

**Opponent Testimony of Bill Schieman to House Bill 175.
Presented to the Ohio Senate Agricultural and Natural Resources Committee
March 29, 2022.**

Chairman Schaffer, Vice Chair Huffman, Ranking Member Fedor and Members of the Ohio Senate Agriculture and Natural Resources Committee:

My name is Bill Schieman and I strongly oppose HB 175. There is no longer any reason to rush this legislation through the Ohio State House. On January 24 this year, the Supreme Court of the United States (SCOTUS) agreed to hear the case Sackett v. Environmental Protection Agency (EPA) 2023. Their decision will clarify what waters are subject to US EPA and US Army Corps of Engineers (USACE) regulations under the Clean Water Act (CWA) and Waters of the United States (WOTUS). We could make better use of the time before their decision comes down to study the latest Substitute HB 175 more closely. We need more time to study probable environmental impacts and do a deeper financial analysis before codifying HB 175 into law. In addition, there has been a fundamental lack of opportunity for thorough stakeholder review of the succession of Substitute HB 175 Bills.

The drafting of HB 175 and all hearings in the Ohio House and Senate prior to January 24, 2022 were conducted before SCOTUS decided to hear the Sackett case in their next term beginning in October this year. Their decision in this case is expected no later than May or June, 2023. It could come sooner.

The Sackett family began a fourteen-year legal battle when the US EPA claimed the CWA applies to their land. Courts have interpreted the CWA various ways over the years and the Sacketts have asked the SCOTUS for clarity to what the extent of the US EPA and the USACE has jurisdiction to regulate waters under the CWA.

In 2006, in *Rapanos v United States*, the first major environmental case heard by newly appointed Chief Justice, John Roberts and newly appointed Associate Justice Samuel Alito, SCOTUS issued their 4-1-4 (split) decision. In the wake of that decision and to the disappointment of many conservatives, the Seventh Circuit in *United States v. Gerke Excavating, Inc.*, the Ninth Circuit in *Northern California River Watch v. City of Healdsburg* and the Eleventh Circuit in *United States v. Robison* have all held that Justice Kennedy's opinion in *Rapanos* (the "significant nexus" test) is "controlling" and gives the EPA and USACE extensive authority to regulate waters (ephemeral streams, isolated wetlands and buried aquifers, etc.) that are not in themselves navigable but are deemed to have "significant nexus" to navigable waterways.

In the 2006 Rapanos case, Associate Justice Antonin Scalia wrote a plurality opinion (joined by Roberts, Thomas and Alito) that argued, in part, the "immense expansion of federal regulation" over "swampy lands" would give the Corps jurisdiction over "half of Alaska and an area the size of California in the lower 48 States." However, Justice Scalia's opinion is not considered "controlling" in Rapanos a fact bemoaned by State Representative Brett Hudson Hillyer (HB 175's Primary Sponsor) in his testimony to the Senate Agriculture and Natural Resources Committee last year.

When this bill was passed by the House on September 29, 2021 it was 8 pages and 217 lines in length. In its present form, its ballooned to 22 pages and 620 lines and contains undefined terminology. We should all be concerned when the Coal Industry is consulted for help rewriting Ohio's Surface Water Regulations.

Clean water is Ohio's greatest natural resource. We have time to create a bipartisan committee to do a detailed study of HB 175. There should be no compromise when it comes to protecting our most valuable natural resource and Ohioan's future for generations and generations to come.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Schieman". The signature is fluid and cursive, with a long horizontal stroke at the end.

William D. Schieman