Disability Rights OHIO

We have the legal right of way.

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Testimony on House Bill 166
Senate Finance Subcommittee on Health and Medicaid
May 16, 2019

Chair Hackett, Ranking Member Thomas, and members of the subcommittee, thank you for the opportunity to provide testimony in consideration of House Bill 166 ("HB 166"). Disability Rights Ohio ("DRO") is designated by the Governor under federal law as the protection and advocacy system and client assistance program for people with disabilities in Ohio. A nonprofit 501(c)(3) corporation, our mission is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. Our thirteen member board is made up of a majority of people with disabilities from around the state who live, work, and play in a variety of settings.

HB 166, the state's biennial budget, provides additional financial support to essential services for people with disabilities in Ohio. DRO applauds the House for maintaining and even increasing several of Governor DeWine's investments helping to address critical issues impacting adults and children with disabilities in Ohio. We encourage the Senate to maintain the House figures, especially in the areas of wages for direct service providers and funding for programs for multi-system youth.

I want to draw the Committee's attention to the provision of the bill that creates section 5123.603 of the Revised Code. This language would establish extreme and unwarranted legislative oversight of a private entity, one that receives no state GRF dollars, by requiring a joint legislative committee to biennially review the designation of Disability Rights Ohio as the state's protection and advocacy system (P&A) and client assistance program (CAP) for people with disabilities.

Disability Rights Ohio still has not been able to learn why this is being proposed. Every state and territory has a P&A and CAP designated by their governor, but no other state has created this type of legislative proposal. In fact, Disability Rights Ohio left the state as an agency in 2012 and was re-designated under Governor Kasich in order to increase its independence and to improve our abilities to act as an independent, important, check and balance on abuse and neglect against people with disabilities in Ohio.

Under federal law, redesignation can only take place if the Governor finds "good cause". Federal regulators advise DRO that "good cause" could only be found due to significant, on-going lack of compliance. Good cause decidedly does not include disagreement with advocacy priorities of the P&A.

There are elaborate procedural requirements,[i] including notice and hearing rights for the P&A or CAP. The plain language of the Developmental Disabilities Act, which was amended in 1998 to strengthen these provisions, indicates that Congress intended the federal process to govern designation exclusively.

Federal grant authorities closely oversee and review any re-designation and transfer of the grants from the existing P&A or CAP to a new designee. We have contacted our federal regulators to address the potential issues this could create, and they have questioned why a state would add a superfluous process, since the authority specifically lies with the Governor under federal law. They are currently scrutinizing the language for possible conflicts with federal law.

We are informed that neither the department of developmental disabilities nor the Opportunities for Ohioans with Disabilities agency, nor the Governor's office, was aware of the language. Noncompliance with the Developmental Disabilities Act (P&A) or the Rehabilitation Act (CAP) potentially jeopardizes federal funding in other programs funded under those acts.

This language, which was added as a last minute amendment in the House Finance Committee, also raises serious issues under both the state and federal constitutions. It is a classic example of the type of "logrolling" that the single subject rule of the Ohio Constitution was intended to prevent.[ii] It does not have any relationship with the state's budget, allotment of funds, or organization of state agencies. It is simply a rider that was included in the House bill. Even as the Ohio Supreme Court has recognized that "appropriations bills ... are different...[and] encompass many items..." those items must all be "bound by the thread of appropriations."[iii] Said otherwise, "the different treatment due to appropriations bills would also involve added caution when considering non-appropriation riders to appropriations bills."[iv] As noted, Disability Rights Ohio is not a state agency; receives no GRF dollars; and its activities are not of the kind subject to licensure or regulation by the state.

A second concern is that this language was likely offered in retaliation for positions that Disability Rights Ohio lawyers have taken in litigation while representing the organization or eligible clients. Our lawyers are highly effective in ensuring that the rights of people with disabilities are protected, including the right to be free from abuse and neglect, and that the federal laws governing the P&A are enforced.[v] Ironically, the language was inserted even as a fair and equitable settlement has been reached in the class action case that a narrow sector of the I/DD community had protested, *Ball v. DeWine*, 2:16-cv-282 (S.D. Ohio)[vi] This type of activity by private entities such as Disability Rights Ohio is protected by the speech and association clauses of the First Amendment to the United States Constitution.[vii]

DRO is in compliance with state law regarding nonprofits; has routinely undergone annual financial audits with no material findings; has been reviewed by federal regulators, both annually and through on site monitoring; and as required by federal law has gathered input from the public on its strategic priorities once a year. Our 990 is available on Guidestar. Our website and social media allow any interested party to keep up with our activities in the courts

and policy arena, and our recently completed annual report includes examples of our activities and a breakdown of our finances, including private and non-federal grant funding.[viii]

This language should be removed. While we are always transparent with our work and will readily share information with legislators on request, formal oversight of this type, especially if intended to harass and retaliate, is never appropriate for a private nonprofit corporation that receives no GRF dollars.

Thank you for the opportunity to provide testimony on HB 166. I would be glad to answer any questions you may have.

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[i] 42 USC § 15043(a)(4); 29 U.S.C. § 732(c)(1)(B)

[ii] Section 15(D), Article II

[iii] *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1, 711 N.E.2d 203

[iv] *City of Dublin v.State of Ohio*, 118 Ohio Misc. 2d 18, 32; 769 N.E.2d 436, 447 (Franklin County C.P. 2002)

[v] *Disability Rights Ohio v Buckeye Ranch*, ___ F. Supp. 3d ___ (2019 WL 1369400 S.D.Ohio 2019)(opinion granting preliminary injunction to access children and records under the PAIMI Act)(available at https://www.disabilityrightsohio.org/assets/documents/order_granting_dro_motion_for_pi_in_buckeye_ranch.pdf)

[vi] https://www.disabilityrightsohio.org/assets/documents/ball_v_dewine_joint_motion_for_settlement_and_exhibit_a.pdf

[vii] *In re Primus*, 436 U.S. 412 (1978)(solicitation of prospective litigants by nonprofit organizations that engage in litigation as a form of political expression and political association constitutes expressive and associational conduct entitled to First Amendment protection); *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)(The First Amendment does not allow prohibitions of speech based on the identity of the speaker, and corporations have free speech rights under that provision.)

[viii] https://www.disabilityrightsohio.org/assets/documents/dro_annual_report_2018.pdf