

Rob McColley

State Senator

1st Senate District



Terry Johnson

State Senator

14th Senate District

Sponsor Testimony

Senate Bill 22

Ohio Senate Government Oversight and Reform Committee

January 26, 2021

Chairwoman Roegner, Ranking Member Craig, and members of the Government Oversight and Reform Committee: Thank you for allowing us the opportunity to provide sponsor testimony on Senate Bill 22, which will allow for legislative oversight of the Governor's executive orders and certain public health orders.

SB 22 will enact two policies to achieve legislative oversight of executive powers. First, it will establish the Ohio Health Oversight and Advisory Committee. The purpose of this committee will be to advise the Governor in matters of public health and will allow the committee to rescind executive orders issued by the Governor in times of public health emergencies.

The Ohio Health Oversight and Advisory Committee will be a joint legislative committee consisting of members from both the Ohio House and the Ohio Senate. These members will serve at the pleasure of the Speaker or President, respectively. Members from both the majority and minority will serve on this committee. The staff of the Joint Medicaid Oversight Committee will also provide administrative assistance to the Ohio Health Oversight and Advisory Committee.

Second, SB 22 will allow for the General Assembly, through concurrent resolutions, to rescind executive orders issued by the Governor in response to a public health state of emergency. This is a responsible safeguard to ensure that Ohioans and their elected representatives and senators are fully engaged in approving or denying restrictions that come down from the state during challenging times like these. Granting statutory authority to the General Assembly to act on behalf of the citizenry of the state to protect their rights and liberties is a

sensible safeguard against state overreach. It is important that we, the legislative branch, are engaged when it comes to making decisions that so powerfully affect the health safety, welfare and freedom, of our constituents.

The goal of this piece of legislation is to give the citizens of the state of Ohio, through their elected officials in the General Assembly, a voice in matters related to public health. Over the past 10 months, we have heard from our struggling constituents all across the state. This bill would allow us to take action on their behalf. It will give the legislature the much-needed ability to work with the executive during times of public health emergencies. This bill restores reasonable checks and balances that are crucial to a well-functioning government.

We want to clarify on the onset this legislation is not intended to limit the power of the Governor or the Department of Health, especially in a time of crisis, to issue orders that require quick and decisive action. This legislation is, however, restoring a balance that has heavily favored the executive for almost a year now. An executive that, while likely with good intentions, issued orders that are unconstitutional and infringe on our liberties. These orders have continuously been extended with no legislative oversight or approval, and have essentially granted the Governor's office lawmaking authority that it simply does not have under our Constitution.

To reiterate this point, I'd like to cite a few cases in the state of Ohio where the judicial branch had agreed with that sentiment. As of the fall, there were 5 cases that have been filed against the state of Ohio in state courts for powers under 3701.13-14. In all 5 of these cases, the courts have ruled against the state. These courts have ruled that venerable and fundamental rights have been violated with these orders. Although not a binding decision in the state of Ohio, a U.S. District Court of the Western District of Pennsylvania eloquently summarizes the constitutional challenges in *County of Butler, et al v. Thomas W. Wolf*. The court ruled:

However, good intentions toward a laudable end are not alone enough to uphold government action against a constitutional challenge. Indeed, the greatest threats to our system of constitutional liberties may arise when the ends *are* laudable and the intent *is* good—especially in a time of emergency. In an emergency, even a vigilant public may let down its guard over its

constitutional liberties only to find that liberties, once relinquished, are hard to recoup and that restrictions—while expedient in the face of an emergency situation—may persist long after the immediate danger has passed.¹

The decision goes on to later say, in regards to checks and balances within the government, “absent a robust system of checks and balances, the guarantees of liberty set forth in the constitution are just ink on parchment” (US District Court, Western District of PA). The opinion goes on further to quote the Supreme Court in a decision stating: “[t]he Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency”².

I want to highlight again it does not matter how good the intentions are, and I believe the Governor acted with what he felt were good intentions, but it does not change the fact that the constitution remains in effect and the Governor and Health Director are subject to checks and balances like every other division of our government. We feel the legislation before you today is more than reasonable. We have the Joint Committee on Agency Rule Review, the Joint Committee on Medicaid and Oversight, and other examples throughout our history that accomplish the same review process we are aiming to establish with this bill. There are also 10 other examples in the ORC currently that allow a concurrent resolution to override a governor’s action. The Governor himself proposed a change in the last operating budget that would allow the General Assembly to suspend the operation of an executive order during a time of emergency via a concurrent resolution. There are 23 other states in this country that have similar checks and balances in place.

We feel this legislation is absolutely crucial for our state. Thank you again for your time and consideration. We would be happy to answer any questions at this time.

¹ <https://casetext.com/case/cnty-of-butler-v-wolf-1>

² *Home Building & Loan Ass’n. v. Blaisdell*, 290 U.S. 398, 425 (1934)