cincinnati, Cleveland, Columbus, Dayton and Toledo over 100 years ago reveals a strikingly similar response to our actions to limit spread of COVID-19. As the incidence of flu cases rose during that crisis, multiple interventions were implemented in an attempt to control the infection – things like limiting large public gatherings and events, putting limitations on the density of public transportation, closing certain schools or certain types of businesses that were considered high risk for transmission, and putting curfews in place for certain businesses. So, while not familiar to most of us on a basis of firsthand experience, ODH's response to this pandemic has not been arbitrary at all. It has followed the recommendations of our federal and state epidemiological and infectious disease experts, the science of

how this particular infection spreads, and tried and true public health interventions that have been used for over 100 years.

Thank you for your time and your consideration of my remarks regarding HB 90.