

Testimony by Andrew M. Thomas, MD, MBA, on behalf of the Ohio State Medical Association
Senate Government Oversight & Reform Committee
February 10, 2021

Chair Roegner and members of the Senate Government Oversight and Reform Committee, my name is Dr. Andrew Thomas and I am testifying today in opposition to SB 22 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.

SB 22 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and the bill would limit ODH or the governor from issuing any similar orders from a period of 90 days after an order is rescinded.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 working to respond to the crisis in the middle of the pandemic is risky, could create additional problems, and could further limit the efficiency and effectiveness of actions taken to date to curb the spread of the virus and limit loss of life due to COVID-19. 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 both in the spring of 2020 and in the past couple weeks, the state has used a deliberate process in collaboration with medical and public health experts, environmental engineers, and content experts from different categories of businesses to safely modify and rollback restrictions as quickly and safely as possible as new science emerged on how to control transmission, as supply chains for personal protective equipment improved, or the pace of the pandemic slowed. .

Even with the vaccine rollout underway in Ohio, we are not yet out of the woods yet by any means. 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. 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 population of our state would be incredibly damaging. .

One purpose of the committee created by SB 22 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 the legislature from a committee of interested legislators who develop a knowledge base on these issues and formed specifically for the purpose of monitoring health emergencies 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 puts the lives of Ohioans at great 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 11th 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 20th and could not have been reissued by the Governor until approximately June 20th.
 - 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 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 is limited to 90 days but 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 9th. 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 US Centers for Disease Control and Prevention, the White House Coronavirus Task Force 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 in order to elicit even more valuable, relevant insight on the specific impact of a 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 a robust, deliberative consideration of any decisions made by the committee related to 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 SB 22.